

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
amendment of ARM 2.55.320	)	AMENDMENT
pertaining to classifications)	
of employments, 2.55.323)	
pertaining to overall rate)	
levels, and 2.55.409	)	NO PUBLIC HEARING
pertaining to expense	)	CONTEMPLATED
constants)	

TO: All Concerned Persons

1. On December 5, 2003, the Montana State Fund proposes to amend ARM 2.55.320 pertaining to classifications of employments, 2.55.323 pertaining to overall rate levels, and 2.55.409 pertaining to expense constants.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m., November 28, 2003, to advise us of the nature of the accommodation that you need. Please contact the Montana State Fund, attn: Nancy Butler, PO Box 4759, Helena, Montana 59604-4759; telephone (406) 444-7725; TDD (406) 444-5971; fax (406) 444-1493.

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

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

(3) The state fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual issued July 1, ~~2002~~ 2003, and assign new or changed classifications as approved by the board. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 39-71-2311 and 39-71-2316, MCA

REASONABLE NECESSITY: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting manual that are now available up to July 1, 2003.

2.55.323 OVERALL RATE LEVEL (1) remains the same.

(2) In determining the projected revenue requirements for the following state fund fiscal year, the state fund actuary shall consider:

(a) the present financial condition of the state fund;

(b) trends in the number and cost of accidents;

~~(c) the estimate of investment and other income accruing to the state fund for the following fiscal year;~~

(c) investment yield on underwriting cash flow;

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

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA

IMP: Sec. 39-71-2311, 39-71-2316 and 39-71-2330, MCA

REASONABLE NECESSITY: This amendment to ARM 2.55.323 is reasonably necessary at this time prior to undertaking the rate making process for future fiscal years. This amendment more accurately reflects how the overall rate level is determined, and makes the rule consistent with ARM 2.55.319(1).

2.55.409 EXPENSE CONSTANT — ~~FY03~~

(1) through (4) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA

IMP: Sec. 39-71-2311 and 39-71-2316, MCA

REASONABLE NECESSITY: This amendment to ARM 2.55.409 is reasonably necessary to make the catchphrase of the section accurately reflect the content of the rule. The rule's catchphrase used "FY 03" to distinguish it from an earlier version of the rule, and to avoid confusion. This potential for confusion no longer exists, and the proposed amendment will clarify that the rule applies to all subsequent fiscal years.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Montana State Fund attorney, Nancy Butler, General Counsel, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, Montana 59604-4759, by fax (406) 444-1493, or by electronic mail address nbutler@montanastatefund.com. Any comments must be received no later than November 28, 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 Montana State Fund attorney, Nancy Butler, General Counsel, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, Montana 59604-4759, by fax (406) 444-1493, or by electronic mail address nbutler@montanastatefund.com.

6. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2600 persons based on an estimated 26,000 policyholders.

7. The Montana State Fund maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Montana State Fund administrative rules. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, PO Box 4759, Helena, MT 59601-4759, telephone (406) 444-7725, faxed to the office at (406) 444-1493, or may be made by completing a request form at any rules hearing held by the State Fund.

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

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

/s/ Herb Leuprecht
Herb Leuprecht
Chairman of the Board

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

Certified to the Secretary of State October 20, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
adoption of new rules I)	ADOPTION
through XV relating to)	
organic certification)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On November 29, 2003, the Montana Department of Agriculture proposes to adopt new rules I through XV relating to organic certification.

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 November 13, 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 adopted provide as follows:

NEW RULE I DEFINITIONS These definitions apply to all rules adopted under authority of Title 80, chapter 11, part 6, MCA.

(1) "Department" means the Montana department of agriculture.

(2) "Director" means the director of the Montana department of agriculture or a designee.

(3) "Handling operation" means any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

(4) "Mediation" means a voluntary, informal process to assist the department and another party to arrive at a mutually acceptable settlement. No formal record is made.

(5) "Mixed operation" means organic and non-organic production on the same production operation.

(6) "Packaging" means changing the size, shape, type or method of a product's containment without any change in the product itself.

(7) "Production operation" means a farm, ranch or other business that grows, gathers or raises crops, wild crops or livestock.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: New Rule I is necessary to clarify the meanings of certain terms and phrases to assure that these terms are interpreted properly and are used in the context intended by the department.

NEW RULE II ADOPTION OF NATIONAL ORGANIC PROGRAM REGULATIONS (1) The department hereby adopts and incorporates by reference the following parts of Title 7, Part 205, Code of Federal Regulations (CFR) adopted December 21, 2000, National Organic Program (NOP):

- (a) Subpart A - Definitions, all sections;
- (b) Subpart B - Applicability, all sections;
- (c) Subpart C - Organic Production and Handling Requirements, all sections;
- (d) Subpart D - Labels, Labeling, and Market Information, all sections;
- (e) Subpart E - Certification, all sections; and
- (f) Subpart G - Administrative:
 - (i) Sections 205.600 through 205.607;
 - (ii) Sections 205.660 through 205.663;
 - (iii) Sections 205.670 through 205.672; and
 - (iv) Sections 205.680 through 205.681.

(2) Federal regulations adopted by reference are effective as Montana law. A copy of these regulations may be obtained from the Montana Department of Agriculture, 303 N. Roberts, PO Box 200201, Helena, MT 59620-0201.

(3) References in the adopted federal regulations to "certifying agent" may be taken to mean the department as used in this manual.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: Authorizing legislation (Title 80, Chapter 11, MCA) for the program requires compliance with the federal Organic Foods Production Act (7 U.S.C. 6501). This Act stipulates that organic certification agents, including state programs, must be accredited by, and operate in compliance with, National Organic Program regulations.

NEW RULE III APPOINTMENT AND COMPENSATION OF ORGANIC COMMODITY ADVISORY COUNCIL (1) The director of the department of agriculture, who by statute is a member of the organic commodity advisory council, will appoint seven other members as follows:

- (a) one consumer from the public at large;
- (b) four certified organic producers;
- (c) one certified organic handler representative, who must be an owner or employee of a certified organic handler; and

(d) one certified organic producer or handler representative appointed at large at the discretion of the director of the department.

(2) The director will give preference to nominations from the organic commodity advisory council, certified organic producers, certified organic handlers, organic food retailers and organic (product) consumers.

(3) The director will consider the following criteria in the selection of producer members of the advisory council:

(a) experience in certified organic production and/or handling;

(b) represent Montana's diversity of types of organic production;

(c) represent Montana's diversity of sizes of organic operations; and

(d) represent Montana geographically.

(4) Appointed members will serve two-year staggered terms. Appointed members shall not serve more than two consecutive terms.

(5) Compensation of council members will be as provided by 2-15-122, MCA.

(6) The council will conduct annual reviews of certification program activities. This will include a yearly review of a sampling of certification decisions.

(7) The council shall conduct meetings and carry out duties in accordance with procedures in 2-15-122, MCA, and any other procedures recommended by the council and approved by the department.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: Section 80-11-601, MCA authorizes the department to appoint an organic commodity advisory council to advise the department on matters pertaining to the operation of an organic certification program. New Rule III is necessary to clarify the structure of this council, procedures for appointing council members, operations, and responsibilities.

The authorizing statute specifies that the council will be composed of the director of the department, a consumer member of the public at large, and certified organic producers, processors, and handlers, a majority of which must be organic producers. Section (1) is necessary to clarify the makeup of the council in terms of total members and number of members for each segment of the community specified by law. The department is proposing an eight-member council of which at least four members are certified organic producers. This assures that the rule complies with statute and the council is an economical and efficient size.

Sections (2) and (3) establish procedures for the department to request nominations for advisory council members, and criteria that will be used to help select members. The rules

are necessary to inform the public of how the department will proceed with selecting advisory council members.

The terms of council members are established in section (4). By establishing staggered, two-year terms, the council's membership will have continuity in that each council will have members experienced with ongoing issues and work of the council and the function of the department's organic certification program. Council members will serve no more than two consecutive terms, and this helps to assure broad representation from different organic farming and handling operations and geographic areas.

The department is required as a USDA-accredited certifier to conduct an annual program review of certification activities conducted by staff, an outside auditor, or a consultant. The department intends to conduct a yearly internal review by program staff. However, members of the existing advisory council requested, and the department agrees, that an external review by the advisory council would be beneficial in assuring that the program maintains the credibility and quality desired by the persons being served.

Section (7) proposes that operations of the council will be conducted according to 2-15-122, MCA. This includes compensation, reimbursement of travel costs, definition of quorum, scheduling meetings, and other matters. Adoption of these procedures assures equitable compensation of council members and efficient conduct of meetings.

NEW RULE IV STATE SEAL (1) Producers and handlers certified by the department may use a seal that identifies the department as the certifying agent, provided that such seal is used in compliance with 7 CFR 205 subpart D. The use of such a seal is voluntary.

(2) The department's organic seal may be reproduced in black and white and must replicate the form and design of the example in figure 1.

(3) The department's organic seal may be reproduced in color and must replicate the form and design of the example in figure 1.

(a) If reproduced in color, the seal must be colored according to specifications approved by the department.

(b) A representation of the colored organic seal is available for viewing and download from the department website.

(4) The department's organic seal may be reproduced as a black and transparent image and must replicate the form and design of the example in figure 1.

(5) Instructions for reproducing the seal in color, black and white or black and transparent are available from the department upon request.

(6) Seals may be affixed only to products organically produced or handled by operations certified organic by the department.

(7) Seals must be printed legibly and conspicuously.

Figure 1:



AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: Program constituents have indicated that one reason for establishing a state organic certification program is to enable certified producers and handlers to identify their products with the image and reputation of the state of Montana. NOP regulations include rules governing the design and use of certifying agency seals or logos. Detailed design and color specifications for the seal, which are provided upon request, ensure consistency of its appearance in the marketplace and thereby enhance its value for product identification.

NEW RULE V APPLICATION PROCEDURES (1) The department will certify production and handling operations that submit an application to the department and comply with the requirements set forth in these rules.

(2) The department may certify contract production or handling of organic products for producers or handlers certified by the department:

(a) The contract production or handling must be described in the production or handling system plan of an operation certified by the department or applying for certification by the department;

(b) Contract producers or handlers will not be certified themselves, but will be included as part of the contracting producer or handler's certification;

(c) The department may review contracts for production or handling to assure that the certified operation or the operation applying for certification has sufficient control over the contracted production or handling to effect change in cases of non-compliance; and

(d) Any notices of non-compliance, denial of certification, or suspension or revocation of certification involving contract production or handling will be issued to the certified operation or operation applying for

certification. No separate proceeding will occur with the contractor.

(3) Each production or handling operation required by 7 CFR 205.100 to be certified, except for those exempt or excluded by 7 CFR 205.101, must apply for certification and must be certified by the department or another accredited certifier:

(a) An operation that meets the definition of "production operation" must be certified as a producer; and

(b) A certified producer who changes crops, wild crops, and/or livestock of their own production into a new distinct product by physically, chemically or otherwise changing the original product, must also certify as a handler.

(i) However, a certified producer may clean, wash, grade, dry, package, transport, or do similar preparation of their own production without handler certification; and

(ii) All such activities by certified producers must be fully described in their Organic System Plan (OSP). The department may require additional information or documentation from certified producers regarding their contracted handling activities.

(c) An operation that meets the definition of "handling operation" must be certified as a handler.

(4) Once granted, certification continues in effect until surrendered by the certified operation or suspended or revoked by the department. However, to continue certification, certified operations must annually submit an application, pay certification fees, allow an on-site inspection and submit information in compliance with 7 CFR 205.406.

(5) Applications must be submitted on forms approved by the department and must be completed, signed, and accompanied by the appropriate fees in order to be considered. Application forms are available on request from the department. Applications for continuation of certification are mailed to certified producers no later than January 15 yearly and to certified handlers no less than 90 days prior to the anniversary date of submission of their initial application.

(6) First time applicants must include a complete OSP with their application. Certified operations may use a renewal form to update their OSP annually for up to three years, but must submit a new complete OSP at least every four years and may be required by the department to submit a new complete OSP whenever there are significant changes to the operation.

(7) Applications for certification must include labels for all crop, livestock and handling inputs, and processing aids and evidence that each input and processing aid contains only allowed substances. Such evidence may consist of lists of ingredients, statements from manufacturers, or verification of recognized third party review.

(8) Applications for certification must include, as part of their OSP, a list of all organic products produced and/or

handled, including sample labels and complete product profiles for each distinctly labeled organic product:

(a) Certified operations must not use an organic label or make organic claims for any product not included in their OSP;

(b) Certified operations may add new products by submitting an addendum to their OSP, including sample labels and complete product profiles where applicable;

(c) Product profiles must be submitted on forms approved by the department and must include a complete list of ingredients in the product and processing aids used in manufacturing the product; and

(d) Information provided to the department on product profiles and sample labels will only be used to evaluate an applicant's compliance with organic program rules. Such information will be treated as confidential.

(9) Applications are due by the following deadlines. Applications submitted after the deadline must include an additional late fee of \$200.

(a) Applications for initial certification of producers are due at least 120 days prior to the harvest of organic crops or the sale of organic livestock or livestock products.

(b) Applications to continue producer certification are due no later than March 15 annually.

(c) Applications for initial certification of handlers can be made at any time.

(d) Applications to continue handler certification are due one year from the date of the previous application.

(10) Certified operations that do not apply to continue certification or do not comply annually with 7 CFR 205.406 may have their certification suspended. An operation that has its certification suspended may reapply but shall pay the fees of a new applicant.

(11) An application for certification may be withdrawn by the applicant at any time:

(a) to withdraw an application for certification, applicants must submit a written request to withdraw, including the applicant's name, address and signature; and

(b) upon receipt of a request to withdraw an application for certification, the department will suspend all actions related to the application and bill the applicant for all fees due for services rendered up to the time of the department's receipt of the withdrawal request.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: New Rule V establishes the standards and procedures for applying to the department. The procedures established by New Rule V are minimum standards.

Section (2) establishes the standards for persons to apply to have contract production or handling certified by the department as organic. Examples of contract handling and

production include custom seed cleaning and custom harvesting. The rule clarifies that the applicant for organic production or handling certification is responsible for describing the contract procedures in their organic system plan, and that a separate application and certification is not necessary for the contract handler or producer.

Section (3) requires that all production and handling operations that are required by federal regulations to be organically certified must be certified in Montana. This rule clarifies Montana's intent to be consistent with federal regulations and makes it a violation in Montana to fail to certify in accordance with federal regulations that are adopted by reference in New Rule II. This rule also clarifies when a producer may conduct certain handling operations without becoming certified as a handler. This distinction is not apparent in adopted national organic regulations. For example, a producer may conduct activities such as cleaning or sorting that fit the definition of handler in federal regulations. However, the department concluded that certain activities customarily conducted by producers, such as preparation for market of products that were grown on the producer's operation, should not require additional certification as a handler. To further this distinction, the rule clarifies that, if a distinctly new product is produced, for example, grinding wheat to sell as flour, this constitutes handling for which handler certification is required.

Section (4) clarifies that certification, once issued by the department, continues in effect, without interruption and without an expiration date until surrendered, suspended or revoked. Suspension or revocation can be initiated by the department under a number of conditions including, but not limited to, failure of the applicant to submit annual fees and application, and failure to comply with organic production or handling standards. While this procedure is consistent with the adopted national organic standards, the department determined it necessary to clarify this by rule, because it is not succinctly stated in the federal regulations. Also, many organic operations are accustomed to procedures in place prior to the adoption of the national organic regulations wherein organic certificates were issued with an expiration date.

Section (5) specifies that application forms must be approved by the department, and must be complete, signed, and accompanied by the correct fees. This rule promotes efficiency and ensures that fundamental information about the applicant and fees accompany the application. The department will provide blank forms for the system plan, record keeping, producer's affidavits, and other forms that may be used by applicants, but are not required. Section (5) further commits the department to mail applications for continuation of producer certification by January 15 and applications for continuation of handler certification at least 90 days prior

to their due dates. This allows ample time for applicants to complete and submit application materials. Advisors from the organic community suggested this date because applications will arrive at establishments at a convenient time in their yearly processes.

Section (6) requires that each application for certification include a detailed description of the processes and procedures that the applicant is following to achieve compliance with organic production and handling standards. This plan is called an organic system plan. The department will provide blank forms that applicants may fill out as their organic system plans. The department will encourage the use of department forms because they address the necessary information and make the processing of applications efficient. Applicants are required to update the plan annually to describe any changes that have been implemented, and the department is requiring a new organic system plan at four-year intervals. Because of the dynamic nature of many organic operations the department is requiring yearly updates and renewal at four-year intervals to assure that changes in operations are documented and can be reviewed by the department to check compliance. This provision is in compliance with national organic program regulations that allow certifiers to request additional information to evaluate compliance.

Section (7) requires that applicants for certification include, with their applications, labels for production and handling inputs and processing aids. They must also include evidence that inputs contain only allowed substances as inert or active ingredients. This information is necessary to determine compliance with 7 CFR Part 205, Subpart G, The National List of Allowed and Prohibited Substances, which is proposed to be adopted by reference in New Rule II.

Section (8) requires applicants for certification to include a list of crops intended to be produced, to submit labels for products produced, and to inform the department of the product composition including ingredients and products used as processing aids. This information is necessary to evaluate compliance with organic production and handling standards regarding labeling of organic products and the use of allowed substances.

Section (9) establishes the deadlines for submitting applications for certification and continuation of certification. It is important for marketing that certification decisions be made in time for producers to legally market production as organic, and many producers desire to have renewals processed prior to marketing a new crop to verify their certification to customers. The deadlines allow the department to process and inspect growing crops in a timely manner to meet these needs.

Handling, unlike production, is often a continuous process and issuance of certification is not associated with harvest. However, it is necessary to renew applications yearly so that updates to system plans and application fees that support certification services are submitted in a timely manner.

Section (10) is necessary to standardize procedures for an applicant to withdraw an application and for the department to bill for services rendered.

NEW RULE VI APPLICATION FEES AND FEES FOR SERVICES

(1) Application fees for producers are as follows:

(a) the application fee is \$165 for operations having less than \$100,000 in gross sales annually, which includes \$15 to provide Organic Materials Review Institute (OMRI) lists to the applicant;

(b) the application fee is \$240 for operations having \$100,000 or more in gross sales annually, which includes \$15 to provide OMRI lists to the applicant;

(c) an additional application fee is \$150 for new applications for certification;

(d) an additional fee for mixed operations is as follows:

(i) \$50 if gross sales are less than \$20,000 annually;

(ii) \$100 if gross sales are from \$20,000 to \$100,000 annually; and

(iii) \$150 if gross sales are more than \$100,000 annually; and

(e) an additional fee is \$75 for combined livestock and crop operations.

(2) Application fees for handlers are as follows:

(a) the application fee is \$215 per facility for operations having less than \$100,000 in gross sales annually, which includes \$15 to provide OMRI lists to the applicant;

(b) the application fee is \$315 per facility for operations having \$100,000 or more in gross sales annually, which includes \$15 to provide OMRI lists to the applicant;

(c) an additional application fee is \$150 for new applications for certification; and

(d) if an operation is certified as a producer, or is applying for certification as a producer, the operation may subtract \$115 from the base application fee for handler certification.

(3) Each applicant for certification will be inspected initially and yearly thereafter, in compliance with 7 CFR 205.403, to assess compliance with certification standards. Fees will be charged to the applicant in amounts sufficient to cover costs of the inspection or to cover contract inspection fees:

(a) for any inspections conducted by department staff, the inspection charge will be \$25 per hour for time incurred in the inspection and writing the report. The department will also charge per diem and mileage at standard state rates; and

(b) for inspections conducted by contracted inspectors, the inspection charge will be equal to that specified in the contract with the inspector and paid to the inspector by the department.

(4) The fee for a transaction documentation form is \$10 per sales-specific transaction documentation form that is completed by the department, and \$10 for a booklet of 10 sequentially numbered transaction documentation forms with an expiration date that may be used by the certified operation.

(5) The fee for extra certificates of organic operation shall be \$5 per form.

(6) A fee of \$25 shall be charged for checks returned due to non-sufficient funds.

(7) A fee of \$10 shall be charged for application packets. Application packets will include a copy of the NOP rules, MDA program rules, a fee schedule, an application form, and an OSP form. The fee may be applied to application fees.

(8) Failure to pay application, inspection, or other fees due will be cause for denying, suspending, or revoking certification.

(9) All application fees and fees for services are non-refundable upon receipt.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: Authorizing legislation for the organic program requires the program to operate with "no negative impact on the state budget." To comply with this mandate, this rule sets fees to help cover the costs of the services provided. NOP regulations require that certifying agents establish a fee schedule and provide all applicants with an estimate of certification costs. This estimate is based on fees set by this rule.

Individual producers applying for certification will pay between \$165.00 and \$615.00. The application fee varies, depending on the level of gross sales made by the operation, the amount of non-organic production, if there are both crops and livestock requested for certification and whether it is a new or renewal application. Applicants for handler certification will pay between \$100.00 and \$465.00. The handler application fee varies, depending on whether the applicant is also applying for producer certification, the level of gross sales and whether it is a new or renewal application.

Based on demand for certification services to date and expectations for growth in demand for organic certification, the department anticipates certifying 75 - 100 producers and 25 - 35 handlers annually. This level of program participation will generate an estimated \$20,000 - \$25,000 in program revenues, representing approximately 20% of the program budget.

NEW RULE VII ANNUAL REPORT AND ASSESSMENT FEES

(1) Producers and handlers certified by the department must submit an annual report of their total gross sales and handling charges for all certified organic production and handling. Certified producers shall pay an annual assessment fee to the department as a percentage of gross sales of organically produced products. Certified handlers shall pay a flat annual assessment fee based on their reported level of gross sales and handling charges for all products and services included in their Organic Handling System Plans (OHSP):

(a) the annual report of all gross sales and handling charges shall be for the previous calendar year;

(b) the report and fees are due along with each operation's annual application to continue certification; and

(c) if a producer or handler chooses not to continue certification, their sales report and assessment fees are due on the anniversary date of their previous application.

(2) The assessment fee on gross sales and handling charges for production and handling certified by the department is as follows:

(a) the fee for certified producers is 1.0% of gross sales exceeding \$20,000;

(b) the fee for certified handlers is:

(i) no assessment fee for handlers whose gross sales and handling charges are less than \$20,000 per year;

(ii) \$100 for handlers with gross sales and handling charges of \$20,000 to \$40,000;

(iii) \$200 for handlers with gross sales and handling charges of \$40,001 to \$100,000;

(iv) \$500 for handlers with gross sales and handling charges of \$100,001 to \$250,000;

(v) \$1,000 for handlers with gross sales and handling charges of \$250,001 to \$500,000;

(vi) \$2,000 for handlers with gross sales and handling charges of \$500,001 to \$1,000,000; and

(vii) \$4,000 for handlers with gross sales and handling charges of over \$1,000,000.

(3) The assessment fee on gross sales for production certified by the department and one or more additional certifiers is as follows:

(a) for sales of products represented as certified by the department, the assessment fee is 1% of gross sales exceeding \$20,000; and

(b) for sales of products certified by the department, but represented as certified by a certifier other than the department, the assessment fee is .5% of gross sales exceeding \$20,000.

(4) The assessment fee for handlers certified by the department and one or more additional certifiers is the same as the assessment fee for handlers certified only by the department.

(5) All assessment fees are non-refundable upon receipt.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: This rule establishes requirements for producers and handlers who are certified by the department to submit annual reports of gross annual sales and handling charges for certified organic production and handling. The rule also requires that an assessment, proportionate to the amount of gross sales and charges be paid to the department. This assessment provides funding to the department for the organic certification program so that the program meets the mandate of 80-11-601, MCA, requiring "assessments on certified organic products payable by certified organic producers, processors, and handlers, in an amount sufficient to fund that state organic certification program without negative fiscal impact on the state budget."

Discussions occurred between the department and the Montana State Organic Certification Advisory Committee and, later, the Montana Organic Commodity Advisory Council established pursuant to 80-11-601, MCA. These groups considered a variety of funding options to meet mandates of statute including acreage fees and flat fees. However, they recommended an assessment and application fee and the department concurred with this recommendation. Advisory groups felt that an assessment fee would fairly allocate fees in amounts proportionate to gross sales. Producers and handlers will therefore be protected from having to pay fees assessed on acreage and flat fees in years where crop disasters, low commodity prices, or other factors resulting in reduced income.

The program's fee schedule is designed so that assessments collected from larger producers and handlers will provide 50%-60% of program revenues. Collecting assessments from larger operations allows application fees to be kept relatively inexpensive for all applicants.

Since application fees do not cover the full costs of providing certification services, it is important that the department collect assessment fees from certified operations. This rule stipulates that certified operations must pay assessment fees based on their sales of organic products. To ease the burden on small operations, no assessment is charged on the first \$20,000 of organic sales. Rule VII(3) and (4) extend assessment fees to sales of all organic products covered by department certification - even if the sales are represented as certified by another certifying agent. This provision limits the ability of certified operations to avoid the assessment by "dual certifying" with other certifiers having lower assessment fees. In so doing, it helps insure that the department can recover its costs of providing certification services.

The department anticipates that 80 producers and 20 handlers will be certified in fiscal year 2004. Approximately one-half of these businesses will be exempt from the assessment fee because gross sales of certified organic products will be less than \$20,000 annually. The non-exempted businesses will pay an assessment that is calculated on their gross sales, and the cumulative amount of the assessment that will be collected by the department in fiscal year 2004 is estimated to be \$20,000 to \$25,000.

NEW RULE VIII CERTIFICATION OF EXEMPT AND EXCLUDED OPERATIONS (1) The department may certify operations that are exempted or excluded from certification pursuant to 7 CFR 205.101. Such certification is voluntary.

(2) Application procedures, fees, and certification standards will be as provided for non-exempt and non-excluded operations.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: Certain types of production and handling operations are exempt or excluded from certification requirements under the NOP. These include small producers, who sell less than \$5,000 worth of organic products per year, and retailers. While not legally required to certify, these operations may wish to certify for various reasons. This rule allows the department to offer certification to operations defined as exempt or excluded under the federal regulations.

NEW RULE IX CONVERSION PROGRAM (1) Producers and handlers converting to organic production that do not qualify for certification may apply for an application review or full review including an inspection. These reviews allow potential applicants to experience procedures and requirements of the certification program and to identify areas of potential noncompliance.

(2) Applicants for conversion period application review must prepay one-half of the applicable application fee and submit appropriate application forms. The department will review the application and no inspection will be conducted. The department will notify the applicant of any deficiencies in the application or the organic system plan.

(3) Applicants for conversion period full review must prepay the full amount of the applicable application fee and submit the appropriate application forms. An inspection will be scheduled and conducted. The department will notify the applicant of any deficiencies in the application or the organic system plan and any deficiencies determined as a result of the inspection.

(4) A conversion period full review including an inspection in the year prior to certification exempts the operation from payment of a new application fee in the first year of certification.

(5) The new application fee does not apply to conversion period reviews.

(6) Persons who participate in the conversion program shall not imply in any manner that they are organically certified, and must not sell, label, or represent products as "100 percent organic", "organic", or "made with organic ingredients."

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: The conversion program established by New Rule IX is a voluntary program that allows persons who are converting to organic, but do not yet meet the standards for certification, to apply for review of their system plans and to have their operations inspected for compliance with organic standards. This program is similar to the "transition program" offered by private certifiers that many Montana organic producers may be familiar with. The purpose is to assist producers and handlers in their conversion process by reviewing their system plans and pointing out areas of their plans that might not comply with organic standards. Participants in the conversion program can also request an inspection of their operation by the department to determine any possible problems. Applicants who participate in this program will pay fees, as established in the rule and required by statute, to pay for the department's services; however, these fees are reduced in comparison to the fees for actual certification, and participants are excused from the new applicant fee when they do apply for certification. Persons in the conversion program, because they are not certified, are prohibited from implying or stating in any way that their products or services are organic. It is the department's opinion that this program will provide opportunities for persons converting to organic operations to learn about the certification process and to correct any deficiencies in their operations; and that eventual certification will be an easier and successful process.

The department does not anticipate more than five persons applying for the conversion program yearly. This level of participation will generate an estimated \$750 each year.

NEW RULE X TRANSACTION DOCUMENTATION FORMS

(1) Transaction documentation forms (TDF) may be used in transactions of certified organic products to identify products that were produced or handled in accordance with rules adopted under this chapter. TDF provided by the department can be used only by operations certified by the department and only for products covered by department certification. Use of TDF is voluntary and two types are available:

(a) transaction documentation forms may be issued as sequentially numbered forms with the producer's or handler's

identification and expiration date beyond which use is not valid. Users shall enter shipment information that must include product name, production date, quantity sold, lot number (if applicable), sale price and date of sale; and

(b) the department shall issue a completed TDF to a producer and/or handler upon written request. Requests must include payment, must be submitted on forms approved by the department and must contain all information requested on the request form including product name, production date, quantity sold, lot number (if applicable), sale price, date of sale and name and address of buyer.

(2) When a TDF is part of a sale, the sales record required by [Rule XI] for certified operations shall include the TDF number.

(3) Unused, expired TDF shall be returned to the department, or they may be collected by an inspector.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: Buyers of organic products often require the producer or handler to provide verification of their certification. Transaction documentation forms are optional documents that certified operations may use to verify the organic status of their products.

NEW RULE XI RECORDS (1) Certified operations must maintain records and make such records available to the department as set forth in 7 CFR 205.103. Records shall be sufficient to facilitate an audit trail to track the identity and movement of certified organic products. Such records must be adapted to the particular business that the certified operation is conducting.

(2) Certified operations must have records of all non-organic production and handling. Such records must be sufficient to clearly document that there is no commingling of organic and non-organic products, that there is no contamination of organic products with prohibited materials used in production or handling of non-organic products, and that no non-organic products are sold or represented as organic.

(3) Certified organic producers, except producers of livestock, shall keep the following records for each crop produced:

(a) location where grown;
(b) storage location;
(c) materials applied to plants, soil, water, and products. These records shall include date applied, application rate, and name of material including brand name for brand name products;

(d) if custom processed, handling and processing description, date, and location. Location shall include the name and address of the handler or processor;

(e) sales records of organic crops by dollar and product volume, name and address of purchaser where possible, and transaction documentation form number when used; and

(f) identifying lot number that facilitates tracking the product from field to sale or release of physical control, if appropriate to the type of operation.

(4) Certified organic livestock producers shall keep the following records:

(a) all livestock must be individually identified or marked except poultry, bees and fish, which may be identified by unit of production, such as flock, hive, or pond;

(b) receipts for acquired stock and materials must be kept to insure a complete audit trail; and

(c) the following records from birth or purchase to sale or release of physical control:

(i) all disease and pest management materials administered including dates administered, material identification, dosages and sources;

(ii) all purchased feeds including dates purchased, feed identification, quantities purchased, sources, and documentation of organic certification;

(iii) weight of slaughter animals at slaughter and weight of post-slaughter animal products;

(iv) slaughter, packing and other handling description, date, and location. Location shall include the name and address of the slaughterer, packing plant or other handler; and

(v) sales records of all organic animal products sold including dates, quantities or weights. Sales records must include the purchaser's name and address where possible and transaction documentation form number when used.

(5) Certified handlers must maintain records that track ingredients and certified organic products from receiving through distribution, shipping, or sale. Such records include, as appropriate to the enterprise:

(a) invoices, bills of lading, and producer certificates for incoming products;

(b) date and quantity of product processed or handled;

(c) storage identification and location of incoming product and of processed or handled product;

(d) repack data, production run reports, invoices and bills of lading of products shipped out; and

(e) handlers must have available copies of organic certificates or other documentation of organic status for all organic ingredients and products. Organic certificates must be current and correspond to the organic ingredients used in processing. All organic certificates must be from USDA-accredited certification agencies.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: The National Organic Rule, 7 CFR 205.103, adopted by reference in New Rule II, requires that certified

organic operations maintain records "concerning the production, harvesting, and handling of organic products...". The regulation further states that records must be adapted to the business, fully disclose all activities and transactions in sufficient detail as to be readily understood and audited, be maintained for not less than five years, be sufficient to demonstrate compliance with organic laws, and be made available for inspection and copying by authorized officials including the certifying agent. The operation's organic system plan must describe the record keeping system. New Rule XI proposes minimum standards for producer and handler records. These standards were developed in consultation with Montana organic advisory groups. The rule informs organic operations of the standards that the department intends to implement and it provides uniformity and consistency in administration of record keeping requirements that meet the intent of national organic standards. The rule, while providing this structure, also allows sufficient flexibility for organic operations to develop their own record keeping forms and to adapt records to meet the needs of individual operations.

NEW RULE XII SAMPLING (1) The department or contract inspectors will collect samples of soil, products, or agricultural inputs from randomly or systematically selected operations certified by the department. The department will collect samples when there is reason to believe, based on observation or information received, that land, an input, or product came into contact with a prohibited substance or that excluded methods were used. Inspectors may collect samples as part of the routine annual organic inspection or recommend sampling by the department.

(2) All certified operations are subject to 7 CFR 205.670, which specifies that the department or the agricultural marketing service (AMS) administrator may require pre-harvest or post-harvest testing of any agricultural input used or agricultural product to be sold, labeled or represented as organic.

(3) The department will analyze samples for prohibited substances or for evidence of use of excluded methods. Pesticide and fertilizer analyses will be conducted whenever possible by the Montana department of agriculture analytical laboratory.

(4) Sampling and analyses will be at the expense of the department provided that revenues from application fees and assessments may be used to fund the sampling program. Inspectors will not be charged for samples taken as part of an organic inspection or investigation.

(5) All results of analyses will be provided to the administrator, AMS, United States department of agriculture; the certified operation or applicant; and the public on request. The department may publish a yearly summary of sample results.

(6) Applicants for certification and certified operations will be provided with a receipt for any samples collected by the department or contract inspectors.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: Sampling is a tool that may be used to help determine the eligibility of an applicant for certification or to investigate the compliance of a certified operation with organic production and handling regulations. This rule specifies the procedures the department follows when conducting sampling.

NEW RULE XIII COMPLAINTS AND INVESTIGATIONS (1) Any person with knowledge of a violation of this chapter may file a complaint with the department. Complaints should be in writing and signed and should provide the details known to the person filing the complaint. The lack of a written or signed complaint will not preclude the department from investigating.

(2) The department will evaluate each complaint and will investigate complaints involving operations certified by the department. Complaints involving operations not certified by the department will be referred to the manager of the national organic program.

(3) The department may investigate certified or non-certified organic operations, whether certified by the department or not, upon determining that a need exists to protect public health and safety or preserve evidence that would justify an immediate investigation.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: This rule clarifies the department's proposed procedures for responding to public and private complaints of violations of law regarding organic production and handling. The department is not proposing to assume responsibilities for general enforcement of national organic standards as allowed by 7 CFR 205.620. This section of federal regulations allows states to apply to the USDA for approval to assume enforcement responsibilities within a state for national organic program requirements. The department will, however, require compliance with those standards by those operations certified by the department, and any noncompliances will be handled through processes for approval, denial, suspension or revocation of certification.

To assure an efficient response and proper disposition of complaints, the department is proposing to act as a clearinghouse for complaints. Section (1) allows persons to submit a complaint to the department, whether the complaint involves a person certified by the department or not. Sections (2) and (3) describe how the department will respond

to these complaints, and these responses are consistent with the authority granted by the USDA to the department as an accredited certifier. The department will normally investigate and take action on a complaint only when that complaint involves an operation certified by the department. All others will be forwarded to the USDA for determination of an appropriate action.

The department is proposing to investigate complaints involving operations not certified by the department if there is a public health or safety issue or a need to preserve evidence. If necessary, the department will implement enforcement actions as set out in New Rule XIV. This assures a rapid response to protect public health and safety from improper practices, and it assures that evidence that might be transitory is preserved awaiting USDA's response to complaints.

NEW RULE XIV COMPLIANCE ENFORCEMENT AND PENALTIES

(1) The department may initiate a compliance action against an applicant for certification or a producer or handler certified by the department that is not in compliance with these rules:

(a) the department and applicants for certification will follow procedures established in 7 CFR 205, subpart (e) in addressing non-compliance issues;

(b) the department and certified operations will follow procedure established in 7 CFR 205, subpart (g) in addressing non-compliance issues;

(c) the department's procedure for denying certification will adhere to that established in 7 CFR 205, subpart (e); and

(d) any notice of denial of certification or proposed suspension or revocation of certification will state the person's right to mediation as provided by 7 CFR 205.663. The department's mediation procedures will be consistent with that established in 7 CFR 205.663 and the department may incorporate procedures for mediation established by state statutes.

(2) Where there is reason to believe that an operation certified by the department is selling, representing, or labeling as organic any products that have been exposed to or contain prohibited substances or have been produced using prohibited substances or excluded methods, the department may place a stop sale tag on such products prohibiting further sale or movement. Any person who removes or disposes of such detained product by sale or otherwise, without prior permission, or removes or alters the tag, is in violation and may be subject to civil penalties. The department may authorize removal of the tag when this chapter has been complied with. If compliance is not achieved within 30 days, or upon the request of the person holding the product, the department may begin proceedings for condemnation.

(3) When the department finds that a producer or handler has committed a violation of these rules, the department may

assess a civil penalty sufficient to recover all costs of the investigation leading to the finding of violation. Such costs shall include those associated with sampling of soil, production inputs or products for residues of prohibited materials or products of excluded methods. Penalties issued to recover costs of investigation shall be in addition to civil penalties issued in response to violations, as described in this rule.

(4) The director may assess a civil penalty not exceeding \$10,000 per violation when the department concludes that a producer or handler committed a violation. The department in selecting an appropriate penalty amount shall consider the severity of the violation and other gravity factors such as negligence and willfulness.

(5) A civil penalty may not be assessed until the person charged is given notice of opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

(6) This rule does not require the department to revoke or suspend certification, issue stop sale orders, or assess civil penalties when other remedies such as a written notice or warning are sufficient to cure a violation.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: The ability to enforce organic standards and issue penalties to operations found to be violating the rules is vital to maintain consumer and public confidence in organic products and to protect the public from fraudulent organic product claims. NOP regulations require that the department establish enforcement procedures for certified operations. This rule allows the department to conduct compliance and enforcement actions and to issue civil penalties to operations violating the rules or regulations. It also specifies the procedures, conditions and penalty amounts to be used for enforcement of the organic rules.

NEW RULE XV MEDIATION (1) Any dispute with respect to denial of certification or proposed suspension or revocation of certification may be mediated at the request of the applicant for certification or certified operation as provided by 7 CFR 205.663. Procedures and time frames for mediation will be consistent with those established in 7 CFR 205.663 and standards for mediation established in 26-1-813, MCA.

(2) Mediators must be impartial and knowledgeable about organic certification standards. A mediator shall be chosen by mutual consent. If a mediator cannot be chosen by mutual consent, the department shall select a mediator.

(3) Matters raised in mediation are privileged, private and confidential, except that a mediated agreement may be disclosed to the secretary of the United States department of agriculture.

(4) Persons can represent themselves or be represented by an attorney. It is understood that any person appearing on

behalf of the person that requested mediation will have full settlement authority for the person they are representing. The mediator has discretion in establishing formal or informal mediation procedures. Where persons choose not to be represented by counsel, the mediator may choose to use informal procedures. However, mediators have the option to provide structure to the mediation and to apply rules of evidence and civil procedure.

(5) If mediation produces a settlement agreement, a written agreement will be prepared with the assistance of the mediator, if necessary. The person who requested mediation, the department's representative, and the mediator shall sign the settlement and provide it to the director. The director shall determine if the settlement is accepted by the department.

(6) The parties shall share equally the cost for the services of a mediator.

AUTH: 80-11-601, MCA
IMP: 80-11-601, MCA

REASON: As a USDA-accredited certifier, the department is required by 7 CFR 205.663 to provide an opportunity for applicants for certification or for certified operations to request mediation of disputed department decisions to deny, suspend, or revoke organic certification. The department deems it necessary to propose New Rule XV to establish standards to ensure efficient and equitable mediation should disputes arise over department decisions.

Mediation is defined in 26-2-813, MCA and addressed in terms of confidentiality and use as evidence. The department is proposing to adhere to this law in the interests of uniformity and consistency in application of law. The department is proposing that mediated agreements be released to the USDA. Federal regulation (7 CFR 205.663) allows the U.S. Secretary of Agriculture to review any mediated agreement for conformity with national organic laws.

Any agreements resulting from mediation will be prepared in writing and signed by the parties to create a written record and to facilitate review of the agreement by the USDA. The department is proposing that, while the department's representative shall have the authority to reach a mediated agreement, the director of the department will review and grant final approval.

The department is proposing that a fair manner of handling costs of mediation is to split them equally between the department and the party requesting mediation. The cost of mediation will depend on a number of factors including the rate charged by the chosen mediator, the complexity of the issue, and the length of time the parties take to complete the mediation process. Mediation services charged by the

Department of Administration, Professional Development Center, are in the neighborhood of \$55 per hour.

4. Concerned persons may submit their data, views or arguments concerning this proposed adoption 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; Phone: (406) 444-2944 or E-mail: agr@state.mt.us. Any comments must be received no later than November 27, 2003.

5. If persons who are directly affected by the proposed adoption 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 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 November 27, 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 17 persons based on 171 currently certified by the department and those who have applied for certification and those who have received application packets, but not yet submitted applications.

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 Adoption is available through the Department's website at 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. 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 on October 20, 2003.

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of ARM 12.11.640 pertaining to a) ON PROPOSED AMENDMENT
no wake zone on the Swan River)

TO: All Concerned Persons

1. On January 14, 2004, at 7:00 p.m. a public hearing will be held at the Region One Fish, Wildlife and Parks Headquarters, 490 North Meridian Road, Kalispell, Montana, to consider the amendment of ARM 12.11.640 pertaining to a no wake zone on the Swan River.

2. The Fish, Wildlife and Parks Commission (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 November 13, 2003, to advise us of the nature of the accommodation that you need. Please contact Edward Kelly, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT; telephone (406) 751-4561; fax (406) 257-0349.

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

12.11.640 SWAN RIVER (1) Swan River is located in Flathead and Lake County counties.

(2) In Lake County, the Swan River is limited to a controlled no wake speed, as defined in ARM 12.11.101, in the following areas:

(a) from the mouth of Swan Lake to Porcupine Bridge approximately 4 1/2 miles.

(3) In Flathead and Lake counties, the Swan River is limited to a controlled no wake speed, as defined in ARM 12.11.101, in the following area:

(a) from where the Swan River flows out of Swan Lake in Lake County, as marked, to where Bear Creek enters the Swan River in Flathead County.

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

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

4. The Swan River from Swan Lake to Bear Creek is a narrow, rocky, shallow river used extensively by floaters. Each year floating pressure is increasing. Several individuals using and living near the river have stated that they believe a serious safety hazard exists on the river when motorized watercraft operate at high rates of speed in the area. The numerous floaters combined with the narrow river channel and shallow waters make it difficult for watercraft to maneuver away from objects in the water and under the water. When

speed is added to the equation, a situation is created that poses a threat to public safety.

Concerned citizens petitioned the commission on September 11, 2003, to limit this area of the river to nonmotorized watercraft. Under 2-4-315, MCA, the commission must respond to a rulemaking petition within 60 days by initiating rulemaking proceedings or denying the petition. After discussing the matter, the commission decided that a less restrictive alternative of a no wake zone in this area would accomplish the same goal of protecting public safety. The commission is responding to the petition by beginning rulemaking, and affording the public opportunity to comment on a proposed no wake zone as stated in paragraph 3 of this notice.

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 Edward Kelly, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT; telephone (406) 751-4561; fax (406) 257-0349; or email at ekelly@state.mt.us and must be received no later than January 30, 2004.

6. Rebecca Dockter, or another hearing officer appointed by the department, 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 this department. 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.

8. 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

Certified to the Secretary of State October 20, 2003

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING
of ARM 17.50.802, 17.50.803,)	ON PROPOSED AMENDMENT
17.50.809, 17.50.811,)	
17.50.812, 17.50.813 and)	(SEPTAGE CLEANING AND
17.50.815 pertaining to)	DISPOSAL)
cesspool, septic tank and)	
privy cleaners)	

TO: All Concerned Persons

1. On November 19, 2003, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., November 10, 2003, to advise us of the nature of the accommodation that you need. Please contact Pat Crowley, Community Services Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-5294; fax (406) 444-1374; or email pcrowley@state.mt.us.

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

17.50.802 DEFINITIONS In addition to the definitions in 75-10-1202, MCA, the following definitions apply in this subchapter:

(1) through (26) remain the same.

(27) "Privy" means a covered or uncovered facility for placement of non-water-carried toilet wastes where the wastes are discharged directly into a seepage pit without treatment in a septic tank or are discharged into a watertight vault.

(28) through (38) remain the same.

AUTH: ~~37-41-103~~, 75-10-1202, MCA

IMP: ~~Title 37, chapter 41~~, 75-10-1201, 75-10-1202, MCA

REASON: This amendment is needed to clarify that the term "privy" is the general term that includes all types of latrines, rather than only a specific type of latrine. The amendment clarifies that a portable toilet, which is defined as a "sealed pit privy" is included in the definition of "privy."

Section 37-41-103 and Title 37, chapter 41, MCA, are being deleted from the history note because the 1999 Legislature repealed Title 37, chapter 41, MCA. See Section 12, Chapter 378, Laws of 1999.

17.50.803 LICENSURE~~+~~, LICENSE APPLICATION~~+~~, ANNUAL RENEWAL

(1) Except as provided in 75-10-1210, MCA, a person may not engage in the business of cleaning cesspools, septic tanks, portable toilets, privies, grease traps, car wash sumps, or similar treatment works, or disposal of septage and other wastes from these devices, unless licensed by the department. A person wishing to engage in any of these businesses shall submit an application for a license to the department on a form provided by the department. A person wishing to renew a license shall do so on the form provided by the department. The following information, if applicable, must be provided:

(a) the full legal name of the licensee or applicant, the organization name or assumed business name, as filed or registered with the secretary of state, the federal tax identification number, and physical business address of the applicant;

(b) through (c) remain the same.

(d) a list of all disposal sites, not exempted under 75-10-1210(2), MCA, that the applicant proposes to use; ~~and~~

(e) the estimated volume of septage and other wastes to be disposed of at each disposal site annually-;

(f) the amount and kinds of pumpings applied to each site in the previous calendar year;

(g) the location of the records required in ARM 17.50.813;
and

(h) a certification by the local health officer or the local health officer's designated representative in the county where the business is located that each vehicle used for surface application of septage is equipped with proper spreading and screening equipment. Before a licensee places a new vehicle in service, the licensee shall have the vehicle inspected by the local health officer or the local health officer's designated representative and provide the department with the certification required in the previous sentence.

(2) For each disposal site proposed for use by the applicant or licensee that must be listed under the requirements of 75-10-1212(2)(d), MCA, including land application sites, wastewater treatment facilities, and solid waste management systems, and that is not exempt under 75-10-1210(2), MCA, the applicant or licensee holder shall submit the following information, if applicable, on a form approved by the department:

(a) the full legal name of the owner of the property, the organization name or assumed business name, as filed or registered with the secretary of state, and federal tax identification number, if available;

(b) through (l) remain the same.

(m) a proposed disposal operation and maintenance plan for each land application site including provisions for access control, if necessary, and the types and sources of wastes to be managed on the site. The operation and maintenance plan must include a description of the vector attraction reduction and pathogen reduction methods proposed for use on the site and a listing of equipment available for managing each type of waste;

(n) certification by a local health officer or a the local health officer's designated representative that the proposed land application site meets all applicable state and local requirements; ~~and~~

(o) the signature of the land owner, facility operator, or designated representative of the owner or operator, granting permission to use the site for land application, disposal, or treatment-;

(p) a sketch or map showing the area available for land application after setback requirements are met, and the distance from the area to neighboring houses; and

(q) for land application sites, a certification by the land owner that the land owner is aware that:

(i) the use of the site or crops from the site may be restricted under the requirements of ARM 17.50.811;

(ii) the land application rate is limited by the rate at which septage may be land-applied as specified in ARM 17.50.809(12) and 17.50.816(6);

(iii) the operational practices for pathogen and vector attraction reduction in ARM 17.50.811 must be followed; and

(iv) the department, local health officer, or the local health officer's designated representative may inspect, and the land owner is required to allow inspection of, the land application site as provided in ARM 17.50.812.

(3) through (10) remain the same.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, 75-10-1211, 75-10-1212, MCA

REASON: The amendment of (1)(a), which requires that an applicant supply the applicant's full legal name, filed or registered organizational name, and federal tax identification number is necessary to allow the Department to have an accurate database. Licensees are given unique identification names by the Department and may hold a variety of different permits. This change would clearly identify which person or business was issued a license and would enable the Department to cross-reference all permits and approved activities. This proposed amendment would also make it easier for the Department to contact or correspond with an applicant or licensee, and would help the Department perform its compliance assistance and enforcement work.

The addition of (1)(f), which requires the annual reporting of the amount and kinds of pumpings applied to each land application site, is necessary for the Department to be able to calculate whether over-application is occurring. Since pumpings may be applied only at agronomic uptake rates to prevent the contamination of ground water, the amount of pumpings applied must be available for the Department to make the determination.

The addition of (1)(h), which requires inspection of vehicles by the local health officer or the local health officer's designated representative in the county where the business is located for proper spreading and screening equipment, is necessary to ensure that the licensee is properly

equipped to land-apply material in a manner protective of human health and the environment. Only one certification, obtained in the county of business location, would be required. This would reduce the need for a licensee or applicant to travel to all of the counties in which a licensee does business, but still assure the Department that the licensee has the proper equipment. The requirement that trucks be inspected prior to being placed in service allows for the licensees to change and upgrade equipment while ensuring that each vehicle is properly equipped.

The amendment of (2)(a), which requires that a property owner supply the owner's full legal name, the business name as filed or registered with the Montana Secretary of State, and federal tax identification number, if available, is necessary to allow the Department to have an accurate database. The Department gives sites unique identification names by place and property owner and a variety of different permits or approvals might exist at the site. This change would clearly identify the sites and would enable the Department to cross-reference all permits.

The amendment of (2)(m), which requires specific information on vector attraction and pathogen reduction and a listing of equipment the licensee uses to manage land-applied waste, is necessary for the Department to evaluate management practices for conformance with the rules and ensure that the licensee has the proper equipment to implement the practices. It would also enable the Department to evaluate whether grazing is restricted on a site, a key element during field inspections.

The addition of (2)(p), which specifies the content of a map or sketch that must accompany the application, is necessary because the map or sketch will inform the Department of the actual area available for land application and the location of nearby neighbors. These items are necessary so the Department can evaluate the acreage available for land application and calculate the amount of septage that may be applied to a site. They would also alert the Department to possible conflicting uses in the vicinity of the site and may dictate alternative management practices that may need to be followed either regularly or on a seasonal basis. For example, some sites may require alkali treatment to avoid odor impacts, have restrictions placed on them for the types of pumpings that can be placed on the site, or have restrictions imposed on site use during the winter.

The addition of (2)(q), which specifies that the owner of land application sites must certify the owner's awareness of crop, use, and access restrictions, and that inspections may occur, is necessary so that land owners are fully aware of the consequences of allowing land application. For example, pastures that receive septage that has not been alkali-stabilized may not be grazed for 30 days after application. Land owners must also be aware that the application rate is dependent upon crop nutrient requirements and that proper management techniques must be followed. This is necessary because many land owners provide tillage services and crop management for the licensees and they need to be aware of the

rule requirements. Because the Department or local health officers or representatives may inspect disposal sites, it is necessary to require an applicant or licensee to give the land owner notice and obtain the land owner's certification of awareness that the Department may inspect the land owner's property.

17.50.809 SPECIFIC SITE CRITERIA (1) A person may not apply pumpings to land within 500 feet of any occupied or inhabitable building.

(2) through (14) remain the same.

(15) The local health officer or the local health officer's designated representative may reject sites for proximity to neighbors or public water supplies, but in no case may a site be within 500 feet of an occupied or inhabitable building or within 100 feet of a drinking water source.

(16) The local health officer or the local health officer's designated representative may withdraw approval of previously approved sites due to changing land use patterns or the proximity to new drinking water sources or public water supplies.

AUTH: ~~37-41-103~~ 75-10-1202, MCA

IMP: ~~37-41-103~~ 75-10-1202, MCA

REASON: The proposed amendment to (1) would add the phrase "or inhabitable" after the word "occupied." This amendment is necessary to ensure that seasonally inhabited or uninhabited buildings that may subsequently become inhabited have the same setbacks as ones currently occupied. Many cabins are occupied only seasonally, and some buildings may be temporarily vacant. However, those residents should have the same health and environmental protection as residents of currently occupied buildings.

The addition of (15), which would allow a local health officer or a designated representative to reject a site for proximity to neighbors or public water supplies, is necessary because it would allow local authorities flexibility in site approval based on local conditions. Sites that would otherwise meet minimum Department criteria may not be acceptable from a local use point of view. Impacts to public water supplies would have a greater effect on more people than the possible impact to a single private well. Public water supplies are required to delineate source water protection zones. Land application in these zones could be a cause for concern to the users, and the local officials should have the ability to address these concerns.

The addition of (16), which would allow local authorities to withdraw site approval for changing land use patterns or the proximity to new drinking water sources or public water supplies, is necessary to account for changes that may occur in the future surrounding a previously acceptable site. Land use patterns in Montana can change rapidly from year to year. A site that was once acceptable due to its remote location could

become surrounded by subdivisions. The proposed addition would make explicit the authority of local officials to withdraw approval from previously approved sites. This proposed addition would leave the power of site approval or withdrawal at the local level.

17.50.811 OPERATION AND MAINTENANCE REQUIREMENTS FOR LAND APPLICATION OR INCORPORATION OF SEPTAGE (1) through (8) remain the same.

(9) A person applying septage to land shall first screen the septage to remove non-putrescible wastes and shall dispose of the non-putrescible wastes in a Class II solid waste management facility licensed in accordance with 75-10-221, MCA.

(10) A person applying septage to land shall apply it with a spreader bar, splash plate, or other dispersive mechanism approved by the department.

AUTH: 75-10-204, 75-10-1202, MCA

IMP: 75-10-204, 75-10-1202, MCA

REASON: The proposed addition of (9) and (10) would require a licensee to screen septage prior to land application to remove wastes that do not decompose and to apply the wastes in a dispersed manner by using a splash plate or spreader bar. The additions are necessary to address two of the most significant causes for complaints at septage land application sites - litter and the application of wastes in a narrow stream directly from the truck. The use of a screen to remove litter from septage and the use of a splash plate is recommended by the USEPA in its publication, "Process Design Manual, Land Application of Sewage Sludge and Domestic Septage" p. 136 (EPA/625/R-95/001). The application of septage in a narrow band suppresses vegetative growth in pastures, at least temporarily, whereas spread septage does not have the same effect and makes nitrogen available for immediate plant use.

17.50.812 INSPECTIONS AND ENFORCEMENT (1) remains the same.

(2) The department and local health officer or the local health officer's designated representative may inspect disposal sites and appropriate records to determine if a violation of Title 75, chapter 10, part 12, MCA, or this subchapter is occurring or has occurred.

(3) Applicants, licensees and owners of disposal sites shall allow inspections conducted under this rule.

AUTH: 75-10-204, 75-10-205, 75-10-1222, MCA

IMP: 75-10-204, 75-10-1211, 75-10-1220, 75-10-1222, MCA

REASON: The addition of the phrase "and local health officer or the local health officer's designated representative" to (2) makes explicit that the local health officer or the local health officer's designated representative also have the authority, along with the Department, to inspect active disposal

sites and records for compliance. This is necessary because the local health departments have primary responsibility for local health matters and provide the Department with the ability to respond quickly to possible problems by using a local person. This would provide the citizens with better protection for human health and the environment.

ARM 17.50.812 contains the authorization for the Department and local health officers or local health officer's designated representatives to inspect disposal sites and records, and the Department is proposing to add a requirement to ARM 17.50.812 that applicants, licensees, and owners allow inspections. The Department is proposing to delete existing ARM 17.50.813(3), which concerns the duty of licensees to make records available for inspection, because ARM 17.50.813 concerns recordkeeping requirements, not inspections. The Department believes it is more appropriate to have the provision concerning inspections of records located in ARM 17.50.812 rather than ARM 17.50.813.

The addition of (3) requires that the licensee and owner of disposal sites allow inspections. This is necessary to explicitly require licensees to allow the Department or local health officials to inspect records and sites so they may ascertain whether an applicant, licensee or land owner of a disposal site is complying with the laws and rules.

17.50.813 RECORDKEEPING REQUIREMENTS (1) through (2) remain the same.

~~(3) Licensees shall make the records required in this rule available for inspection by the department during reasonable business hours.~~

(3) Licensees shall submit records required in (1) to the department on the following schedule:

(a) for the period of January 1 through March 31, by April 15;

(b) for the period of April 1 through June 30, by July 15;

(c) for the period of July 1 through September 30, by October 15;

(d) for the period of October 1 through December 31, by January 15.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, MCA

REASON: The proposed deletion of existing (3) is discussed under the reason for ARM 17.50.812, above. The proposed addition of new (3) would require licensees to make quarterly reports of septic pumping records to the Department. This is needed because failure of licensees to keep adequate records is the single most common violation found during inspections. This would enable the Department to better verify the amount and kinds of material generated and land-applied and enable the Department to better advise licensees if the department noticed applications approaching the agronomic uptake rate. The Department would also be able to better use staff resources by reviewing records in the office, providing a review for all

licensees and not just the ones the Department was able to visit in the field.

17.50.815 GREASE TRAP WASTES (1) through (6) remain the same.

(7) Grease trap waste, dewatered or not, may be:

(a) and (b) remain the same.

(c) land-applied under the following conditions:

(i) in accordance with ARM 17.50.811~~(2)~~(3)(a) or (b) for disposal of septage; or

(7)(c)(ii) and (8) remain the same.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, MCA

REASON: ARM 17.50.815 was adopted as a new rule at page 848, Issue No. 10 of the Montana Administrative Register, published May 25, 2001. It concerns the management of grease trap pumpings. The Department intended that (7)(c)(i) of that rule refer to ARM 17.50.811(3)(a) and (b) of the septic pumper rules that require that land-applied septage be injected below the surface or tilled into the soil, so that land application of grease trap waste would be governed by those requirements. However, the rule amendment incorrectly cited ARM 17.50.811(2)(a) and (b). ARM 17.50.811(2)(a) and (b) do not exist. ARM 17.50.811(2) concerns application of bulk septage or other materials to public contact sites or home lawns or gardens. The proposed amendment to ARM 17.50.815(7)(c)(i) is necessary to correct this error by referencing the proper subsections.

The Department also is proposing minor editorial revisions that are necessary to clarify the rules, but that are not intended to change the meaning of the rules.

4. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Pat Crowley, Community Services Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-5294; fax (406) 444-1374; or email pcrowley@state.mt.us no later than 5:00 p.m., December 3, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Norman Mullen, attorney, has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name 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 the Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to Elois Johnson, Paralegal, at ejohnson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

7. 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 M. Rusoff
DAVID M. RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 20, 2003.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.32.1118,) ON PROPOSED AMENDMENT
relating to nursing education) AND ADOPTION
accrediting bodies, and the)
proposed adoption of NEW RULE I)
relating to the nurse's role in)
cosmetic procedures)

TO: All Concerned Persons

1. On December 2, 2003, at 9:30 a.m., a public hearing will be held in room 471, 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 Nursing no later than 5:00 p.m., on November 26, 2003, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@state.mt.us.

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

8.32.1118 RECOGNIZED ACCREDITATION BODIES (1) The board recognizes the following national accreditation bodies:

(a) ~~committee~~ commission on collegiate nursing education (CCNE); and

(b) national league for nursing ~~accreditation~~ accrediting commission (NLNAC).

(2) remains the same.

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

IMP: 37-8-301, MCA

REASON: It is reasonable and necessary to amend the rule to correct two recently discovered errors: in (1)(a), the word "committee" should be "commission", and in (1)(b), the word "accreditation" should be "accrediting" to reflect the proper names of the two national accreditation bodies referred to in the rule.

4. The proposed new rule provides as follows:

NEW RULE I STANDARDS RELATED TO THE LICENSED NURSE'S ROLE IN COSMETIC PROCEDURES (1) A licensed nurse who has the proper training and on-going competency may perform the following tasks and procedures only under the on-site supervision of a physician:

- (a) procedures using lasers;
- (b) procedures using intense pulsed light sources;
- (c) procedures using microwave energy;
- (d) procedures using radio frequency;
- (e) procedures using electrical impulse;
- (f) dermatologic procedures employing technologies that cut or alter living tissue; and
- (g) injections or insertions of the following:
 - (i) botulism toxins, commonly referred to as "botox";
 - (ii) natural and synthetic collagens;
 - (iii) silicone;
 - (iv) sclerotherapy agents; or
 - (v) natural or synthetic filler materials.

AUTH: 37-8-202, MCA

IMP: 37-2-102, MCA

REASON: The board determined it is necessary and reasonable to clarify the nurse's role in the tasks and procedures specified in the proposed new rule because several nurses recently sought clarification and the Board of Medical Examiners concurred that clarification was necessary. The board believes the rule may affect approximately 30 nurses and approximately 15 physicians.

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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@state.mt.us, and must be received no later than 5:00 p.m., December 16, 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/nur>. 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 Nursing 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 Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

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

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

10. The Board of Nursing will meet on January 21, 2004, at 9:00 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.

BOARD OF NURSING
KIM POWELL, RN, CHAIRMAN

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State October 20, 2003

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULES I, II,) ON PROPOSED ADOPTION
III and IV pertaining to)
radiologist assistants, scope)
of practice, supervision, and)
adoption of a code of ethics)

TO: All Concerned Persons

1. On November 24, 2003, at 10:00 a.m., a public hearing will be held in room 438, 301 South Park, Helena, Montana to consider the proposed 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 Montana Board of Radiologic Technologists no later than November 19, 2003, to advise us of the nature of the accommodation that you need. Please contact Ms. Helena Lee, Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; by facsimile to (406) 841-2305; or by e-mail to dlibsdrts@state.mt.us.

3. The proposed NEW RULES provide as follows:

NEW RULE I QUALIFICATIONS (1) To become licensed as a radiologist assistant (RA), an applicant shall:

(a) be a graduate of an educational program recognized by the American college of radiology (ACR), the American registry of radiologic technologists (ARRT), or the American society of radiologic technologists (ASRT);

(b) be certified by the certification board for radiologic practitioner assistant (CBRPA) or considered eligible for the CBRPA certification examination;

(c) maintain an active ARRT registration status;

(d) have current certification in advanced cardiac life support (ACLS) skills;

(e) furnish validation of participation in continuing education activities with a minimum 24 hours of continuing education credits in each biannual report; and

(f) have a current Montana radiologic technologist license.

AUTH: 37-1-131, 37-14-202, MCA

IMP: 37-14-313, MCA

REASON: The Board of Radiologic Technologists has determined it is reasonably necessary to adopt this New Rule I

to establish qualifications for licensure to implement Chapter 307, Laws of 2003 (HB 501), and to protect the public from potential harm. HB 501 requires that the Board provide for the licensure of radiologist assistants. Section 3 of the bill requires the Board to establish rules defining scope of practice and functions of the RA which are to be consistent with guidelines adopted by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ACRT), and the American Registry of Radiologic Technologists (ARRT).

NEW RULE II SCOPE OF PRACTICE - SPECIFIC DUTIES AND FUNCTIONS

(1) The RA shall evaluate the day's schedule of procedures with the supervising staff radiologist or the licensee's radiologist designate and determine where the licensee's skills will be best utilized.

(2) The RA, after demonstrating competency, and under the general supervision (as defined in [NEW RULE III]) of a staff radiologist, may perform the following procedures when ordered by the treating physician:

- (a) biopsies guided by:
 - (i) ultrasound;
 - (ii) computed tomography; or
 - (iii) fluoroscopy;
- (b) drainages and drainage catheter placements guided by:
 - (i) ultrasound;
 - (ii) computed tomography; or
 - (iii) fluoroscopy;
- (c) myelograms;
- (d) the following vascular access procedures:
 - (i) arteriograms; and
 - (ii) central venous procedures;
- (e) venous access procedures;
- (f) fistulagrams;
- (g) fistulaplasties;
- (h) declots;
- (i) permacath placements;
- (j) central venous line placements;
- (k) IVC filter placement; and
- (l) gastrostomies.

(3) The RA shall evaluate and screen medical images for normal versus abnormal and provide a technical report to the supervising radiologist for review and final signatures.

(4) The RA shall assess and evaluate the physiologic and psychological responsiveness of each patient.

(5) The RA shall participate in patient management, including acquisition of additional imaging for completion of the exam and record documentation in medical records.

(6) The RA shall administer intravenous contrast media or glucagon, under the supervision of a radiologist or the attending physician pursuant to 37-14-301, MCA.

(7) The RA shall maintain current levels of education in emerging techniques, procedures and therapies by obtaining a minimum of 24 hours of continuing education biannually as required by ARRT, ACR, or ASRT and as approved by the board.

(8) The RA shall maintain values congruent with the code of ethics of the CBRPA as well as adhering to national, institutional and/or departmental standards, policies, and procedures regarding the standards of care for patients.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-202, 37-13-301, 37-14-313, MCA

REASON: The Board of Radiologic Technologists has determined this rule is reasonably necessary to comply with and implement legislative provisions expressed by passage of Chapter 307, Laws of 2003 (HB 501), and to be consistent with guidelines already established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the American Registry of Radiologic Technologists (ARRT) as mandated by HB 501.

NEW RULE III DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Supervision" has the following definitions:

(a) "Direct supervision" means the licensed radiologist must be immediately available to furnish assistance and direction throughout the performance of the procedure (immediate availability may be by direct communication in person, by radio, telephone, facsimile, e-mail, tele-radiology or other telecommunication methods between the supervised individual and a licensed radiologist). Direct supervision does not mean that the licensed radiologist must be present in the room when the procedure is performed.

(b) "General supervision" means diagnostic procedures are furnished under the licensed radiologist's overall direction and control, but the licensed radiologist's presence is not required. The licensed radiologist must be available on a regularly scheduled basis to review the practice of the supervised individual, to provide consultation to the supervised individual, to review records, and to further educate the supervised individual in the performance of the individual's duties.

(c) "Personal supervision" means a licensed radiologist must be in attendance in the room during the performance of the procedure, e.g., cardiac catheterization and cardiovascular stress tests, including those furnished in nuclear medicine and echocardiography.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-102, 37-14-202, 37-14-313, MCA

REASON: The Board of Radiologic Technologists has determined this rule is reasonably necessary to comply with legislative intent as expressed by passage of Chapter 307, Laws of 2003 (HB 501). The Board proposes the definitions in conjunction with the professional understanding of terminology and to delineate different types of supervision necessary with different types of procedures as expressed in the guidelines of

the ACR, ASRT, and ARRT set out in Section 3 of HB 501 and as a requirement of compliance with those guidelines as expressed in HB 501. The Board notes that the definitions also serve to compare and contrast the various levels of professional supervision required.

NEW RULE IV ADOPTION OF CODE OF ETHICS (1) The board adopts and incorporates by reference the code of ethics adopted by the American registry of radiologic technologists (ARRT) which became effective in July 2002.

(2) Copies of the ARRT code of ethics may be obtained from the Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513.

(3) The RA shall adhere to the ARRT code of ethics and principles.

(4) In addition to the ARRT code of ethics and principles, the conduct of the RA will be governed by the following additional ethical and professional principles. The RA shall:

(a) adhere to all state and federal laws governing informed consent concerning the patient's health care;

(b) seek consultation with the supervising physician, other health providers, or qualified professionals having special skills, knowledge or expertise whenever the welfare of the patient will be safeguarded or advanced by such consultation. Supervision should include ongoing communication between the supervising physician and the RA regarding care of all patients;

(c) provide only those services for which they are qualified via education and demonstration of clinical competency and as set forth in this chapter;

(d) not misrepresent in any manner, either directly or indirectly, their clinical skills, educational experience, professional credentials, identity, or ability and capability to provide radiology health care services;

(e) place service before material gain; and

(f) carefully guard against conflicts of professional interest.

AUTH: 37-1-131, 37-14-202, MCA

IMP: 37-14-202, 37-14-313, MCA

REASON: The Board has determined that adoption of the ARRT code of ethics is necessary because HB 501, enacted by passage of Chapter 307, Laws of 2003, requires the board to adopt rules consistent with the guidelines of ARRT, ACR and ASRT. The ARRT Code of Ethics is uniformly interpreted and enforced by these three entities.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or

by e-mail to dlibsdrts@state.mt.us and must be received no later than 5:00 p.m., November 28, 2003.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Radiologic Technologists rule notice section. The Department strives to make the electronic copy of this notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version, 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 Board of Radiologic Technologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name included on 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 Radiologic Technologists administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed or delivered to the Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrts@state.mt.us or may be made by completing a request form at any rule hearing by the agency.

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

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JOHN ROSEBAUM, CHAIRMAN

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State October 20, 2003.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.17.144) ON PROPOSED AMENDMENT
and 24.17.147, relating to)
obligations of public)
contracting agencies,)
employers, and contractors)

TO: All Concerned Persons

1. On November 20, 2003, at 1:00 p.m., the Department of Labor and Industry will hold a public hearing in the Lewis Room in the basement of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.17.144 and 24.17.147 to clarify the obligations of public contracting agencies, and of employers and contractors on public works projects.

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., November 14, 2003 to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Attn: John Andrew, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-4619; fax (406) 444-7071; TDD (406) 444-5549; e-mail joandrew@state.mt.us.

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

24.17.144 OBLIGATIONS OF PUBLIC CONTRACTING AGENCIES

(1) A public contracting agency must include in the bid specifications and contracts for any public works the following:

(a) An an unequivocal agreement by the contractor or employer to give preference to employment of bona fide Montana residents in compliance with 18-2-403(1), MCA-;i

(b) a statement that ~~For~~ any construction project, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, the bid specifications and the contract shall provide that at least 50% of the workers of each contractor working on the project ~~(including workers employed by subcontractors)~~ will be bona fide Montana residents in compliance with 18-2-403(1) and 18-2-409, MCA. In the case of a particular contractor such percentage of Montana residents shall be modified to comply with any written directive by the commissioner specifying a different percentage-;i

~~(b)(c)~~ An an unequivocal agreement by the contractor or employer that a worker ~~(including workers employed by a subcontractor)~~ performing labor on the project will be paid the

applicable standard prevailing rate of wages as determined by the commissioner-;

~~(e)~~(d) A a listing of standard prevailing wage rates including fringe benefits determined by the commissioner applicable to the public works contract-; and

~~(d)~~(e) The the contract provisions must clearly show that the contractor or employer and ~~its subcontractors~~ are is bound to pay wages at rates determined by the commissioner, and to give required preferences.

(2) through (4) remain the same.

AUTH: 18-2-409 and 18-2-431, MCA

IMP: 18-2-401, 18-2-403, 18-2-421 and 18-2-422, MCA

24.17.147 OBLIGATIONS OF EMPLOYERS, AND CONTRACTORS AND SUBCONTRACTORS

(1) All contractors and employers ~~subcontractors~~ shall give preference in hiring to bona fide Montana residents in the performance of public works contracts.

(a) In the performance of a public works contract for a construction project, a each contractor, ~~subcontractor or employer~~ so engaged shall ensure that at least 50% of all workers performing labor under the contract for public works are bona fide Montana residents.

(b) For cause as provided in 18-2-409, MCA, a contractor, ~~subcontractor or employer~~ may in writing request that the commissioner modify percentage residency requirements on a particular project. In requesting the variance, the contractor, ~~subcontractor or employer~~ must document in writing any and all measures taken in assessing the availability of bona fide Montana employees including, but not limited to, newspaper advertising or contacting local job service offices, ~~newspaper advertising, and contacting~~ local union halls, or temporary or personnel agencies. The commissioner may modify or waive residency requirements under the provision of the statute and shall by written directive notify the contracting agency of any such modification or waiver.

(2) All contractors, ~~subcontractors~~ and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification or type of employee established by the commissioner, and shall pay each such employee a rate of wages not less than the standard prevailing rate.

AUTH: 18-2-409 and 18-2-431, MCA

IMP: 18-2-401 and 18-2-403, MCA

REASON: There is reasonable necessity to amend these rules in order to remove ambiguity and to conform the language of the rules to reflect the clear legislative intent of House Bill 403 (Sec. 1, Ch. 564, L. 2003) to require that 50% of the workers of each and every contractor on a public works construction project are bona fide Montana residents. The term "subcontractor" is removed in these rules because section 18-2-401(4), MCA, clearly

states that subcontractors are included in the definition of a "Contractor," thus continued reference to subcontractors in these rules is unnecessarily redundant. The term "employer" is added or deleted in some of these rules, where appropriate, in order to conform rule language to the statutory definition. In section 18-2-401(7), MCA, an "employer" is defined as an entity engaged in nonconstruction services. Earmarking and other minor changes in style are made to improve clarity.

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:

John Andrew
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59604-6518

and must be received by no later than 5:00 p.m., December 1, 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., December 1, 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, or made by completing a request form at any rules hearing held by the Department.

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

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,
Alternate Rule Reviewer

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

Certified to the Secretary of State: October 20, 2003.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.17.127,) ON PROPOSED AMENDMENT
pertaining to prevailing wage)
rates - non-construction)
services and heavy and highway)
construction services)

TO: All Concerned Persons

1. On November 21, 2003, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of ARM 24.17.127 establishing the prevailing wage rates for public works projects. The Department proposes to incorporate by reference the 2003 non-construction services rates and the federal rates for heavy construction and highway construction services.

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., November 17, 2003, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638; or email bschleicher@state.mt.us.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(f) The current non-construction services rates are contained in the ~~2001~~ 2003 version of "The State of Montana Prevailing Wage Rates - Service Occupations" publication.

(g) The current heavy and highway construction services rates are contained in the ~~2002~~ 2003 version of the "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.

(2) and (3) remain the same.

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

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the non-construction services rates. Pursuant to section 18-2-491(13)(a)(ii), MCA, the Department is to conduct a biennial survey of employers engaged in non-construction services in order to set the standard prevailing rate of wages for non-construction services. The prevailing wages for non-construction services were last updated in 2001. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

There is reasonable necessity to amend ARM 24.17.127 to update the heavy and highway construction services rates to track with the recent adoption by the federal government of Davis-Bacon Act prevailing wage rates for heavy and highway construction. Rates for heavy construction were adopted by the federal government for Montana in June 2003, pursuant to General Decision No. MT20030001. Rates for highway construction were adopted by the federal government for Montana in September 2003, pursuant to General Decision No. MT20030002. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

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

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

and must be received no later than 5:00 p.m., November 28, 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 internet at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rule 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., November 28, 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. A copy of the proposed 2003 publication, identified as "preliminary non-construction services rates", is available and can be accessed on-line via the internet at: <http://rad.dli.state.mt.us/pw/>.

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

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

10. The Department proposes to make the amendments effective December 25, 2003. The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the proposed amendments at a later date.

11. 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
Alternate Rule Reviewer

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

Certified to the Secretary of State October 20, 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 24.29.3802) ON PROPOSED AMENDMENT
relating to hourly attorney)
fee rates)

TO: All Concerned Persons

1. On November 20, 2003, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the Sacajawea Room in the basement of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.29.3802 to change the hourly attorney fee rate.

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., November 14, 2003, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Claims Assistance, Attn: Debbie Wilson, P.O. Box 8011, Helena, MT 59604; telephone (406) 444-6535; fax (406) 444-4140; TDD (406) 444-5549; or email dewilson@state.mt.us.

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

24.29.3802 ATTORNEY FEE REGULATION (1) through (3) remain the same.

(4) The fee schedule set forth in ~~subsection~~ (3) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate not exceeding ~~\$75.00~~ \$100.00 per hour, but the total fee charged may not exceed the schedule set forth in ~~subsection~~ (3) except as provided in ~~subsection~~ (7). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.

(5) through (12) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-225 and 39-71-613, MCA

REASON: There is reasonable necessity to amend this rule to provide an hourly attorney fee rate increase to account for an increased cost of living. The hourly rate of \$75.00 has not been raised since 1987. The fiscal impact of this rule change should be minimal. There are approximately 262 attorneys actively representing workers' compensation claimants in Montana, and over 1400 fee agreements were approved in past fiscal year. But, there are fewer than 10 attorney fee

agreements approved per year that are based on an hourly rate, on average about 0.5% of all attorney fee agreements. Because hourly attorney fee agreements are subject to the same total fee limits as provided in section (3) for contingency fee agreements, there is apt to be little change in the number of approved hourly fee agreements in the foreseeable future.

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:

Carol Glead, Acting Bureau Chief
Workers' Compensation Claims Assistance
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604

and must be received no later than 5:00 p.m., November 28, 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 rule 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., November 28, 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, or made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice requirements 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/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: October 20, 2003

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

In the matter of the proposed) NOTICE OF PUBLIC
adoption of NEW RULE I, pertaining) HEARING ON PROPOSED
to master electrician license) ADOPTION
qualifications)

TO: All Concerned Persons

1. On November 25, 2003, at 9:00 a.m., a public hearing will be held in room 438, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed adoption of New Rule I.

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 State Electrical Board, no later than November 19, 2003, at 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 831-2309; e-mail dlibsdele@state.mt.us.

3. The proposed New Rule provides as follows:

NEW RULE I MASTER ELECTRICIAN QUALIFICATIONS (1) An applicant for a master electrician's license shall furnish evidence satisfactory to the board that the applicant meets one of the following requirements:

(a) the applicant is a graduate electrical engineer from an accredited college or university and has at least one year of journeyman level experience;

(b) the applicant is a graduate of a two year minimum electrical trade school and has at least four years of practical journeyman level experience; or

(c) the applicant has five years of journeyman level experience in planning, layout and supervising the installation and repair of wiring apparatus for electrical light, heat and power.

(2) The journeyman level experience required by (1)(a), (b) or (c) must be obtained by a combination of residential, commercial and industrial work.

(a) No less than 10%, but no more than 50% of the required experience may be obtained by residential work.

(b) No more than 70% of the required experience may be obtained by either commercial or industrial work.

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-131, 37-68-201, 37-68-301, 37-68-304, MCA

REASON: The Montana State Electrical Board has determined that it is reasonably necessary to clarify confusing areas for applicants. Many questions have recently arisen regarding the exact qualifications necessary. This New Rule is designed to clarify those qualifications and to ensure that the board will utilize the same standards for all applicants. The New Rule will be consistent with statutory requirements and what is believed by the board to be necessary for a demonstration of adequate knowledge by applicants to protect the public health, safety and welfare.

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 Montana State Electrical Board, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdele@state.mt.us and must be received no later than 5:00 p.m., November 28, 2003.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Montana State Electrical Board's rule notice section. The Department strives to make the electronic copy of this notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version, 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 Montana State Electrical Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name included on 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 Montana State Electrical Board administrative rulemaking proceedings. Such written request may be mailed or delivered to the Montana State Electrical Board, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdele@state.mt.us or may be made by completing a request form at any rule hearing by the agency.

7. The Montana State Electrical Board will convene on January 15, 2004 to consider comments made by the public, the proposed responses to those comments and to take final action

on the proposed New Rule. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

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

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

MONTANA STATE ELECTRICAL BOARD
RON VAN DIEST, CHAIRMAN

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State October 20, 2003

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULE I,) ON PROPOSED ADOPTION
pertaining to medical)
assistants)

TO: All Concerned Persons

1. On November 22, 2003, at 11:00 a.m., a public hearing will be held at the Elkhorn Mountain Inn, 1 Jackson Creek Road, Montana City, Montana, to consider the proposed adoption of the above-stated rule.

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 Medical Examiners no later than 5:00 p.m., on November 14, 2003, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worscheh, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2363; e-mail dlibsmed@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I MEDICAL ASSISTANTS (1) For purposes of this rule, the following definition applies:

(a) "Physician or podiatrist's office" means those places designated by the physician or podiatrist as his or her office and at which patients are seen by the physician, podiatrist or physician assistant-certified.

(2) Medical assistants shall work under the supervision of a Montana-licensed physician, podiatrist or physician assistant-certified who is responsible for all administrative and clinical tasks performed by the medical assistant.

(3) Physician, podiatrist or physician assistant-certified supervision shall be active and continuous but shall not be construed as requiring the physical presence of the supervising physician, podiatrist or physician assistant-certified at the time and place that services are rendered so long as the physician, podiatrist or physician assistant-certified is available for consultation except that physician, podiatrist or physician assistant-certified supervision shall be on-site when a medical assistant performs invasive procedures, administers medicine or performs allergy testing.

(4) The supervising physician, podiatrist or physician assistant-certified is responsible for determining the competency of a medical assistant to perform the administrative and clinical tasks delegated to the medical

assistant. A medical assistant shall perform clinical and administrative duties only within the supervising physician's, podiatrist's or physician assistant-certified's scope of practice and consistent with the medical assistant's education, training and experience.

(5) A medical assistant must be a graduate of an accredited medical assisting program or possess experience, training or education sufficient, in the supervising physician's, podiatrist's or physician assistant-certified's opinion, to perform delegated duties responsibly, safely and conscientiously.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-1-131, 37-3-104, MCA

REASON: The Board finds that there is reasonable necessity to adopt NEW RULE I to comply with and implement the provisions of section 37-3-104, MCA, enacted in Chapter 85, Laws of 2003, which require the Board to adopt guidelines by administrative rule for administering the use of unlicensed medical assistants by physicians, podiatrists and physician assistants-certified.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2363, or by e-mail to dlibsmed@state.mt.us, and must be received no later than 5:00 p.m., December 15, 2003.

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

6. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to

receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2363, e-mailed to dlibsmed@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

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

8. Anne O'Leary, attorney, has been designated to preside over and conduct the public hearing.

9. The Board of Medical Examiners will meet on January 16, 2004, at its regularly scheduled meeting, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed rule adoption. Members of the public are welcome to attend and listen to the Board's deliberations.

BOARD OF MEDICAL EXAMINERS
ANNE M. WILLIAMS, M.D., CHAIRMAN

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State October 20, 2003

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.40.1415,	)	ON PROPOSED AMENDMENT
37.86.1802, 37.86.1806 and)	
37.86.1807 pertaining to)	
medicaid reimbursement for)	
durable medical equipment,)	
prosthetics, orthotics and)	
medical supplies)	

TO: All Interested Persons

1. On November 19, 2003, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 10, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.40.1415 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: REIMBURSEMENT (1) Services available through the program are reimbursed as specified in this rule.

(2) The following services are reimbursed as provided in (3):

- (a) environmental accessibility adaptations;
- (b) homemaking;
- (c) adult day health;
- (d) habilitation;
- (e) personal emergency response systems;
- (f) nutrition;
- (g) psycho-social consultation;
- (h) nursing;
- (i) respiratory therapy;
- (j) dietetic services;
- (k) specially trained attendant care;
- (l) behavioral programming;

- (m) chemical dependency counseling;
- (n) cognitive rehabilitation;
- (o) comprehensive day treatment;
- (p) community residential rehabilitation;
- (q) supported living;
- ~~(r) specialized medical equipment and supplies;~~
- ~~(s)~~ (r) specialized child care for children with AIDS;
- ~~(t)~~ (s) adult residential care;
- ~~(u)~~ (t) respite care not provided by a nursing facility;

and

- ~~(v)~~ (u) nonmedical transportation.

(3) The services specified in (2) are, except as otherwise provided in (4), reimbursed at the lower of the following:

(a) the provider's usual and customary charge for the service; or

(b) the rate negotiated with the provider by the case management team up to the department's maximum allowable fee.

(4) The services specified in (2) are reimbursed as provided in (3) except that reimbursement for components of those services that are incorporated by specific cross reference from the general medicaid program may only be reimbursed in accordance with the reimbursement methodology applicable to the component service as a service of the general medicaid program.

(5) The following services are reimbursed in accordance with the referenced provisions governing reimbursement of those services through the general medicaid program:

(a) personal assistance as provided at ARM 37.40.1105 and 37.40.1302;

(b) outpatient occupational therapy as provided at ARM 37.86.610;

(c) outpatient physical therapy as provided at ARM 37.86.610;

(d) speech therapy as provided at ARM 37.86.610; and

(e) audiology as provided at ARM 37.86.705.

(6) Case management services are reimbursed, as established by contractual terms, on either a per diem or hourly rate.

(7) Respite care services provided by a nursing facility are reimbursed at the rate established for the facility in accordance with ARM Title 37, chapter 40, subchapter 3.

(8) Specialized medical equipment and supplies are reimbursed as follows:

(a) equipment and supplies which are reimbursable under ARM 37.86.1801, 37.86.1802, 37.86.1806 and 37.86.1807 shall be reimbursed as provided in ARM 37.86.1807;

(b) equipment and supplies which are not reimbursable under ARM 37.86.1801, 37.86.1802, 37.86.1806 and 37.86.1807 shall be reimbursed at the lower of the following:

(i) 100% of the provider's usual and customary charge for the item; or

(ii) the rate negotiated with the provider by the case management team up to the department's maximum allowable fee.

~~(8)~~ (9) Reimbursement is not available for the provision of a service to a person that may be reimbursed through another

program.

~~(9)~~ (10) No copayment is imposed on services provided through the program but recipients are responsible for copayment on other services reimbursed with medicaid monies.

~~(10)~~ (11) Reimbursement is not available for the provision of services to other members of a recipient's household or family unless specifically provided for in these rules.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA

IMP: Sec. 53-6-101, 53-6-111, 53-6-113 and 53-6-402, MCA

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in rule provisions generally applicable to medicaid providers. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing facility residents are contained in the department's rules governing nursing facility reimbursement.

(2) Reimbursement for prosthetic devices, durable medical equipment and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed in writing prior to delivery by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions for medical supplies used on a continuous basis shall be renewed by a physician at least every 12 months and must specify the monthly quantity of the supply.

(i) Prescriptions for oxygen shall include the liter flow per minute, the hours of use per day and the recipient's PO2 or oxygen saturation blood test(s) results.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the medicare criteria set forth in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, Coverage Issue 60-4, Use of Home Oxygen, pages X-5 through X-9, ~~as of~~ (December 1, 1997), which is hereby adopted and incorporated by reference. The medicare criteria ~~specifies~~ specify the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The medicare criteria also ~~specifies~~ specify the medical documentation and laboratory evidence required to support medical necessity. A copy of the medicare criteria 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.

(c) Reimbursement for oxygen is made on a monthly basis.

Only one unit may be billed per month regardless of the actual amount used by the patient.

(d) A statement of medical necessity for the rental of durable medical equipment, excluding oxygen equipment, shall indicate the length of time the equipment will be needed. All prescriptions shall be signed and dated.

(e) No more than one month's medical supplies may be provided to a medicaid recipient based on the physician's orders.

(f) A determination of the medical necessity of an item made by the medicare program is applicable to the medicaid program.

(g) Recipients shall be limited to a new wheelchair no more than once every five years, unless the department determines that a new chair is required sooner because the recipient's current chair is causing the recipient serious health problems or because of a significant change in the recipient's medical condition.

(3) Providers of oxygen to recipients for whom oxygen was determined to be medically necessary prior to the adoption of the medicare criteria, effective March 1, 1998, set forth in (2) may be reimbursed for oxygen services to those recipients, even though the oxygen would not be medically necessary for them under the medicare criteria, until the recipient's next recertification of medical necessity.

(4) The following items are not reimbursable by the program:

(a) items determined not to be medically necessary by the medicare program, except as provided in (3);

(b) orthopedic shoes, corrections, and shoe repairs unless the criteria in (4)(b)(i) or (ii) are met and the physician's prescription indicates that:

(i) the shoes are attached to a brace or orthotic device which cannot be accommodated in a regular shoe; or

(ii) the shoes are covered under medicare criteria for therapeutic shoes for diabetics. The department ~~hereby~~ adopts and incorporates by reference the Durable Medical Equipment Regional Carrier (DMERC) Region D supplier manual for coverage of therapeutic shoes for diabetics (March 1998). This manual describes the conditions under which the medicare program will cover therapeutic shoes for diabetics. A copy of ~~these~~ the medicare criteria 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-i

(c) convenience and comfort items;

(d) payment for provider's travel;

(e) nutrient solutions except when they are for parenteral and enteral nutrition therapy, are the primary source of nutrition for patients, and are medically appropriate;

(f) purchase of air fluidized beds;

(g) any delivery, mailing or shipping fees or other costs of transporting the item to the recipient's location; ~~and~~

(h) disposable incontinence wipes-i

- (i) adaptive equipment;
- (j) building modifications;
- (k) automobile modifications;
- (l) environmental control devices;
- (m) exercise equipment;
- (n) personal care items;
- (o) alarms;
- (p) educational equipment;
- (q) personal computers; and
- (r) sexual aids or devices.

(5) The date of service for custom molded or fitted items is the date upon which the provider completes the mold or fitting and either orders the equipment from another party or makes an irrevocable commitment to the production of the item.

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

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

37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services are as follows:

(a) Subject to the requirements of this rule, the department will pay the lowest of the following for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services:

(i) the provider's usual and customary charge for the item; or

(ii) the department's fee schedule maintained in accordance with the methodology described in ARM 37.86.1807.

(b) For all purposes under ARM 37.86.1806 and 37.86.1807, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers. The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price. For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all medicaid providers by more than 20%. For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in (3).

(c) A prior authorization is required for the following:

(i) for any line item of prosthetic device, durable medical equipment, medical supplies and related maintenance, repair and services on which the department's fee is equal to or greater than \$1,000; and

(ii) all items identified as requiring prior authorization in the department's fee schedule referenced in ARM 37.86.1807(2)~~(d)~~.

(d) Prior authorization of a claim does not guarantee ~~that~~

the recipient is eligible for medicaid payment for the requested item or service.

(e) Reimbursement for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services utilized by nursing facility residents and billed by a nursing facility is subject to the limits in the department's rules governing nursing facility reimbursement.

(2) For items that require prior authorization, the authorization number must be included on the submitted claim.

(3) Medicaid reimbursement for items provided on a rental basis is limited as follows:

(a) Total medicaid rental reimbursement for items listed in medicare's capped rental program or classified by medicare as routine and inexpensive rental will be limited to 120% of the purchase price for that item. Monthly rental fees will be limited to 10% of the purchase price and payments will be limited to 12 months.

(i) For purposes of this limit, the purchase price is the purchase fee specified in the department's fee schedule established under ARM 37.86.1807. ~~If no purchase or rental fee has been set for the item, the purchase price shall be the applicable by report percentage, as specified in ARM 37.86.1807 (2) and (3), of the provider's usual and customary charge for the item, determined in accordance with (1)(b). If no purchase fee has been set but a monthly rental fee has been set, the purchase price shall be 10 times the monthly rental fee established in accordance with ARM 37.86.1807.~~

(ii) Interruptions in the rental period of less than 60 days will not result in the start of a new 12-month period or new 120% of purchase price limit, but periods in which service is interrupted will not count toward the 12-month limit.

(iii) A change in supplier during the 12-month period will not result in the start of a new 12-month period or new 120% of purchase price limit. Providers are responsible to investigate whether another supplier has been providing the item to the recipient and medicaid will not notify suppliers of this information. The provider may rely upon a separate written statement of the recipient that another supplier has not been providing the item, unless the provider has knowledge of other facts or information indicating that another supplier has been providing the item. The supplier providing the item in the twelfth month of the rental period is responsible to transfer ownership to the recipient.

(iv) If rental equipment is changed to different but similar equipment, the change will not result in the start of a new 12-month period or new 120% of purchase price limit, unless:

(A) the change in equipment is medically necessary as a result of a substantial change in the recipient's medical condition;

(B) a new certification of medical necessity for the new equipment is completed and signed by a physician; and

(C) the medicaid services bureau prior authorizes the change in equipment.

(b) During the 12-month rental period, medicaid rental

reimbursement includes all supplies, maintenance, repair, components, adjustments and services related to the item during the rental month. No additional amounts related to the item may be billed or reimbursed for the item during the 12-month rental period. The supplier providing the rental equipment during the rental period is responsible for all maintenance and servicing of the equipment.

(c) After 12 months rental, the recipient will be deemed to own the item and the provider must transfer ownership of the item to the recipient. After the 12-month rental period, the provider may bill separately for supplies, maintenance, repair, components, adjustments and services related to the item, subject to the requirements of these rules, except that repair charges are not reimbursable during the manufacturer's warranty period.

(d) All rentals will be paid on a monthly basis, except air fluidized beds which will be reimbursed at a daily rental rate.

(i) Medicaid will pay an entire monthly rental fee for the initial month of rental even if less than a full month. When a rental extends into a second or subsequent month, medicaid will pay a rental fee for a partial month only if the partial month period is at least 15 days.

(e) Items classified by medicare as needing frequent and substantial servicing will be reimbursed by medicaid on a monthly rental basis only. The 120% cap specified in (3)(a) does not apply and rental reimbursement may continue as long as the item is medically necessary.

(f) If the purchase of a rental item is cost effective, the department may negotiate with the provider to purchase the item.

(4) If no purchase fee has been set for a purchase item but a monthly rental fee has been set, medicaid reimbursement for purchased items shall be limited to 10 times the monthly rental fee established in accordance with ARM 37.86.1807.

(5) The department may contract with providers of prosthetic devices, durable medical equipment and medical supplies to be sole providers of a specific item in a geographic area.

(6) Medical coverage of diapers is limited to 180 diapers per recipient per month.

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

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) Providers must bill for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS 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) Prosthetic devices, durable medical equipment and medical supplies shall be reimbursed in accordance with the department's fee schedule dated July 2003, which is hereby adopted and incorporated by reference. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, ~~Health Policy Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) The department's fee schedule, referred to in ARM 37.86.1806(1), for items other than wheelchairs and ~~wheelchair accessories~~ items billed under generic or miscellaneous codes as described in (1), shall include fees set and maintained according to the following methodology:

~~(a) At least annually, the department will review billings for items, other than those items for which a specific fee has been set under the provisions of (3)(b), to determine the total number of times each such item has been billed by all providers in the aggregate within the previous 12 month period.~~

~~(b) Upon review of the aggregate number of billings as provided in (3)(a), the department will establish a fee for each item which has been billed at least 50 times by all providers in the aggregate during the previous 12 month period. The department shall set each such fee at 80% of the average charge billed by all providers in the aggregate for such item during such previous 12 month period. For purposes of determining the number of billings and the average charge, the department will consider only those billings that comply with ARM 37.86.1806(1)(b).~~

~~(i) Once the department has established a fee as provided in (3)(b), such fee will not be adjusted except as provided in (5).~~

(a) 100% of the medicare region D allowable fee;

~~(e) (b) Except as provided in (4), for all items for which no medicare allowable fee is available has been set under the provisions of (3)(b), the department's fee schedule amount shall be 80% 75% of the provider's usual and customary charge-, until a reasonable fee is established through a pricing cluster as described in (3)(b)(ii).~~

(i) For purposes of (3)~~(e)~~(b) and (4), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

(A) The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price.

(B) For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(C) For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all medicaid providers by

more than 20%.

(D) For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in ARM 37.86.1806(3).

(ii) For the purposes of (3)(b), a pricing cluster consists of product retail price lists from manufacturers and distributors. Such pricing is used to compare all provider billed charges for an item/service billed under a specific procedure code. The average charge from a 12-month period is considered reasonable if equal to or less than the average retail price of the pricing cluster. If the average charge is considered reasonable, a permanent fee will be set at 75% of the reasonable charge.

(iii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at 75% of the provider's usual and customary charge as defined in (3)(b)(i).

~~(d) For new procedure codes where a medicare fee is available, the department's fee schedule amount shall be the medicare allowable charge, until the department sets a fee based upon 50 billings for the procedure code as provided in (3)(c).~~

(4) The department's fee schedule, referred to in ARM 37.86.1806(1), for all wheelchairs and ~~wheelchair accessories~~ items billed under generic or miscellaneous codes as described in (1) shall be ~~80%~~ 75% of the provider's usual and customary charge as defined in ~~(3)(e)~~ (b)(i).

~~(a) Items having no manufacturer's list price, such as items customized by the provider, will be reimbursed in accordance with (3)(c).~~

~~(5) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:~~

~~(a) The department shall increase or decrease those fees established as provided in (3)(b) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective as provided by the legislature.~~

~~(b) The department shall not apply any legislative increase or decrease to those items described in (3)(c) or (4), unless specifically directed by legislative enactment to do so.~~

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

3. The Montana Medicaid program pays medical expenses for eligible low income individuals. Reimbursement for durable medical equipment, prosthetic devices, orthotic devices, and medical supplies (DMEPOS) provided to Medicaid recipients generally is governed by ARM 37.86.1801, 37.86.1802, 37.86.1806 and 37.86.1807. Reimbursement for DMEPOS provided to Medicaid recipients participating in the Home and Community Based Services Waiver Program is governed by ARM 37.40.1415. The Home and Community Based Services Waiver Program (the Waiver Program) is a program for Medicaid recipients who are disabled or over

the age of 65 who require a nursing home level of care but are able to continue living in the community if appropriate services are provided to them.

The amendment of the rules governing reimbursement for DMEPOS items is necessary at this time because the Department proposes to change its fees to align them more closely with the fees Medicare pays for the same items. For items other than wheelchairs and items billed under generic and miscellaneous codes, the Department proposes to pay 100% of the Medicare allowable fee for the item. For wheelchairs and items billed under generic and miscellaneous codes and items for which no Medicare allowable fee is available, the Department is proposing to reduce the fee from 80% of the provider's usual and customary charge to 75% of the usual and customary charge.

The Department's decision to re-evaluate its methodology for reimbursing DMEPOS was prompted by concerns on the part of the Medicaid Services Bureau and DMEPOS providers that the fees currently paid by Medicaid were in some cases inadequate and might limit Medicaid recipients' access to quality items and services. Some fees currently being paid for DMEPOS have not been changed since they were established in the 1980's. The proposed new DMEPOS reimbursement methodology, under which Medicaid will pay the same fee as Medicare for many items, is simpler than the current method and is expected to result in substantial administrative savings for both providers and the Department.

Other options for reimbursing DMEPOS have previously been tried and have been rejected as unsatisfactory to providers, Medicaid recipients and the Department alike. Such options include contracting with a sole source supplier or regional suppliers. Supplier interest was limited to the more densely populated areas of the state, and it was a constant struggle to provide coverage in rural areas of the state. Another option tried was to pay the provider's acquisition cost plus a dispensing fee. The latter reimbursement method was not favored by the provider community, causing concerns that Medicaid recipients in rural areas might have trouble accessing DMEPOS services.

The Waiver Program proposes to amend ARM 37.40.1415 in order to align its reimbursement policies with the methodology proposed by the Medicaid Services Bureau for items provided to Medicaid recipients who are not participants in the Waiver Program. Although the Waiver Program could pay different fees than the fees paid for other Medicaid recipients, it is confusing to providers to be paid at different rates for the same item depending on whether the recipient is in the Waiver Program. The Waiver Program therefore has decided to pay the same fees for DMEPOS as are paid by the Montana Medicaid Program for Medicaid recipients not in the Waiver Program. However, the Waiver Program pays for some specialized equipment and medical supplies for its participants which Medicaid does not cover for

Medicaid recipients who are not in the Waiver Program. These items will be reimbursed at the rates which the Waiver Program currently pays for all DMEPOS, namely, 100% of the provider's usual and customary charge or a rate negotiated with the provider by the case management team up to the Department's maximum allowable fee, whichever is lower.

It is expected that the proposed change in DMEPOS reimbursement for Medicaid recipients in general will be budget neutral. Although the Department will be paying more for some DMEPOS items by paying 100% of the Medicare allowable fee, this increase in expenditures will be offset by the savings resulting from the reduction of fees for other items. The Department is proposing to reduce the fees paid for wheelchairs and items billed under generic and miscellaneous codes and items for which no Medicare allowable fee is available from 80% of the provider's usual and customary charge to 75% of the usual and customary charge. This will result in a substantial savings to the Department for these items. Approximately 650 providers of DMEPOS to Medicaid recipients not in the HCBS Waiver Program will be affected by the proposed changes.

The Waiver Program will realize an estimated savings of \$66,000 per year as a result of the proposed changes in fees. This savings is due to the fact that under the new fee schedule the Waiver Program will pay 75% of the provider's usual and customary charge for wheelchairs and items billed under generic or miscellaneous codes and items for which no Medicare allowable fee is available, whereas the Waiver Program currently pays 100% of the provider's usual and customary charge unless a lower rate is negotiated with the provider. Approximately 267 providers of DMEPOS to Medicaid recipients in the Waiver Program will be affected by the proposed changes.

In addition to the changes to implement the new DMEPOS fees, several other changes are being made to the rules governing DMEPOS. In ARM 37.86.1802, section (4) specifies items which are not reimbursable by Medicaid. The Department proposes to add a number of items to the list of noncovered items. This is being done for purposes of clarification and does not represent a change in policy. Many of the items being added to the list are already specified in the Medicaid provider Manual as noncovered items, although they were not mentioned in the rule.

In ARM 37.86.1806, an inaccurate cross reference is being corrected. ARM 37.86.1806(1)(c)(ii) currently refers to the fee schedule contained in ARM 37.86.1807(2)(d), but ARM 37.86.1807(2) does not have a subsection (d). Therefore, this provision is being corrected by deleting the reference.

Additionally, ARM 37.86.1806(1)(d) is being amended to clarify the Department's policy on prior authorization for DMEPOS. ARM 37.86.1806(1)(d) currently states that prior authorization of a claim does not guarantee that the recipient is eligible for

Medicaid. In discussions with DMEPOS providers over the years, it has become apparent that providers consider prior authorization to be a guarantee that all of the requirements for reimbursement are met, which is not correct. Even when an item or service has been prior authorized, a provider is not necessarily entitled to be paid for it. As the rule currently states, the provider would not be entitled to payment if the person to whom the item or service was provided was not covered by Medicaid on the date when it was provided. However, the provider also might not be entitled to payment for some other reason. Although the purpose of prior authorization is to determine whether the item or service is medically necessary, prior authorization is not an absolute guarantee that it was medically necessary. For example, if the prior authorization was based on incomplete or inaccurate information furnished by the provider, a post payment review of the claim might determine that the item or service was not medically necessary even though prior authorization was granted.

Also, the "Child and Adult Health Resources Division" has been substituted for the "Health Policy and Services Division" throughout these rules because the legislature created an new division to administer the Medicaid program that pertains to child and adult health care resources.

4. The proposed rule amendments will be effective January 1, 2004.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on November 28, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health
and Human Services

Certified to the Secretary of State October 20, 2003.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.86.3501,	)	ON PROPOSED AMENDMENT
37.86.3502, 37.88.101,)	
37.88.901, 37.88.907 and)	
37.89.103 pertaining to adult)	
mental health services)	

TO: All Interested Persons

1. On November 19, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 10, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.86.3501 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, DEFINITIONS (1) through (5) remain the same.

(6) "Episode of decompensation" means increased symptoms of psychosis, self-injury, suicidal or homicidal intent or psychiatric hospitalization.

(7) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of (2)(a), (b) or (c). The person must also meet the requirements of (2)(d). The person:

(a) has been involuntarily hospitalized for at least 30 consecutive days because of a mental disorder at Montana state hospital (Warm Spring campus) at least once;

(b) has a DSM-IV diagnosis of:

(i) schizophrenic disorder (295);

(ii) other psychotic disorder (293.81, 293.82, 295.40, 295.70, 297.1, 297.3, 298.9);

(iii) mood disorder (293.83, 296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);

(iv) amnestic disorder (294.0, 294.8);

(v) disorder due to a general medical condition (310.1);
(vi) pervasive developmental disorder not otherwise
specified (299.80) when not accompanied by mental retardation;
or

(vii) anxiety disorder (300.01, 300.21, 300.3);

(c) has a DSM-IV diagnosis with a severity specifier of
moderate or severe of personality disorder (301.00, 301.20,
301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90)
which causes the person to be unable to work competitively on a
full-time basis or to be unable to maintain a residence without
assistance and support by family or a public agency for a period
of at least six months or is obviously predictable to continue
for a period of at least six months; and

(d) has ongoing functioning difficulties because of the
mental illness for a period of at least six months or for an
obviously predictable period over six months, as indicated by at
least two of the following:

(i) a medical professional with prescriptive authority
has determined that medication is necessary to control the
symptoms of mental illness;

(ii) the person is unable to work in a full-time
competitive situation because of mental illness;

(iii) the person has been determined to be disabled due to
mental illness by the social security administration; or

(iv) the person maintains a living arrangement only with
ongoing supervision, is homeless, or is at imminent risk of
homelessness due to mental illness; or

(v) the person has had or will predictably have repeated
episodes of decompensation.

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

IMP: Sec. 53-6-101, MCA

37.86.3502 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE
DISABLING MENTAL ILLNESS, ELIGIBILITY (1) Case management
services are available under ARM 37.86.3501, 37.86.3502,
37.86.3504, 37.86.3506, 37.86.3507 and 37.86.3515 only to adults
(age 18 or over) with severe disabling mental illness.

~~(2) "Severe disabling mental illness" means with respect~~
~~to a person who is 18 or more years of age that the person meets~~
~~the requirements of (2)(a), (b) or (c). The person must also~~
~~meet the requirements of (2)(d). The person:~~

~~(a) been hospitalized for at least 30 consecutive days~~
~~because of a mental disorder at Montana state hospital (Warm~~
~~Spring campus) at least once;~~

~~(b) a DSM IV diagnosis of:~~

~~(i) schizophrenic disorder (295);~~

~~(ii) other psychotic disorder (295.40, 295.70, 297.1,~~
~~297.3, 298.9, 293.81, 293.82);~~

~~(iii) mood disorder (296.2x, 296.3x, 296.40, 296.4x,~~
~~296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90, 301.13, 293.83);~~

~~(iv) amnesic disorder (294.0, 294.8);~~

~~(v) disorder due to a general medical condition (310.1);~~

~~(vi) pervasive developmental disorder not otherwise~~

~~specified (299.80) when not accompanied by mental retardation;
or~~

~~(vii) obsessive compulsive disorder (300.3);~~

~~(c) the person has a DSM IV diagnosis with a severity specifier of moderate or severe of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full time basis or to be unable to maintain a residence without assistance and support by family or a public agency for a period of at least six months or is obviously predictable to continue for a period of at least six months; and~~

~~(d) the person has ongoing functioning difficulties because of the mental illness for a period of at least six months or for an obviously predictable period over six months, as indicated by one of the following:~~

~~(i) a health care professional has determined that medication is necessary to control the symptoms of mental illness;~~

~~(ii) the person is unemployed or does not work in a full-time competitive situation because of mental illness;~~

~~(iii) the person receives SSI or SSDI payments due to mental illness; or~~

~~(iv) the person maintains or could maintain a living arrangement only with the ongoing supervision and assistance of family or a public agency.~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-21-703, MCA

IMP: Sec. 53-6-101 and 53-21-701, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) through (3)(b) remain the same.

(4) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of (4)(a) or (b). The person must also meet the requirements of (4)(c). The person has:

(a) a DSM-IV diagnosis with a severity specifier of moderate or severe of mood disorder (293.83, 295.70, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90, 396.40); or

(b) a DSM-IV diagnosis with a severity specifier of moderate or severe borderline personality disorder (301.83), personality disorder not otherwise specified (NOS) (301.9) with prominent features of 301.83; and

(c) ongoing difficulties in functioning because of mental illness for a period of at least six months or for an obviously predictable period over six months, as indicated by:

(i) dysregulation of emotion, cognition, behavior and interpersonal relationships;

(ii) recurrent suicidal, parasuicidal, serious self-damaging impulsive behaviors, or serious danger to others;

(iii) a history of treatment at a higher level of care, and

(iv) evidence that lower levels of care are inadequate to meet the needs of the client.

~~(4)~~ (5) The department may waive a requirement for prior authorization when the provider can document that:

(a) and (b) remain the same.

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

~~(6)~~ (7) Under no circumstances may a waiver under ~~(4)~~ (5) be granted more than 30 days after the initial date of service.

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

AUTH: Sec. 53-6-113, MCA

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

37.88.901 MENTAL HEALTH CENTER SERVICES, DEFINITIONS

(1) through (8) remain the same.

(9) "Intensive community based rehabilitation facility" means an adult mental health group home that provides medically necessary rehabilitation services to adults with severe and disabling mental illness who have a history of institutional placements due to mental illness and a history of repeated unsuccessful placements in less intensive community based programs. The provider must provide the following services to residents:

(a) close supervision and support of daily living activities;

(b) assistance with medications including administration of medications as necessary;

(c) rehabilitation in the following areas as needed by each client:

(i) maintenance of physical health and wellness;

(ii) personal hygiene;

(iii) safety;

(iv) symptom management;

(v) communication skills;

(vi) vocational activities;

(vii) community integration;

(viii) social skills;

(ix) leisure and recreation skills;

(x) establishment and maintenance of a community support network;

(xi) establishment and maintenance of meaningful daily structure; and

(xii) management of personal finances;

(d) case management to assure all necessary community services and supports, including services and supports for non-psychiatric medical conditions, are available;

(e) discharge planning for transition to a less restrictive setting when appropriate; and

(f) transportation to assure appropriate community resources are accessible.

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

~~(13)~~ (14) "Program of assertive community treatment" means

a self-contained clinical team which:

- (a) through (c) remain the same.
 - (d) delivers ~~85%~~ 75% or more of team service ~~contacts~~ time outside program offices;
 - (e) remains the same.
 - (f) provides psychiatric services at the rate of at least 12 hours per week for each ~~40~~ 70 persons served; and
 - (g) maintains a ratio of at least one staff person, not including the psychiatrist, for each ~~10~~ nine persons served. Assertive community treatment teams must be approved by the addictive and mental disorders division.
- (14) through (17) remain the same but are renumbered (15) through (18).

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

37.88.907 MENTAL HEALTH CENTER SERVICES, REIMBURSEMENT

- (1) through (1)(b) remain the same.
- (2) For day treatment and crisis intervention services, medicaid will not reimburse a mental health center provider for more than one fee per treatment day per recipient. This ~~subsection~~ does not apply to practitioner services to the extent such services are separately billed in accordance with these rules.
- (3) Reimbursement will be made to a provider for reserving an adult foster care or mental health adult group home bed only if:
 - (a) the recipient's plan of care documents the medical need for a therapeutic visit as part of a therapeutic plan ~~to transition the recipient to a less restrictive level of care;~~
 - (b) remains the same.
 - (c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic visit; and
 - ~~(d) the recipient is absent from the provider's facility for no more than three patient days per absence; and~~
 - ~~(e)~~ (d) no more than 14 patient days per recipient in each rate year will be reimbursed for therapeutic visits.

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

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

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

- (1) and (2) remain the same.
- (3) "Correctional or detention facility" means:
 - (a) through (e) remain the same.
 - ~~(f) a pre release center;~~
 - (g) through (i) remain the same but are renumbered (f) through (h).
- (4) through (14)(d)(vi) remain the same.
- (15) "Severe disabling mental illness" means with respect

to a person who is 18 or more years of age that the person meets the requirements of (15)(a), (b) or (c). The person must also meet the requirements of (15)(d). The person:

(a) has been involuntarily hospitalized at least 30 consecutive days because of a mental disorder at Montana state hospital (Warm Springs campus) at least once;

(b) has a DSM-IV diagnosis with a severity specifier of moderate or severe of:

(i) and (ii) remain the same.

(iii) mood disorder (293.83, 296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, ~~296.90, 301.13, 293.83~~);

(iv) through (vi) remain the same.

(vii) ~~obsessive-compulsive~~ anxiety disorder (300.01, 300.21, 300.3); or

(c) remains the same.

(d) has ongoing functioning difficulties because of the mental illness for a period of at least six months or for an obviously predictable period over six months, as indicated by ~~one~~ at least two of the following:

(i) a ~~physician~~ medical professional with prescriptive authority has determined that medication is necessary to control the symptoms of mental illness;

(ii) the person is ~~unemployed or does not~~ unable to work in a full-time competitive situation because of mental illness;

(iii) the person ~~receives SSI or SSDI payments~~ has been determined to be disabled due to mental illness by the social security administration; ~~or~~

(iv) the person maintains ~~or could maintain~~ a living arrangement only with ~~the ongoing supervision and assistance of family or a public agency.~~ , is homeless or is at imminent risk of homelessness due to mental illness; or

(v) the person has had or will predictably have repeated episodes of decompensation. An episode of decompensation includes increased symptoms of psychosis, self-injury, suicidal or homicidal intent or psychiatric hospitalization.

(16) through (18) remain the same.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-21-703, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202 and 53-21-701, MCA

3. The proposed amendments to the administrative rules pertain to adult mental health services. The amendments would add two services for individuals with severe disabling mental illness. Intensive outpatient therapy will be available to individuals who have a substantiated medical need for more sessions than would be allowed under ARM 37.88.101(3). An intensive community based rehabilitation facility would provide services for adults with a history of institutional placements due to mental illness and a history of repeated unsuccessful placements in less intensive community programs. The amendments

would revise the requirements and patient to staff ratio for a program of assertive community treatment. The proposed amendments provide greater flexibility for reserving an adult foster care or mental health adult group home bed when the individual is temporarily absent from the facility. The proposed amendments would change identified diagnoses in the definition of severe disabling mental illness and increase the number of functional impairments from one to at least two. Finally, the proposed amendments remove pre-release centers from the list of correctional or detention facilities for purposes of MHSP services.

ARM 37.86.3501

The Department proposes adding a definition of decompensation which is needed to administer the proposed changes in ARM 37.86.3502 pertaining to severe mental illness. The proposed amendment provides further criteria for functional impairment by including episodes of decompensation.

In addition, the definition for severe disabling mental illness will be moved from ARM 37.86.3502 into ARM 37.86.3501 where it belongs. The proposed amendment changes the definition of "severe disabling mental illness" (SDMI) to provide clarification and to modify the criteria the Department will use for determination of medical necessity for mental health services for adults.

ARM 37.86.3502 and 37.89.103

The proposed language clarifies that an individual who has been hospitalized at the Montana State Hospital must have been admitted under an involuntary commitment order. The proposed amendment to these rules deletes diagnoses of Mood Disorder NOS (296.9) and Cyclothymic Disorder (301.13) and adds the following anxiety disorders: Panic Disorder without Agoraphobia (300.01), Panic Disorder with Agoraphobia (300.21). These diagnoses are included in the definition of serious mental illness in 33-22-706(6)(e), MCA. Obsessive Compulsive Disorder (300.3) remains a covered diagnosis under the category of anxiety disorders. The proposed amendment increases the requirement for ongoing functioning difficulties to a minimum of two from the list provided. Each of the listed functional difficulties was modified for clarification. In addition, homelessness, or imminent risk of homelessness due to mental illness has been added for consideration.

The amendments are proposed to provide the Department with improved criteria for identification of individuals most in need of mental health services. The amendments are intended to ensure that limited resources are directed to adults who have the greatest risk for needing the most intense, restrictive and expensive care and to provide an opportunity to direct services and resources to that population in an attempt to mitigate the

need for high end care. The alternative is to not amend the definition of SDMI and continue to serve a larger group of beneficiaries with the limited resources available. This has the potential for elimination of services or provider rate decreases in order to balance expenditures and legislative appropriation.

The proposed amendments remove a pre-release center from the list of facilities considered a 'correctional or detention facility' in the definitions for the Mental Health Services Plan (MHSP). Per ARM 37.89.114(11), an individual who is an inmate in or incarcerated in a correctional or detention facility is not eligible to receive services under MHSP. The change will allow individuals otherwise eligible for the plan who are residing in a pre-release center to receive necessary mental health services. With this amendment, MHSP will be consistent with an interpretation of Medicaid eligibility that is permissive for services to be provided to this group of eligible beneficiaries. The alternative is to not make the change and delay treatment for serious mental illness until the individual has been discharged from the pre-release center. Early intervention is likely to reduce the cost of treatment.

ARM 37.88.101(4)

Additional outpatient therapy sessions for adult intensive outpatient therapy services for individuals with severe disabling mental illness will be reimbursed when medically necessary after the limit imposed by ARM 37.88.101(3) has been met and when continued outpatient therapy is the treatment of choice. The individual must meet clinical criteria described in the proposed rule and the service must be authorized by the Department or its designee. The amendment is proposed for those individuals who are at imminent risk for safety and security without continued therapy services. The Department does not, however, wish to make the service available to all individuals with SDMI. The alternative is to not provide the service with the likelihood of exacerbated symptoms of mental illness and increased cost of providing services at a higher level of care. Alternately, the Department could allow an unlimited number of sessions for all individuals with mental illness. The cost of providing unlimited sessions for all individuals would require the Department to eliminate other services, to reduce eligibility, or to decrease provider rates.

ARM 37.88.901

The proposed program of assertive community treatment is a clinical team that provides needed treatment, rehabilitation, and support services to adults with severe disabling mental illness. The proposed amendments change the service delivery requirements by reducing the amount of service time provided outside of the program office, increasing psychiatric services, and increasing the staff to client ratio. These amendments will

allow program staff to better meet the intensive needs of clients in the program. Individuals served in an Assertive Community Treatment (ACT) program show decreased days of hospitalization and fewer law enforcement contacts than for a similar population in the community. The alternative to this proposed amendment is to not modify the service delivery requirements.

The proposed intensive community based rehabilitation facility service is a new adult mental health service for individuals with a history of institutional care and repeated unsuccessful community placements. This service would target individuals who have resided at the Montana Mental Health Nursing Care Center in Lewistown or other institutions for individuals with mental illness who have been identified by the professional staff in that facility as appropriate for the close supervision, support, and rehabilitation services available in a less restrictive environment. The Department wishes to provide treatment in the community whenever possible and recognizes that the intensive needs of this population exceed the resources currently available.

The alternative would be to continue to provide treatment for this population within the Montana Mental Health Nursing Care Center. For the population between the ages of 21 and 64, the cost of treatment is reimbursed with 100% state general funds. In a facility with fewer than 17 beds, the cost of providing the rehabilitation portion of this service is eligible for matching federal funds.

ARM 37.88.907

The proposed amendment changes the requirement for reimbursement for adult group home or foster care providers when the recipient is temporarily away from the facility for a therapeutic visit. Although the absence must be a part of the individual's therapeutic plan, the amendment would eliminate the requirement that the absence be related to a planned transition to a less restrictive level of care.

The amendment also eliminates the prohibition of more than three days per absence, leaving unchanged a maximum of 14 patient days per recipient in each rate year. The change is proposed to provide an opportunity for adult residents to visit with family members for periods of time when there is not an intent to transition out of the group or foster care setting.

The amendment also provides an opportunity for longer visits with family members during holidays or vacations. The amendment does not, however, extend the total number of days allowed during an annual period of time. The alternative is to not change the rule and continue to restrict a small population of adults to very brief visits with family members.

In addition, the Department is taking this opportunity to conform the rule to current rule format practice.

Fiscal Impact and Persons Affected

The Department believes that as many as 200 Medicaid beneficiaries with serious mental illness will meet the criteria for adult intensive outpatient therapy. The cost of providing this service will be offset by savings at higher levels of care, including acute inpatient hospitalization and admissions to Montana State Hospital.

The proposed amendment to the ACT program improves the service but it does not change the number of individuals served or the cost of providing the service. The same is true for amendments to administrative rule for reserving an adult foster care or mental health group home bed.

During the next biennium, the Department anticipates that 15 Medicaid beneficiaries will be placed in intensive community based rehabilitation facilities. The cost of this service will be offset by general fund savings at the Montana Mental Health Nursing Care Center with a net savings to the Department.

The amendments to the definition of severe disabling mental illness may result in some beneficiaries no longer meeting the clinical criteria for mental health services. The Department does not believe that the number is substantial and feels that the ability to focus limited resources on those with the greatest need is an adequate justification for the amendment.

The amendment to remove pre-release centers from the list of correctional or detention facilities will have no impact on the cost of providing services. MHSP services are currently contracted through licensed mental health centers for an annual fixed amount. The Department will not adjust the contracted budget for the small number of individuals projected to be included by this amendment.

4. The proposed amendments will be effective January 1, 2004.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on November 28, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health
and Human Services

Certified to the Secretary of State October 20, 2003.

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

In the matter of the adoption	)	NOTICE OF PROPOSED
of new rules I through IV	)	ADOPTION
pertaining to the)	
implementation of the Montana)	
medicaid disease management	)	NO PUBLIC HEARING
program	)	CONTEMPLATED

TO: All Interested Persons

1. On November 29, 2003, the Department of Public Health and Human Services proposes to adopt the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 21, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I DISEASE MANAGEMENT PROGRAM: DEFINITIONS The following terms and definitions apply to the disease management program:

(1) "Disease management organization (DMO)" means a clinically qualified organization that has a disease management program which uses evidence based health care practices.

(2) "Disease management program services" means specialized services provided to medicaid clients with the chronic medical conditions listed in [Rule III]. Disease management program services are aimed at care coordination, client education, improved client self-care and efficiency and cost effectiveness of services.

(3) "Eligible client" means a Montana medicaid client who has the disease management program's specified combination of eligibility and disease factors.

(4) "Enrolled client" means an eligible client who has been notified in writing of enrollment in the disease management program and eligibility to receive disease management program services and who has not declined to participate.

(5) "Evidence based healthcare practice" means a clinical approach to practicing medicine based on the clinician's awareness of medical evidence and the strength of that evidence to support the management of a disease treatment process.

(6) "Medical home" means one provider or clinic who provides the majority of all ambulatory health care services to

each client. This provider is the client's source for routine or preventive healthcare.

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

RULE II DISEASE MANAGEMENT PROGRAM: GENERAL (1) The disease management program provides coordinated health care interventions and education for medicaid clients with the chronic medical conditions listed in [Rule III]. The purpose of the program is to provide and/or coordinate services that decrease utilization and cost while optimizing treatment and improving health outcomes for clients.

(2) A disease management program must include the following procedures:

- (a) evaluate each enrolled client;
- (b) prioritize disease management program services provided to an enrolled client based on the client's need or other criteria, as appropriate; and
- (c) contact and coordinate with a department or department authorized case manager as appropriate for planned service delivery to an enrolled client.

(3) Disease management program services must provide one or more of the following to each enrolled client:

- (a) assistance in establishing a medical home;
- (b) educational materials;
- (c) instruction regarding self-managing the targeted conditions;
- (d) assessment of available services, equipment and supplies that might enhance the client's ability to manage the client's disease processes; or
- (e) coordination with a department or department authorized case managers.

(4) Disease management program services do not:

- (a) change the scope of services available to a client eligible under a Title XIX medicaid program;
- (b) interfere with the relationship between an enrolled client and the client's chosen provider(s);
- (c) duplicate case management activities available to a client in the client's community; or
- (d) substitute for established activities that are available to a client and provided by programs administered through other department divisions or state agencies.

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

RULE III DISEASE MANAGEMENT PROGRAM: CLIENT ELIGIBILITY AND ASSIGNMENT (1) To receive disease management services an eligible client must be a recipient of Montana medicaid and be diagnosed with at least one of the following chronic medical conditions:

- (a) asthma;
- (b) diabetes;

- (c) heart failure;
- (d) chronic pain; or
- (e) cancer.
- (2) A client must not be:
 - (a) receiving mental health service plan (MHSP) benefits, specified low income medicare beneficiary (SLMB) benefits or qualified medicare beneficiary (QMB) benefits;
 - (b) residing in a nursing home or institutional setting for more than 30 days;
 - (c) receiving medicaid benefits through presumptive eligibility;
 - (d) eligible for third party coverage that provides disease management program services or requires administrative controls that would duplicate or interfere with Montana medicaid's disease management program; or
 - (e) receiving case management services that disease management program services would duplicate.
- (3) A client meeting the eligibility requirements in this rule:
 - (a) is automatically enrolled in the disease management program;
 - (b) is notified of the enrollment in writing;
 - (c) may request a disenrollment at any time; and
 - (d) may request a re-enrollment at any time.

AUTH: Sec. 53-6-101 and 53-6-113, MCA

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

RULE IV DISEASE MANAGEMENT PROGRAM: SCOPE OF SERVICES AND REIMBURSEMENT (1) If a disease management program is provided by a DMO, the program must meet the following criteria:

- (a) the program requirements stated in the contract between the department and the DMO must be fulfilled;
- (b) the scope of practice must be appropriate for the provider of the health care service; and
- (c) the DMO must comply with all other applicable state and federal requirements.

(2) Only a DMO contracted with the department may bill and be reimbursed for providing disease management services. Billing requirements and payment methodology will be described in a contract between the DMO and the department.

AUTH: Sec. 53-6-101 and 53-6-113, MCA

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

3. These are new rules to implement a Disease Care Management Program in Montana Medicaid for certain chronic diseases. Disease Management is a system of coordinated healthcare interventions and education for populations with chronic conditions in which patient self-care efforts are significant. Under the proposed rules disease management would initially be provided for asthma, diabetes, heart failure, pain and cancer. Other chronic diseases may be included in the program in the future.

The purpose of the Disease Management program is to improve health outcomes, decrease utilization of Medicaid services and improve the efficiency and cost effectiveness of services. The program is intended to appropriately control costs for physician visits without adversely impacting patient care.

This disease management program is expected to result in a net Medicaid savings of \$2.5 million annually. This service is potentially eligible to the full Medicaid population of approximately 75,000 per month, though the enrollees with applicable conditions are estimated at approximately 6,000.

4. New Rules I through IV are proposed to be effective on December 1, 2003. There is no adverse impact to this effective date. The disease management program is designed to improve the health care of Medicaid enrollees eligible for the program. By having December 1, 2003 as an effective date, the program will coincide with the beginning of the flu season.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on November 28, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on November 28, 2003.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 600 based on the 6,000 individuals affected by rules covering the Montana medicaid disease management program.

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health
and Human Services

Certified to the Secretary of State October 20, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)
adoption of New Rule I; amendment) NOTICE OF PUBLIC HEARING
of ARM 42.5.201 and 42.5.213;) ON PROPOSED ADOPTION,
transfer of ARM 42.5.210; and) AMENDMENT, TRANSFER, AND
repeal of ARM 42.5.211 and) REPEAL
42.5.212 relating to electronic)
signatures, filing and remittance))
of tax information)

TO: All Concerned Persons

1. On December 1, 2003, at 10:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I; amendment of ARM 42.5.201 and 42.5.213; transfer of ARM 42.5.210; and repeal of ARM 42.5.211 and 42.5.212, relating to electronic signatures, filing, and remittance of tax information.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue 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 of Revenue not later than 5:00 p.m., November 17, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I ELECTRONIC RETURNS, REPORTS, AND SIGNATURES

(1) The department's ability to accept electronic returns and reports is constantly evolving. Taxpayers should check www.discoveringmontana.com/revenue, the department's website, to determine which types of returns and reports the department will accept electronically.

(2) An electronic return or report is not complete unless all requested information is provided and it is signed by the taxpayer or the taxpayer's authorized representative as provided in this rule.

(3) Providing a personal identification number (pin) or an electronic signature as part of an electronic filing is the filer's declaration, under the penalty of false swearing, that:

(a) the filer is the taxpayer identified in the report or return; and

(b) the information in the report or return is true, correct, and complete.

(4) The department is part of a federal-state joint-filing program that allows taxpayers to electronically file certain federal and state tax returns together. If a taxpayer files an electronic Montana return as part of the federal-state joint-filing program, the taxpayer's federal signature or pin is considered the taxpayer's signature or pin on the Montana electronic return.

(5) If the department permits a taxpayer to file a report or return electronically outside the federal-state joint-filing program, including by telephone, without providing a pin or an electronic signature, the act of filing the return or report electronically constitutes the filer's declaration, under the penalty of false swearing, that:

(a) the filer is the taxpayer identified in the report or return; and

(b) the information in the report or return is true, correct, and complete, and constitutes the taxpayer's signature.

(6) Except as permitted in the federal-state joint-filing program described in (3)(a), a return or report may not be made electronically for a taxpayer unable to make the taxpayer's own return made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer as provided in ARM 42.15.303.

(7) Registered employers who have no quarterly withholding to report may, in lieu of filing a required withholding report showing "no wages paid this quarter," submit an e-mail to the department's website at www.discoveringmontana.com/revenue, on or before the filing due date. The department's website contains a section entitled "about the agency" and there is a drop-down box inside this reference entitled "contact us." Registered employers may complete and submit this page with the following information:

(a) name of the person filing the report;

(b) telephone number of the person filing the report;

(c) name of the registered employer;

(d) address of the registered employer;

(e) the registered employer's federal employer identification number;

(f) the registered employer's Montana employer identification number; and

(g) the statement, "no wages paid this quarter" reporting that no state withholding is due.

(8) Registered employers filing a "no wages paid this quarter" state withholding report by e-mail as provided in (7) must retain proof that they sent the report as part of their payroll records, as required by 15-30-204, MCA, and ARM 42.17.203.

(9) If the department notifies a registered employer

that a withholding report may not be submitted by e-mail as provided in (7), the employer must thereafter file a paper report or, if authorized, an electronic withholding report.

AUTH: Sec. 15-1-803, MCA

IMP: Sec. 15-1-231, 15-1-801, 15-1-802, 15-1-803, 15-30-142, and 15-30-305, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to explain the requirements to file a tax return with the department electronically. Certain criteria must be met for the return to be considered a valid electronic return. The rule will provide taxpayers and tax practitioners with the information to be able to correctly file returns or reports with the department electronically.

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

42.5.201 ELECTRONIC FUNDS TRANSFER PAYMENT (1) The department's ability to accept electronic payments is constantly evolving. Taxpayers should check the department's website at www.discoveringmontana.com/revenue to determine which types of electronic payments the department will accept. Effective October 1, 1985, every taxpayer who has a tax liability of \$500,000 or greater must make payment by electronic funds transfer. Also, the department of revenue will accept voluntary payments by electronic funds transfer from any taxpayer that has a tax liability of less than \$500,000. The tax return must be filed and the electronic funds transfer made by the tax due date or the appropriate late filing and late payment penalties and interest will be applied.

~~(2) In order to comply with the appropriate tax filing requirements, the taxpayer should notify his bank by the due date to initiate an electronic funds transfer. The correct format required for an electronic funds transfer message, to properly transfer funds from the taxpayer's account to the Montana state treasurer's account, should be:~~

- ~~(a) name of taxpayer;~~
- ~~(b) type of tax;~~
- ~~(c) amount transferred;~~
- ~~(d) name of correspondent bank;~~
- ~~(e) correspondent bank account number;~~
- ~~(f) name of receiving bank;~~
- ~~(g) city and state of receiving bank;~~
- ~~(h) ABA nine digit identifier number of receiving bank;~~
- ~~(i) recipient's account number; and~~
- ~~(j) recipient's account name.~~

~~(3) If for some reason there is a technical problem in successfully making the electronic funds transfer, the cashier at the receiving bank should be contacted to resolve the problem by the tax filing due date.~~

~~(4) The taxpayer shall place on the tax return a notation, stamp, or other indication informing the department~~

that payment was made by electronic funds transfer. A taxpayer with a tax liability of \$500,000 or greater must make payment electronically:

(a) if by electronic funds transfer, to the Montana state treasurer; and

(b) if by other method accepted by the department, to the department.

(3) The tax return or report must be filed and the electronic payment initiated by the tax due date or the appropriate late filing and late payment penalties, and interest will be applied. If an electronic payment is initiated by the due date but either the department does not receive payment or credit, or the payment or credit is charged back, the tax liability is not discharged, the tax is not paid, and appropriate late payment penalties and interest will be applied.

(4) The following information must be included with any electronic payment:

(a) name and tax identification number of the taxpayer;

(b) type of tax or taxes being paid;

(c) amount of each type of tax being paid; and

(d) any additional information necessary to process the type of electronic payment being made and to identify the taxpayer and account to which the payment is to be applied.

(5) If a paper return or report is filed and payment made electronically, the taxpayer shall place on the tax return or report a notation, stamp, or other indication informing the department that payment was made electronically.

AUTH: Sec. 15-1-803, MCA

IMP: Sec. 15-1-231, 15-1-801, 15-1-802, and 15-1-803, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.201 to clarify that the department does allow electronic payments and that taxpayers should check with the department to determine the current e-mail methods that will be accepted.

42.5.213 BACKUP SITUATION (1) With prior approval of the department, for those taxpayers that are required to make electronic payments whenever the amount due is \$500,000 or greater, as stated in 15-1-802, MCA, the department will allow, ~~In~~ in an emergency situation, fed wire transfers or paper bank drafts (checks) may be utilized by taxpayers who have elected to file electronically. The use must meet with prior approval of the department. Nothing in this rule shall pre-empt 15-1-802, MCA, which requires electronic payment whenever the amount due is \$500,000 or greater.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-802 and 15-30-210, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.213 because the rule as previously written was unclear. The rewritten rule clarifies that this exception

only applies to those taxpayers who are required to file electronically as stated in 15-1-802, MCA. With prior approval the department will allow alternative payment for those taxpayers.

5. The Department proposes to transfer the following rule:

42.5.210 (42.15.317) FILING DATE (1) remains the same.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-204, 15-30-207, and 39-71-2503, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.5.210 to ARM Title 42, Chapter 15, sub-chapter 3, because the subject of this rule is more applicable to the subject of that chapter rather than Chapter 5.

6. The Department proposes to repeal the following rules:

42.5.211 PERSONAL IDENTIFICATION NUMBER which can be found on page 42-565 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-211, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.5.211 because a personal identification number (pin) or password requirements are contained in New Rule I, which expands the process for providing these items. Therefore, this rule is no longer necessary.

42.5.212 ELECTRONIC PAYMENT/FILING DATE which can be found on page 42-565 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-210, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.5.212 because the specifics of this rule are not applicable and the rule is no longer necessary.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than December 5, 2003.

8. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

9. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at the department's rulemaking section as found at www.discoveringmontana/revenue/css/5foryourreference/02administrativerules, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

10. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 20, 2003

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT,
amendment of ARM 2.12.101 and) ADOPTION, AND REPEAL
adoption of new Rules I)
through VII concerning)
implementation of the Montana)
Information Technology Act)
and the repeal of ARM)
2.12.102)

TO: All Concerned Persons

1. On August 28, 2003, the Department of Administration, Information Technology Services Division, published MAR Notice No. 2-2-325 regarding the public hearing on the proposed amendment of ARM 2.12.101 and adoption of new rules I through VII concerning implementation of the Montana Information Technology Act and the repeal of ARM 2.12.102, at page 1821 of the 2003 Montana Administrative Register, Issue Number 16.

2. The agency has adopted new rule I (2.12.201) and new rule IV (2.12.204) exactly as proposed. The agency has repealed ARM 2.12.102 exactly as proposed. The agency has amended ARM 2.12.101 and adopted new rule II (2.12.202), new rule III (2.12.203), new rule V (2.12.205), new rule VI (2.12.206), and new rule VII (2.12.207) with the following changes, stricken matter interlined, new matter underlined:

2.12.101 UTILIZATION OF CENTRALIZED STATE FACILITIES

(1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, except the national guard.

(2) The department shall provide a number of information technology services and operate and maintain a central computer center, a statewide telecommunications network, and a point of entry for electronic government services. Information technology services may include hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department.

(3) Centralized state facilities will be utilized in accordance with policies adopted relating to enterprise services. Exceptions to using enterprise services will be granted in accordance with ARM 2.12.205.

AUTH: Sec. ~~2-15-102~~, 2-17-512, 2-17-518 and 2-17-1103, MCA

IMP: Sec. 2-17-512 and 2-17-518, MCA

COMMENT 1: A comment was received that section 2-17-518, MCA, should be cited as an implementation section as well as the authorizing section for the rules.

RESPONSE 1: The Department concurs and has corrected this.

COMMENT 2: Change ARM 2.12.101 to place equal emphasis on the various roles and duties designated to the Department under section 2-17-512, MCA.

RESPONSE 2: Language that speaks to the department's broader responsibilities has been included in this section.

RULE II (2.12.202) DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (14) remain as proposed.

AUTH: Sec. ~~2-15-1001, 2-15-1021 and 2-17-506~~ 2-17-518, MCA

IMP: Sec. 2-17-506, MCA

COMMENT 3: A comment was received that section 2-17-518, MCA, should be cited as the authorizing section for the rules.

RESPONSE 3: The Department concurs and has corrected this.

RULE III (2.12.203) AGENCY INFORMATION TECHNOLOGY PLANS

(1) through (4) same as proposed.

AUTH: Sec. ~~2-17-524~~ 2-17-518, MCA

IMP: Sec. 2-17-524, MCA

COMMENT 4: A comment was received that section 2-17-518, MCA, should be cited as the authorizing section for the rules.

RESPONSE 4: The Department concurs and has corrected this.

RULE V (2.12.205) GRANTING EXCEPTIONS (1) State agencies may make a written request for an exception from a rule, policy, standard or procedure in writing to the CIO. The request must:

(a) clearly outline a compelling business case, which includes a cost benefit analysis for the state agency and whether there is an impact to the enterprise, including an analysis of the economic impact on private businesses in Montana, demonstrating why it is in the best interests of the state of Montana to grant the exception;

(b) provide a description why enterprise accepted solutions, current policies and standards will not meet the state agency business requirements;

(c) demonstrate that the proposed solution ~~does not create conflicts~~ conforms with the state strategic plan for information technology, other policies, standards, procedures and guidelines ~~unless a compelling case for deviation can be clearly demonstrated; and~~

(d) demonstrate that the proposed solution does not interfere with the ongoing conduct of business in other agencies or create other costs to the enterprise or other agencies.

(2) through (3) remain as proposed.

AUTH: Sec. ~~2-17-515~~ 2-17-518, MCA

IMP: Sec. 2-17-515, MCA

COMMENT 5: A comment was received that Section 2-17-518, MCA, should be cited as the authorizing section for the rules.

RESPONSE 5: The Department concurs and has corrected this.

COMMENT 6: A comment was received that the cost-benefit analysis to the enterprise should also include an analysis of the positive or negative effects on the private sector.

RESPONSE 6: The department agrees that assessing the impact on the private businesses in Montana is important when evaluating exception requests. Language has been added to reflect this in subsection (1)(a).

COMMENT 7: A comment was received that the language in subsection (1)(c) be restructured to focus on the positive aspects of an exception rather than the negative aspect of noncompliance with the state strategic plan.

RESPONSE 7: The department agrees that wording to emphasize conformity with the plan rather than noncompliance is preferable. Language has been changed to reflect this in subsection (1)(c).

RULE VI (2.12.206) ESTABLISHING POLICIES, STANDARDS, PROCEDURES AND GUIDELINES

(1) through (4) remain as proposed.

AUTH: Sec. ~~2-17-515~~ 2-17-518, MCA

IMP: Sec. ~~2-17-515~~ 2-17-512, MCA

COMMENT 8: A comment was received that section 2-17-518, MCA, should be cited as the authorizing section for the rules and that a better implementation cite could be given.

RESPONSE 8: The Department concurs and has corrected this.

RULE VII (2.12.207) APPEAL PROCESS AS IT APPLIES TO INFORMATION TECHNOLOGY PLANS, PROCUREMENTS AND GRANTING EXCEPTIONS

(1) through (3) remain as proposed.

AUTH: Sec. 2-17-518, ~~2-17-524 and 2-17-5158~~, MCA

IMP: Sec. ~~2-17-5158~~, 2-17-518 and 2-17-524, MCA

COMMENT 9: A comment was received that the last cite for both the authority and implementation was nonexistent.

RESPONSE 9: The Department concurs and has corrected this.

By: Scott Darkenwald
SCOTT DARKENWALD, Director
Department of Administration

Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State October 20, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE
of ARM 4.12.607 and 4.12.608) OF AMENDMENT
relating to the reporting of)
fertilizer and fee schedules)

TO: All Concerned Persons

1. On September 11, 2003, the Department of Agriculture published MAR Notice No. 4-14-141 regarding the amendment of ARM 4.12.607 and 4.12.608 relating to the reporting of fertilizer and fee schedules at page 1985 of the 2003 Montana Administrative Register, Issue Number 17.

2. The reason for the correction is the notice of amendment incorrectly cited the authority code. The corrected rule amendment reads as follows:

4.12.607 INVESTIGATIONAL ALLOWANCES AND OVERALL INDEX VALUE (1) through (2) remain the same.

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

4.12.608 REPORTING OF FERTILIZER AND FEE SCHEDULES (1) through (5) remain the same.

AUTH: 80-~~11~~ 10-301, MCA
IMP: 80-10-207, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on September 30, 2003.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State on October 20, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of a new rule (ARM 8.94.3810))
for the submission and review)
of applications to the)
Treasure State Endowment)
Program (TSEP))

TO: All Concerned Persons

1. On August 14, 2003, the Department of Commerce published MAR Notice No. 8-94-37 regarding the public hearing on the proposed adoption of a rule concerning the submission and review of applications to the Treasure State Endowment Program (TSEP) at page 1713 of the 2003 Montana Administrative Register, Issue Number 15.

2. The Department has adopted new rule I (ARM 8.94.3810) exactly as proposed, but has amended the Montana Treasure State Endowment Program (TSEP) Application Guidelines dated 2004 that are incorporated by reference in new rule I based on comments received.

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

Comment 1: Applicants for Preliminary Engineering Report (PER) grants should be allowed to have more than one open grant at a time because there are numerous needs that are delayed because of this limitation.

Response: Eligible entities are allowed to apply for multiple PER grants, but must complete a PER for one project before being awarded a second grant for another project. This limit was adopted to ensure that the funds are available to eligible entities across the State. While the Department recognizes that some areas of the State may have more needs than other parts of the State, in part due to growth, the Department is concerned about some of the smaller, more rural areas with limited funding not having access to the TSEP funds. As a result, the Department decided not to change this requirement at this time, but will reconsider the proposal in future application guidelines.

Comment 2: The Department should increase the maximum construction grant amount from \$500,000 to \$600,000, since the amount has not changed over the past ten years and inflation has dramatically increased project costs.

Response: The Department currently incorporates a provision that allows the Department to recommend an amount greater than \$500,000 for projects with extreme financial need. The Department decided to lower the limitation related to recommending an amount greater than \$500,000, or greater than the amount requested by the applicant. Instead of 200% of target rate the Department would only recommend enough additional funding that would be sufficient to bring the projected user rates down so that they are no less than 150% of target rate. To be consistent with a related requirement in the guidelines, the Department also modified the test for a hardship grant so that an applicant only has to be at 1 1/2 times the target rate rather than two times the target rate to be eligible. The Department decided against increasing the ceiling to \$600,000, since it would likely result in most applicants requesting the higher amount, which would result in fewer projects being funded. Once the TSEP fund grows to a sufficient size, the Department plans to revisit increasing the maximum amount that can be requested by an applicant.

Comment 3: The requirement limiting assessments of bridge systems to once every five years should be modified to allow more frequent assessments of critical bridges.

Response: It was not the intent of the Department to limit use of TSEP funds to pay for an assessment of a bridge only once every five years. As a result, the Department modified the limitation to allow more frequent assessments for specific bridges, including those that are to be studied in detail as part of the PER, or bridges that have been determined to be a high priority or that are being more closely monitored because of rapid deterioration. The applicant must provide a justification for needing to assess a bridge more frequently. In addition, the Department changed the limitation for doing complete assessments of bridge systems from once every five years to once every four years.

Comment 4: Special consideration should be given to poorer areas by decreasing the amount that would be required to be paid in user rates before a grant would be recommended by the Department. This would also result in an increased number of points in the financial analysis, making poorer areas more competitive.

Response: The Department concluded that the goals of the program do not include providing special consideration for low-income communities. One of the goals is to help ensure that these projects are affordable, but that applies to all people within the State. The methodology already takes into account people with lower incomes, since the target rate is based upon the median household income of the project area. Furthermore, a change of this nature would make the financial analysis very difficult to complete, since the existing

analysis is not able to accommodate varying target rates based upon different income brackets.

Comment 5: The Department should have some latitude to validate and/or adjust, as necessary, the target rate multiplier.

Response: The Department agrees and will examine the annual median household income (MHI) estimates provided by the U.S. Census Bureau to determine if a 2% increase is too aggressive, given actual inflation. Based on the statewide MHI estimates, the Department may lower the multiplier in any given funding cycle.

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

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

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State October 20, 2003.

BEFORE THE BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through VI to)
implement the Certified)
Regional Development)
Corporation Program (CRDC))

TO: All Concerned Persons

1. On August 28, 2003, the Department of Commerce published MAR Notice No. 8-99-38 regarding the public hearing on the proposed adoption of rules concerning the implementation of the Certified Regional Development Corporation Program (CRDC) at page 1829 of the 2003 Montana Administrative Register, Issue Number 16.

2. The Department has adopted new rules I (8.99.301), III (8.99.303), IV (8.99.304), V (8.99.305), and VI (8.99.306), exactly as proposed.

3. The Department has adopted new rule II (8.99.302) as proposed but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II CERTIFICATION OF REGIONAL DEVELOPMENT CORPORATIONS (1) The following information shall be presented to the department by applicants that seek certification as a CRDC:

(a) through (f) remain as proposed.

(g) evidence of broad-based community support, at the time of certification, that includes written support from all county governments, a majority of all incorporated cities and towns, and a significant level of support from economic development organizations in the region. Where applicable, evidence of support from tribal governments and tribal economic development organizations is strongly encouraged. In addition, county governments cannot provide multiple letters of support for the same geographic area;

(h) through (2) remain as proposed.

AUTH: 90-1-116, MCA

IMP: 90-1-116, MCA

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

Comment 1: Two individuals expressed support from themselves and the organizations they represent for the proposed administrative rules, but requested that the department add a new rule to allow county governments the

ability to provide written support to more than one organization and thereby allow for the support of more than one service region within a county's jurisdiction. In addition, one of the individuals requested that the department not allow county lines to be the sole determinant of a regional service area and give trade or market area designations equal weight as county lines in identifying service regions.

Four individuals and the organizations they represent supported the adoption of the rules as proposed and opposed allowing counties to be split into more than one service region. One of the organizations supported the adoption of the rules as proposed and opposed the use of trade or market area designations for creating service regions and stated that if the use of trade or market area designations were allowed, the organization withdraws its support of the proposed rules and requested that additional hearings be held and the comment period be extended. Two of the individuals and the organizations they represent requested that the rules be adopted as proposed and that the department reject the suggestion that counties be allowed to split into more than one service region. One of the individuals and their respective organization supported adopting the rules as proposed and opposed the development of urban and rural regions and allowing counties to split into multiple service regions.

Response: The administrative rules as proposed by the department do not preclude a county government from supporting more than one service region. The department has, however, revised New Rule II(1)(g) to specifically state that a county government cannot provide multiple letters of support for the same geographic area. The department has decided not to make any additional changes to the rules. However, the department strongly encourages county governments to consider existing service regions that support other federal and state programs when endorsing CRDC service regions. For example, the U.S. Department of Commerce, Economic Development Administration (EDA) currently designates Economic Development Districts (EDD); the department strongly encourages county governments to consider EDD boundaries when endorsing CRDC service regions. If a county government has decided it would prefer to split a county into more than one service region, the department will review each proposal on a case-by-case basis and may approve proposals under exceptional circumstances.

Comment 2: Two individuals questioned the complexity of the department's proposal for the assistance grant distribution formula and requested that it be simplified. One individual requested that all available funds be distributed annually to the Certified Regional Development Corporations (CRDC) by utilizing the following distribution formula: 50% of

available funds to be distributed on a numerical basis; and 50% be distributed on a per capita basis.

Response: The department has decided to retain the assistance grant distribution formula as proposed. As stated in House Bill (HB) 76, which establishes the CRDC program:

(3) An assistance grant to a certified regional development corporation will be made based on rules adopted by the department for the state matching funds program. The rules for distribution of funds must include consideration of:

(a) the size of the geographic area represented by the certified regional development corporation;

(b) the number of communities served by the certified regional development corporation;

(c) the population served by the certified regional development corporation; and

(d) the services offered by the certified regional development corporation.

Therefore, the statute for the program requires a funding mechanism more detailed than that suggested by the comments. In addition the Economic Development Advisory Council, also provided for in HB 76, met on August 8, 2003 and recommended the department implement the proposed distribution formula. Thus, the distribution formula will be retained as proposed.

Comment 3: One individual recommended that the department invite interested applicants to attend a pre-application workshop before the CRDC selection process.

Response: The department has decided to further explore this recommendation with potential applicants once the CRDC selection process has been initiated.

Comment 4: One individual stated concern for the possibility that the CRDC program and administrative rules would provide the possibility for the duplication of programs, particularly Revolving Loan Fund (RLF) programs. The individual stated that if an applicant doesn't currently manage an RLF, the rules as proposed encourage an applicant to create a new RLF rather than supporting a partnership with a current RLF provider.

Response: The legislative intent of HB 76 encourages a regional approach to economic development that would facilitate the efficient delivery of state economic development programs. The administrative rules as proposed by the department support the intent of HB 76 in this regard. Therefore, the department will not make any changes to the proposed rules, but the department will reinforce the efficient delivery of state programs by encouraging partnerships in the CRDC selection process.

Comment 5: One individual questioned the current CRDC program's ability to provide adequate financial support for community economic development efforts. In addition, the individual stated that they were very successful in utilizing the funding from the previous Certified Communities program that was abolished by HB 76. The newly created CRDC program and the proposed rules will shift funding away from the communities to non-profit corporations that will potentially attempt economic development in a whole region without the complete support and participation of all the communities and stakeholders in the region.

Response: HB 76 abolished the Certified Communities program and does not direct the department to address the adequacy of state financial support for community economic development efforts in the CRDC program. HB 76 directs the department to provide for a regional approach to economic development that encourages the efficient delivery of state economic development programs. In addition, New Rule II(1)(g) proposed by the department requires that an applicant demonstrate broad-based community support. Therefore, the department has decided to not add additional rules or amend the proposed rules.

Comment 6: One individual provided a letter of support for a service region consisting of Mineral, Sanders and Lake Counties.

Response: The administrative rules as proposed do not preclude the governments of Mineral, Sanders and Lake Counties from endorsing the described three county region. Therefore the department will not make any changes to the proposed rules.

Comment 7: One individual commented that they could not find any ranking criteria for selection as a CRDC in the administrative rules.

Response: The department has decided to not change the proposed rules to include ranking criteria. As provided for in New Rule II(1)(g), an applicant shall provide written support from all county governments that they are applying to represent. If an applicant provides the department with written support from all the county governments it is applying to represent, then other applicants cannot apply or compete for servicing the same geographic area. Therefore, there is no need for the department to include ranking criteria in the administrative rules.

To further clarify the process of designating CRDCs by the department, it is important to recognize that although the applicant will not compete with another organization for a service region, the applicant must meet, even in the absence

of competition, the minimum requirements for certification as a CRDC as provided for in the proposed rules.

Comment 8: One individual asked for clarification concerning how the department would award program funds if the department designates less than twelve CRDCs.

Response: New Rule III Assistance Grants- Distribution states:

(1) The department shall distribute assistance grants annually as follows:

(a) \$25,000 to each CRDC for providing services to their respective regions. For the purpose of this rule, services means work in the development and management of revolving loan funds, business technical assistance, state and federal grants and programs, local and regional planning, business retention and expansion programs, and business recruitment programs; \$60,000 to CRDCs according to the following formula:

(i) 35% shall be distributed based on the number of counties in the region served;

(ii) 25% shall be distributed based on the population of the region served;

(iii) 25% shall be distributed based on the size of the geographic area of the region served; and

(iv) 15% shall be distributed based on the number of incorporated cities or towns in the region served;

(c) all remaining assistance grants will be distributed, in the department's sole discretion, to CRDCs for demonstrated capacity building needs.

HB 76 directs the department to distribute all program funding available to the CRDCs on an annual basis. At the time that program funds are distributed, the fewer the number of designated CRDCs the lower the amount of program funds that would be distributed under (1)(a). If there are funds remaining after distributing funds based on (1)(a) and (1)(b), all remaining funds shall be distributed under (1)(c). For example, in the current State Fiscal Year (SFY), \$425,000 has been appropriated by the legislature to the department for the CRDC program. As directed by the legislature in HB 76, all of the appropriated funds (\$425,000) will be distributed to the designated CRDCs. If there are only ten CRDCs, \$250,000 (\$25,000 each) will be distributed under (1)(a). \$60,000 will be distributed under (1)(b) and the remaining \$115,000 will be distributed under (1)(c).

Comment 9: One individual stated that the proposed rules do not include information concerning who makes the final programmatic decisions, the Economic Development Advisory Council or the Department of Commerce.

Response: As stated in New Rule II(2) and New Rule III, the Director of the department will make the final decision concerning certification of CRDCs and the distribution of

program funds. As provided for in HB 76, the Economic Development Advisory Council (EDAC) prescribes allowable uses of program funds by the CRDCs. As stated in New Rule IV, the EDAC at their August 8, 2003 meeting, officially prescribed allowable administrative expenses to include:

- (a) personnel and operating expenses; and
- (b) any other expenses deemed necessary by the council to maintain the organization's certification as a CRDC.

Comment 10: One individual requested clarification concerning the requirement that an "applicant" be a private nonprofit corporation. For example, is the applicant required to be a private nonprofit corporation recognized as tax exempt by the Internal Revenue Service under Section 501(c)(3)?

Response: The department has decided not to change the definition of "applicant" in the proposed rules, but will clarify its intent in the CRDC selection process. The applicant will be required by the department to provide current documentation of being approved by the IRS for tax-exempt status. The department does not have a preference concerning under which section of the code the organization is approved. For example, an applicant may be approved by the IRS under Section 501(c)(3) or 501(c)(6).

Comment 11: Two individuals requested clarification of the department's definition of "applicant" and requested that the definition include language allowing for a partnership of organizations to apply.

Response: The department has decided not to change the definition of "applicant" but will clarify the acceptance of an application from multiple organizations in the CRDC selection process. The department will accept applications from an applicant that includes a private, nonprofit corporation acting as the lead development organization for a group of development organizations. A private, nonprofit corporation acting as the lead development organization must provide evidence of formal agreements with the organizations they are representing to include memos of understanding and/or contracts for services to the department at the time of application.

Comment 12: One individual requested clarification of whether existing administrative funds could be used as assistance grant matching dollars.

Response: The department will accept existing cash from the applicant's administrative budget as match for the assistance grant. New Rule II(1)(e)(i) states that matching funds for assistance grants shall be provided through existing or new cash from the applicant's administrative budget.

Comment 13: One individual requested clarification of whether the applicant in meeting the minimum requirement of providing 4,160 hours of staff time annually to economic development activities could include staff time from all of the organizations that are co-applying or partnering together.

Response: The department has decided not to amend the rules but to clarify New Rule II(1)(c) in the CRDC selection process. The department will accept dedicated staff time from organizations co-applying or applying in partnership. The lead development organization shall submit in their response formal agreements with the organizations they are representing to include memos of understanding and/or contracts for services that clearly identify the total hours of staff time committed by the partnering organizations for specific services to the CRDC at the time of application.

BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE

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

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State, October 20, 2003.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through V)
concerning collection of)
restitution from felony)
offenders)

TO: All Concerned Persons

1. On August 14, 2003, the Department of Corrections published MAR Notice No. 20-7-29 regarding the public hearing on the proposed adoption of new rules I through V pertaining to collection of restitution from felony offenders at page 1737 of the 2003 Montana Administrative Register, Issue Number 15.

2. The department has adopted new rules I (20.12.101), II (20.12.103), III (20.12.106), IV (20.12.109), and V (20.12.111), exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

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

Certified to the Secretary of State October 20, 2003

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

In the matter of the)
amendment of ARM 24.16.7506)
and ARM 24.16.7537 and the)
adoption of NEW RULE I)
relating to wage claims)
mediation)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On September 11, 2003, the Department of Labor and Industry published MAR Notice No. 24-16-175 regarding the proposed amendment and adoption of the above stated rules at page 1944, 2003 Montana Administrative Register, issue number 17.

2. A public hearing was held in Helena on October 7, 2003. No comments were received from members of the public who attended the hearing, but agency personnel offered one comment. No written comments were received prior to the closing of the comment period on October 17, 2003.

3. After consideration of the comment, the Department has amended ARM 24.16.7506 and 24.16.7537 exactly as proposed.

4. After consideration of the comment, the Department has adopted NEW RULE I as proposed with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.16.7536) MEDIATION PROCEDURES

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

(b) If a dispute has entered contested case proceedings, but further mediation resolves the dispute prior to a final agency decision, the parties may either withdraw the case or sign a stipulation ~~authorizing the mediator to request~~ requesting dismissal of the contested case hearing.

AUTH: 39-3-202, MCA
IMP: 2-4-603, 39-3-216, MCA

5. The Department has thoroughly considered the comment. The comment received, and the Department's response, are as follows:

Comment 1: Agency personnel commented that the language of NEW RULE I(6)(b) was unclear and recommended appropriate changes to clarify that the authority to withdraw a case or stipulate to dismissal rests with the parties.

Response 1: The Department agrees and has amended NEW RULE I accordingly.

/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: October 20, 2003.

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

In the matter of the amendment and) NOTICE OF AMENDMENT
transfer, repeal, and transfer of) AND TRANSFER,
existing rules and the adoption of new) REPEAL, TRANSFER,
rules I (24.138.417) III (24.138.402)) AND ADOPTION
and IV (24.138.414), all pertaining to)
dentistry, dental hygiene and denturistry)

TO: All Concerned Persons

1. On August 14, 2003, the Board of Dentistry published MAR Notice No. 8-16-59 regarding the public hearing on the proposed amendment and transfer, repeal and adoption of the above-stated rules relating to dentistry, dental hygiene and denturistry at page 1742 of the 2003 Montana Administrative Register, issue no. 15.

2. A public hearing on the proposed amendment and transfer, repeal and adoption was held on September 4, 2003. One public comment was received concerning the proposed rule changes. The Board has thoroughly considered the comment and the Board's response is as follows:

COMMENT: The Montana Dental Association stated that it is appropriate for the Board to have rules regarding advertising applicable to all licensees, not just dentists.

RESPONSE: The Board will take the comment under consideration at a future meeting to discuss whether the advertising rules should be applicable to other classes of licensees. The Board believes that it is not appropriate to substantially broaden the scope of the advertising rules without allowing formal public comment on specific proposed amendments.

3. During the preparation of replacement pages for the amended rules, the Board discovered that certain existing provisions of rules had not been identified in the Notice of Public Hearing as remaining the same. The Board has amended and transferred ARM 8.16.605A (24.138.506), 8.16.707A (24.138.406), and 8.16.907 (24.138.3207), with the following changes, deleted matter interlined, new matter underlined:

8.16.605A (24.138.506) DENTAL HYGIENIST LICENSURE BY CREDENTIALS (1) through (1)(b) remain as proposed.
(1)(c) through ~~(h)~~ (i) remain the same.
(2) through (4) remain~~s~~ the same.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-304, MCA

8.16.707A (24.138.406) FUNCTIONS FOR DENTAL AUXILIARIES

(1) through (3)(1) remain as proposed.
(4) through (11) remains the same.

AUTH: 37-4-205, 37-4-408, MCA
IMP: 37-4-408, MCA

8.16.907 (24.138.3207) REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) remains as proposed.

(2) remains as proposed.
(a) and (b) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-4-511, MCA

4. ARM 8.17.706 was inadvertently included in both the "amend" and "repeal" sections of the Notice of Public Hearing. The substance of the language of ARM 8.17.706 is being incorporated via the amendment and transfer of ARM 8.16.1003 (24.138.2104). ARM 8.17.706 is being repealed, not amended.

5. After considering the comment, the Board has amended and transferred the following rules, exactly as proposed:

<u>OLD</u>	<u>NEW</u>	
8.16.401	24.138.501	APPROVED DENTAL AND DENTAL HYGIENE SCHOOLS
8.16.408	24.138.514	APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE
8.16.409	24.138.403	MANDATORY CPR
8.16.410	24.138.2401	COMPLAINT PROCEDURE
8.16.411	24.138.2402	SCREENING PANEL
8.16.412	24.138.505	DENTIST LICENSURE BY CREDENTIALS
8.16.511	24.138.301	DEFINITIONS
8.16.513	24.138.3002	ADVERTISING CONTENT
8.16.514	24.138.3102	SPECIALTY ADVERTISING
8.16.515	24.138.3003	ADVERTISING RECORDS AND RESPONSIBILITY
8.16.601	24.138.401	INTRODUCTION
8.16.701	24.138.408	SERVICE TO THE PUBLIC AND QUALITY OF CARE
8.16.702	24.138.409	PATIENT SELECTION
8.16.703	24.138.410	PATIENT RECORDS
8.16.705	24.138.411	EMERGENCY SERVICE
8.16.706	24.138.412	CONSULTATION AND REFERRAL
8.16.708	24.138.404	JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY
8.16.709	24.138.413	REBATE AND SPLIT FEES
8.16.719	24.138.3101	GENERAL STANDARDS FOR SPECIALTIES
8.16.720	24.138.3103	STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS

8.16.722	24.138.2301	UNPROFESSIONAL CONDUCT FOR DENTISTS AND DENTAL HYGIENISTS
8.16.723	24.138.405	MANAGEMENT OF INFECTIOUS WASTE
8.16.807	24.138.515	CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL OR REVOCATION
8.16.901	24.138.3201	PRACTICE OF ANESTHESIA
8.16.902	24.138.3202	PERMIT REQUIRED FOR ADMINISTRATION OF ANESTHESIA
8.16.903	24.138.3203	MINIMUM QUALIFYING STANDARDS
8.16.904	24.138.3204	MINIMUM MONITORING STANDARDS
8.16.905	24.138.3205	FACILITY STANDARDS
8.16.906	24.138.3206	ON-SITE INSPECTION OF FACILITIES
8.16.908	24.138.3208	REPORTING ADVERSE OCCURRENCES
8.16.909	24.138.3209	ANESTHESIA FEE SCHEDULE
8.16.1001	24.138.2101	DEFINITION OF CONTINUING EDUCATION
8.16.1003	24.138.2104	REQUIREMENTS AND RESTRICTIONS
8.16.1005	24.138.2106	EXEMPTIONS AND EXCEPTIONS
8.17.702	24.138.518	RENEWALS
8.17.705	24.138.2103	SUBJECT MATTER ACCEPTABLE FOR DENTURIST CONTINUING EDUCATION
8.17.801	24.138.2302	UNPROFESSIONAL CONDUCT FOR DENTURISTS

6. The Board has transferred the following rules:

<u>OLD</u>	<u>NEW</u>	
8.16.101	24.138.101	BOARD ORGANIZATION
8.16.201	24.138.201	PROCEDURAL RULES
8.16.202	24.138.202	PUBLIC PARTICIPATION
8.16.402	24.138.502	INITIAL LICENSURE OF DENTISTS BY EXAMINATION
8.16.512	24.138.3001	ADVERTISING FEE INFORMATION
8.16.516	24.138.3004	SEVERABILITY
8.16.602	24.138.407	FUNCTIONS FOR DENTAL HYGIENISTS
8.16.605	24.138.503	INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION
8.16.611	24.138.508	DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION
8.16.1002	24.138.2102	SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION
8.16.1004	24.138.2105	REPORTING PROCEDURES
8.17.403	24.138.511	DENTURIST APPLICATION REQUIREMENTS
8.17.404	24.138.510	DENTURIST EXAMINATION
8.17.405	24.138.512	DENTURIST INTERN
8.17.710	24.138.517	DENTURIST LICENSE REINSTATEMENT
8.17.711	24.138.415	NINETY DAY GUARANTEE REQUIRED BY DENTURISTS
8.17.803	24.138.519	GROUNDS FOR DENIAL OF A LICENSE

8.17.808 24.138.416 PRIOR REFERRAL FOR PARTIAL
DENTURES

7. The Board has adopted New Rules I (24.138.417), III (24.138.402) and IV (24.138.414) exactly as proposed.

8. The Board is not adopting New Rule II. The Board determined that further review and revision of this rule is needed and will reissue this proposed New Rule in a forthcoming notice.

9. The Board has repealed ARM 8.16.405, 8.16.606, 8.16.607, 8.16.608, 8.16.609, 8.16.610, 8.17.501, 8.17.704, 8.17.706, 8.17.707, 8.17.708, 8.17.709, 8.17.802, 8.17.811, and 8.17.812 exactly as proposed.

BOARD OF DENTISTRY
MIKE MCCARTHY, DDS, 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 October 20, 2003.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 32.23.301 pertaining to)
fees charged by the department)
on the volume on all classes)
of milk)

TO: All Concerned Persons

1. On September 11, 2003, the department of livestock published MAR Notice No. 32-4-159 regarding the proposed amendments of ARM 32.23.301, pertaining to fees charged by the department on the volume on all classes of milk at page 1948 of the 2003 Montana Administrative Register, Issue Number 17.

2. The department of livestock has amended ARM 32.23.301 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Carol Grell Morris,
Rule Reviewer

Certified to the Secretary of State October 20, 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 37.2.101, 37.2.102,)	
37.2.301, 37.2.502, 37.2.701,)	
37.2.702, 37.2.703, 37.2.705,)	
37.2.706, 37.2.707, 37.2.720,)	
37.2.902 and 37.2.907)	
pertaining to department)	
procedures for administrative)	
rules, recovery and offset of)	
debts, self-sufficiency trusts,)	
state facility reimbursement)	
and community services block)	
grants)	

TO: All Interested Persons

1. On September 11, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-299 pertaining to the proposed amendment of the above-stated rules relating to department procedures for administrative rules, recovery and offset of debts, self-sufficiency trusts, state facility reimbursement and community services block grants, at page 1951 of the 2003 Montana Administrative Register, issue number 17.

2. The Department has amended ARM 37.2.101, 37.2.102, 37.2.301, 37.2.502, 37.2.701, 37.2.702, 37.2.703, 37.2.705, 37.2.706, 37.2.707, 37.2.720, 37.2.902 and 37.2.907 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State October 20, 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 37.8.105, 37.8.106,)
37.8.126, 37.8.127, 37.8.128,)
37.8.129, 37.8.302, 37.8.303,)
37.8.808, 37.8.1801,)
37.8.1802, 37.8.1803 and)
37.8.1808 pertaining to)
records and statistics)

TO: All Interested Persons

1. On September 11, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-300 pertaining to the proposed amendment of the above-stated rules relating to records and statistics, at page 1960 of the 2003 Montana Administrative Register, issue number 17.

2. The Department has amended ARM 37.8.105, 37.8.106, 37.8.126, 37.8.127, 37.8.128, 37.8.129, 37.8.302, 37.8.303, 37.8.808, 37.8.1801, 37.8.1802, 37.8.1803 and 37.8.1808 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State October 20, 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 37.12.301, 37.12.305,)	
37.12.306, 37.12.310,)	
37.12.311, 37.12.312,)	
37.12.314, 37.12.315,)	
37.12.316, 37.12.320,)	
37.12.324, 37.12.326,)	
37.12.337, 37.12.338,)	
37.12.341, 37.12.345,)	
37.12.346, 37.12.401,)	
37.12.601 and 37.12.603)	
pertaining to laboratories)	

TO: All Interested Persons

1. On September 11, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-301 pertaining to the proposed amendment of the above-stated rules relating to laboratories, at page 1969 of the 2003 Montana Administrative Register, issue number 17.

2. The Department has amended ARM 37.12.301, 37.12.305, 37.12.306, 37.12.310, 37.12.311, 37.12.312, 37.12.314, 37.12.315, 37.12.316, 37.12.320, 37.12.324, 37.12.326, 37.12.337, 37.12.338, 37.12.341, 37.12.345, 37.12.346, 37.12.401, 37.12.601 and 37.12.603 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

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

Certified to Secretary of State October 20, 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 37.14.1002 and)
37.14.1003 pertaining to)
radiation general safety)
provisions)

TO: All Interested Persons

1. On August 28, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-298 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to radiation general safety provisions, at page 1863 of the 2003 Montana Administrative Register, issue number 16.

2. The Department has amended ARM 37.14.1002 and 37.14.1003 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State October 20, 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;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2002 and 2003 Montana Administrative Registers.

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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 September 2003, appear. Vacancies scheduled to appear from November 1, 2003, through January 31, 2004, 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 October 8, 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 SEPTEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board (Governor)			
Dr. Michael Bergkamp Helena	Governor	Dunne-Boggs	9/26/2003 9/1/2007
Qualifications (if required): naturopath			
Dr. Kathleen Stevens Billings	Governor	White	9/26/2003 9/1/2007
Qualifications (if required): physician			
Board of Medical Examiners (Governor)			
Dr. Daniel Alzheimer Helena	Governor	Alvarez	9/24/2003 9/1/2007
Qualifications (if required): doctor of medicine			
Dr. James D. Upchurch Crow Agency	Governor	reappointed	9/24/2003 9/1/2007
Qualifications (if required): doctor of medicine			
Board of Pardons and Parole (Corrections)			
Mr. Darryl Dupuis Polson	Governor	not listed	9/4/2003 1/1/2006
Qualifications (if required): auxiliary member with knowledge of American Indian culture and problems			
Rep. Matt McCann Harlem	Governor	not listed	9/4/2003 1/1/2005
Qualifications (if required): auxiliary member with knowledge of American Indian culture and problems			
Board of Pharmacy (Labor and Industry)			
Mr. Jim Cloud Stevensville	Governor	not listed	9/8/2003 7/1/2008
Qualifications (if required): registered pharmacy technician			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Physical Therapy Examiners (Labor and Industry)			
Ms. Judy Cole Forsyth	Governor	reappointed	9/8/2003 7/1/2006
Qualifications (if required): public member			
Ms. Brenda T. Mahlum Missoula	Governor	reappointed	9/8/2003 7/1/2006
Qualifications (if required): physical therapist			
Dr. Paul Melvin Great Falls	Governor	Heetderks	9/8/2003 7/1/2006
Qualifications (if required): physician			
Board of Professional Engineers and Land Surveyors (Governor)			
Mr. David Gates Butte	Governor	Beaudry	9/29/2003 7/1/2007
Qualifications (if required): professional engineer			
Flathead Basin Commission (Governor)			
Mr. Paul Smiley Kalispell	Governor	reappointed	9/24/2003 6/30/2007
Qualifications (if required): public member			
Mr. Gary Wicks Polson	Governor	reappointed	9/24/2003 6/30/2007
Qualifications (if required): public member			
Flathead Basin Commission (Governor) cont.			
Ms. Marilyn Wood Big Fork	Governor	reappointed	9/24/2003 6/30/2007
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board (Administration)			
Ms. Sheila Stearns Helena	Board of Regents	Crofts	9/1/2003 9/1/2005
Qualifications (if required): none specified			
Montana Organic Commodity Advisory Council (Agriculture)			
Mr. Robert Boettcher Big Sandy	Director	not listed	9/4/2003 9/4/2005
Qualifications (if required): producer			
Mr. Randy Hinebauch Conrad	Director	not listed	9/4/2003 9/4/2005
Qualifications (if required): at large representative			
Mr. John Hoffland Helena	Director	not listed	9/4/2003 9/4/2004
Qualifications (if required): consumer			
Mr. Mikel Lund Scobey	Director	not listed	9/4/2003 9/4/2004
Qualifications (if required): producer			
Ms. Nancy Matheson Helena	Director	not listed	9/4/2003 9/4/2004
Qualifications (if required): producer			
Mr. David Oien Conrad	Director	not listed	9/4/2003 9/4/2005
Qualifications (if required): handler			
Ms. Judy Owsowitz Whitefish	Director	not listed	9/4/2003 9/4/2005
Qualifications (if required): producer			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers Standards and Training Advisory Council (Governor)			
Ms. Elaine Allestad	Governor	Keenan	9/24/2003
Big Timber			2/14/2004
Qualifications (if required): representative of the Board of Crime Control			
Tourism Advisory Council (Commerce)			
Mr. Mark Browning	Governor	Madsen	9/8/2003
Miles City			7/1/2006
Qualifications (if required): representative of Custer Country			
Mr. Kim Champney	Governor	reappointed	9/8/2003
Billings			7/1/2006
Qualifications (if required): representative of Custer Country			
Ms. Mary Ellen Schnur	Governor	Henrich	9/8/2003
Townsend			7/1/2006
Qualifications (if required): representative of Gold West Country			
Mr. Clark Whitehead	Governor	reappointed	9/8/2003
Lewistown			7/1/2006
Qualifications (if required): representative of Russell Country and a federal agency			
Mr. Richard J. Young	Governor	reappointed	9/8/2003
Brockton			7/1/2006
Qualifications (if required): representative of Missouri River Country and tribal government			
Western Interstate Commission on Higher Education (Commissioner of Higher Education)			
Ms. Sheila Stearns	Governor	Krause	9/2/2003
Helena			6/19/2005
Qualifications (if required): educator engaged in the field of higher education			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks)		
Dr. Duane Douglas, Sidney	Governor	1/1/2004
Qualifications (if required): veterinarian		
Ms. Becky Mesaros, Cascade	Governor	1/1/2004
Qualifications (if required): representative of the alternative livestock industry		
Mr. Stanley Rauch, Victor	Governor	1/1/2004
Qualifications (if required): representative of sportspersons		
Appellate Defender Commission (Administration)		
Ms. Beverly Kolar, Geysers	Governor	1/1/2004
Qualifications (if required): public member		
Board of Chiropractors (Commerce)		
Dr. Gregory Hoell, Bozeman	Governor	1/1/2004
Qualifications (if required): chiropractor		
Board of Horse Racing (Commerce)		
Ms. Susan Austin, Kalispell	Governor	1/20/2004
Qualifications (if required): representative of District 5		
Mr. Jay C. Clark, Sweetgrass	Governor	1/20/2004
Qualifications (if required): representative of the horse racing industry		
Mr. Charles Carruthers, Butte	Governor	1/20/2004
Qualifications (if required): representative of the horse racing industry		
Ms. Brenda Koch, Lewistown	Governor	1/20/2004
Qualifications (if required): representative of District 2		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Occupational Therapy Practice (Commerce) Ms. Debra J. Ammondson, Great Falls Qualifications (if required): occupational therapist	Governor	12/31/2003
Board of Personnel Appeals (Labor and Industry) Mr. Jack Holstrom, Clancy Qualifications (if required): attorney with labor-management experience	Governor	1/1/2004
Board of Respiratory Care Practitioners (Commerce) Dr. Robert Pueringer, Billings Qualifications (if required): physician	Governor	1/1/2004
Mr. Robert Kirtley, Bozeman Qualifications (if required): respiratory care practitioner	Governor	1/1/2004
Capitol Restoration Commission (Administration) Mr. Loren Smith, Great Falls Qualifications (if required): public member appointed by the Lieutenant Governor	Governor	12/3/2003
Ms. Jeanne Michael, Billings Qualifications (if required): public member appointed by the Lieutenant Governor	Governor	12/3/2003
Ms. Gayle Shanahan, Helena Qualifications (if required): public member appointed by the Governor	Governor	12/3/2003
Rep. Linda L. Holden, Valier Qualifications (if required): public member	Governor	12/3/2003
Department of Corrections Advisory Council (Corrections) Rep. Dorothy Bradley, Bozeman Qualifications (if required): public member	Governor	11/13/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Corrections Advisory Council (Corrections) cont. Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	11/13/2003
Sen. Royal C. Johnson, Billings Qualifications (if required): public member	Governor	11/13/2003
Mr. Dennis McCave, Billings Qualifications (if required): public member	Governor	11/13/2003
Rep. Jim Shockley, Victor Qualifications (if required): public member	Governor	11/13/2003
Sen. Tom Zook, Miles City Qualifications (if required): public member	Governor	11/13/2003
Sen. Bill Tash, Dillon Qualifications (if required): public member	Governor	11/13/2003
Lt. Governor Karl Ohs, Harrison Qualifications (if required): public member	Governor	11/13/2003
Judge Deborah Kim Christopher, Polson Qualifications (if required): public member	Governor	11/13/2003
Rep. Steve Gallus, Butte Qualifications (if required): public member	Governor	11/13/2003
Rep. Carol C. Juneau, Browning Qualifications (if required): public member	Governor	11/13/2003
Judge Stewart Stadler, Whitefish Qualifications (if required): public member	Governor	11/13/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Corrections Advisory Council (Corrections) cont.		
Mr. Bill Furois, East Helena Qualifications (if required): public member	Governor	11/13/2003
Ms. Gloria Edwards, Bozeman Qualifications (if required): public member	Governor	11/13/2003
Ms. Leah Acord, Bozeman Qualifications (if required): public member	Governor	11/13/2003
Dr. Pat McGree, Butte Qualifications (if required): public member	Governor	11/13/2003
Mr. Tony Pfaff, Deer Lodge Qualifications (if required): public member	Governor	11/13/2003
Mr. Tom Blaz, Anaconda Qualifications (if required): public member	Governor	11/13/2003
Mr. Dick Boutillier, Great Falls Qualifications (if required): public member	Governor	11/13/2003
Ms. Lindsay Clodfelter, Missoula Qualifications (if required): public member	Governor	11/13/2003
Mr. Marty Lambert, Bozeman Qualifications (if required): public member	Governor	11/13/2003
Mr. Allan Underdal, Shelby Qualifications (if required): public member	Governor	11/13/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)		
Ms. Sylvia Danforth, Miles City Qualifications (if required): services provider	Governor	1/1/2004
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	1/1/2004
Mr. Dan McCarthy, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	1/1/2004
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): university program representative	Governor	1/1/2004
Rep. Bob Lawson, Whitefish Qualifications (if required): legislator	Governor	1/1/2004
Ms. Bernadette Franks-Ongoy, Helena Qualifications (if required): representative of the Montana Advocacy Program	Governor	1/1/2004
Ms. Marlene Disburg, Helena Qualifications (if required): representative of vocational rehabilitation	Governor	1/1/2004
Ms. Jannis Conselyea, Helena Qualifications (if required): representative of Department of Public Health and Human Services	Governor	1/1/2004
Ms. Kim Evermann, Helena Qualifications (if required): representative of the Older Americans Act	Governor	1/1/2004
Ms. JoAnn Dotson, Helena Qualifications (if required): Title IV representative	Governor	1/1/2004

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Grass Conservation Commission (Natural Resources and Conservation) Mr. Dewayne Ozark, Glasgow Qualifications (if required): grazing district preference rights holder	Governor	1/1/2004
Independent Living Council (Public Health and Human Services) Mr. John Pipe, Poplar Qualifications (if required): representing consumers	Director	12/1/2003
Judicial Nomination Commission (Justice) Mr. Tony Harbaugh, Miles City Qualifications (if required): public member	Governor	1/1/2004
Ms. Elizabeth Brennan, Missoula Qualifications (if required): none specified	Supreme Court	12/31/2003
Montana Alfalfa Seed Committee (Agriculture) Mr. John Wold, Laurel Qualifications (if required): representative of the alfalfa seed growers	Governor	12/21/2003
Mr. Kim Martinson, Townsend Qualifications (if required): representative of alfalfa seed sellers	Governor	12/21/2003
Montana Children's Trust Fund Board (Public Health and Human Services) Ms. Judy Birch, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	1/1/2004
Rep. Betty Lou Kasten, Brockway Qualifications (if required): public member	Governor	1/1/2004
Ms. Betty Hidalgo, Great Falls Qualifications (if required): public member	Governor	1/1/2004

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Children's Trust Fund Board (Public Health and Human Services) cont.		
Ms. Shirley Brown, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	1/1/2004
Mr. Mark A. Bryan, Bozeman Qualifications (if required): public member	Governor	1/1/2004
Montana Correctional Enterprises Ranch Advisory Council (Corrections)		
Mr. Don Davis, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Sen. Francis Koehnke, Townsend Qualifications (if required): public member	Governor	1/29/2004
Mr. Ray Lybeck, Kalispell Qualifications (if required): public member	Governor	1/29/2004
Rep. Robert Thoft, Stevensville Qualifications (if required): public member	Governor	1/29/2004
Sen. Thomas Beck, Helena Qualifications (if required): public member	Governor	1/29/2004
Rep. Edward (Ed) J. Grady, Canyon Creek Qualifications (if required): public member	Governor	1/29/2004
Mr. Bill Slaughter, Helena Qualifications (if required): public member	Governor	1/29/2004
Mr. Ross Swanson, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Correctional Enterprises Ranch Advisory Council (Corrections) cont.		
Sen. Bill Tash, Dillon Qualifications (if required): public member	Governor	1/29/2004
Sen. Gerald Pease, Lodge Grass Qualifications (if required): public member	Governor	1/29/2004
Rep. Allen Rome, Garrison Qualifications (if required): public member	Governor	1/29/2004
Ms. Gayle Lambert, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Mr. Bill Dabney, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Mr. Steve Hartman, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Montana Geographic Information Council (Administration)		
Mr. Tony Herbert, Helena Qualifications (if required): designee of the director of the Department of Administration	Governor	11/28/2003
Ms. Karen Strege, Helena Qualifications (if required): State Librarian	Governor	11/28/2003
Mr. Jon Sesso, Butte Qualifications (if required): representative of local government	Governor	11/28/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont.		
Mr. Lance Clampitt, Denver, CO	Governor	11/28/2003
Qualifications (if required): representative of federal government		
Mr. Stuart Blundell, Helena	Governor	11/28/2003
Qualifications (if required): representative of private business active in land information systems		
Mr. Richard Aspinall, Bozeman	Governor	11/28/2003
Qualifications (if required): representative of the University System		
Mr. Art Pembroke, Helena	Governor	11/28/2003
Qualifications (if required): representative of local government		
Mr. Michael Randall, Helena	Governor	11/28/2003
Qualifications (if required): representative of the Montana Department of Transportation		
Mr. Chris Smith, Helena	Governor	11/28/2003
Qualifications (if required): designee of a director of a state agency		
Mr. Steve Shannon, Butte	Governor	11/28/2003
Qualifications (if required): representative of public utilities		
Mr. Ken Jenkins, Missoula	Governor	11/28/2003
Qualifications (if required): president of the Montana Association of Land Surveyors		
Mr. Martin Prather, Missoula	Governor	11/28/2003
Qualifications (if required): representative of federal government		
Ms. Dolores Cooney, Helena	Governor	11/28/2003
Qualifications (if required): designee of a director of a state agency		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont.		
Mr. Harold Blattie, Helena Qualifications (if required): representative of local government	Governor	11/28/2003
Mr. Tom Deiling, Billings Qualifications (if required): representative of federal government	Governor	11/28/2003
Ms. Kathie Jewell, Billings Qualifications (if required): representative of the Montana GIS Interagency Technical Working Group	Governor	11/28/2003
Mr. R.J. Zimmer, Helena Qualifications (if required): representative of the Montana Local Government GIS Coalition	Governor	11/28/2003
Mr. Don Wetzel, Jr., Billings Qualifications (if required): representative of Montana Tribes	Governor	11/28/2003
Montana Higher Education Student Assistance Corporation (Education)		
Mr. Rick Bartos, Helena Qualifications (if required): at large member	Board of Regents	12/31/2003
Montana Statewide Independent Living Council (Public Health and Human Services)		
Ms. Kris Kleinschmidt, Great Falls Qualifications (if required): none specified	Director	1/2/2004
Montana Vocational Rehabilitation Council (Public Health and Human Services)		
Mr. Wayne Nankivel, Helena Qualifications (if required): federally mandated business industry and labor position	Director	11/26/2003
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. W. Ralph Peck, Helena Qualifications (if required): Director	Director	12/11/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. LaMonte Schnur, Townsend Qualifications (if required): forage producer	Director	12/11/2003
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	12/11/2003
Mr. Ray Ditterline, Bozeman Qualifications (if required): ex officio	Director	12/11/2003
Mr. Kelly Flynn, Townsend Qualifications (if required): outfitters and guides	Director	12/11/2003
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	12/11/2003
Mr. Tim Schaff, Fishtail Qualifications (if required): forage producer	Director	12/11/2003
Mr. Wayne Maughn, Fort Benton Qualifications (if required): livestock/agriculture	Director	12/11/2003
Ms. Marcy Mack, Pablo Qualifications (if required): weed districts	Director	12/11/2003
Mr. David Leininger, Lewistown Qualifications (if required): forage producer	Director	12/11/2003
Mr. Ross Wagner, Kalispell Qualifications (if required): forage producer	Director	12/11/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Jim Pfau, Stevensville Qualifications (if required): feed pellets/cubes products	Director	12/11/2003
Resource Conservation Advisory Council (Natural Resources and Conservation) Mr. Tom Stelling, Fort Shaw Qualifications (if required): representative of conservation districts	Director	1/30/2004
Ms. Marieanne Hanser, Billings Qualifications (if required): representative of South Central Montana	Director	1/30/2004
Mr. Robert Fossum, Richland Qualifications (if required): representative of Eastern Montana	Director	1/30/2004
Ms. Vicki McGuire, Eureka Qualifications (if required): representative of Western Montana	Director	1/30/2004
Mr. Dave Schwarz, Terry Qualifications (if required): representative of conservation districts	Director	1/30/2004
Mr. Bob Breipohl, Saco Qualifications (if required): representative of North Central Montana	Director	1/30/2004
Mr. Robert Anderson, Poplar Qualifications (if required): representative of general public	Director	1/30/2004
SABHRS Executive Advisory Council (Administration) Mr. Tony Herbert, Helena Qualifications (if required): Tier 1/Administration	Director	11/15/2003
Mr. Mike Billings, Helena Qualifications (if required): Tier 2/DPHHS	Director	11/15/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
SABHRS Executive Advisory Council (Administration) cont. Mr. Terry Johnson, Helena Qualifications (if required): Tier 1/Legislative Branch	Director	11/15/2003
Ms. Lynn Chenoweth, Helena Qualifications (if required): Tier 3	Director	11/15/2003
Ms. Cathy Muri, Helena Qualifications (if required): Tier 1/Administration	Director	11/15/2003
Ms. Jane Hamman, Helena Qualifications (if required): Tier 1/Governor's Office	Director	11/15/2003
Ms. Frieda Houser, Helena Qualifications (if required): Tier 5	Director	11/15/2003
Mr. John McEwen, Helena Qualifications (if required): Tier 1/Administration	Director	11/15/2003
Ms. Tammy Peterson, Helena Qualifications (if required): Tier 3	Director	11/15/2003
Ms. Ann Bauchman, Helena Qualifications (if required): Tier 4	Director	11/15/2003
Ms. Teri Juneau, Helena Qualifications (if required): Tier 4	Director	11/15/2003
Mr. Darrell Zook, Helena Qualifications (if required): Tier 2/MDT	Director	11/15/2003
Ms. Julia Dilly, Helena Qualifications (if required): Tier 2/OPI	Director	11/15/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
SABHRS Executive Advisory Council (Administration) cont.		
Mr. D.J. Whitaker, Helena Qualifications (if required): Tier 2/CHE	Director	11/15/2003
Mr. David Clark-Snustad, Helena Qualifications (if required): Tier 3	Director	11/15/2003
Ms. Ann Danzer, Helena Qualifications (if required): Tier 4	Director	11/15/2003
Ms. Kris Schmitz, Helena Qualifications (if required): Tier 6	Director	11/15/2003
Trauma Care Committee (Public Health and Human Services)		
Dr. Joseph Leal, Glendive Qualifications (if required): representing the Eastern Regional Trauma Advisory Committee	Governor	11/2/2003
Dr. Michael B. Orcutt, Great Falls Qualifications (if required): representing the Central Regional Trauma Advisory Committee	Governor	11/2/2003
Dr. Kendall Flint, Browning Qualifications (if required): representing Indian Health Service	Governor	11/2/2003
Dr. Gregory J. Moore, Missoula Qualifications (if required): representing the Western Regional Trauma Advisory Committee	Governor	11/2/2003
Ms. Colleen Overcast, Chinook Qualifications (if required): representing Montana Emergency Medical Services Association	Governor	11/2/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services) cont.		
Mr. Michael P. McGree, Butte Qualifications (if required): representing the Montana Private Ambulance Operators	Governor	11/2/2003
Dr. Douglas Kuntzweiler, Clancy Qualifications (if required): representing the American College of Emergency Physicians	Governor	11/2/2003
Dr. Thomas Bennett, Billings Qualifications (if required): representing the Eastern Regional Trauma Advisory Committee	Governor	11/2/2003
Upland Game Bird Advisory Council (Fish, Wildlife, and Parks)		
Mr. Ben Deeble, Missoula Qualifications (if required): none specified	Director	11/1/2003
Mr. Robert Eng, Bozeman Qualifications (if required): none specified	Director	11/1/2003
Mr. Richard Kirstein, Scobey Qualifications (if required): none specified	Director	11/1/2003
Mr. Marty Lau, Great Falls Qualifications (if required): none specified	Director	11/1/2003
Mr. Dale Manning, Missoula Qualifications (if required): none specified	Director	11/1/2003
Mr. Ellis Misner, Fairfield Qualifications (if required): none specified	Director	11/1/2003
Mr. Pat Pierson, Red Lodge Qualifications (if required): none specified	Director	11/1/2003

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2003 through JANUARY 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upland Game Bird Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Craig Roberts, Lewistown Qualifications (if required): none specified	Director	11/1/2003
Mr. Dale Tribby, Miles City Qualifications (if required): none specified	Director	11/1/2003
Mr. Ben Williams, Livingston Qualifications (if required): none specified	Director	11/1/2003
Mr. Lowell Young, Plentywood Qualifications (if required): none specified	Director	11/1/2003