

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 2.6.205 and 2.6.214 pertaining to ) AMENDMENT  
state vehicle use )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On April 14, 2008, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on March 18, 2008, to advise us of the nature of the accommodation that you need. Please contact Kristie Rhodes, Department of Administration, 1625 11th Avenue, Helena, Montana, 59620; telephone (406) 444-2421; fax (406) 444-2592; Montana Relay Service 711; or e-mail krhodes@mt.gov.

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

2.6.205 DRIVER REQUIREMENTS (1) through (3) remain the same.

(4) A state employee required to drive as part of the employee's job shall report an accumulation of conviction points of 12 or more according to the schedule in 61-11-203, MCA, for the past 36 months immediately preceding the infraction, whether accumulated while driving a state vehicle, a personal vehicle for state business, or accumulated while driving a motor vehicle for any purpose within ten days of the accumulation of 12 or more points to the employee's supervisor.

(5) through (8) remain the same.

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to amend ARM 2.6.205 to conform the rule to requirements of the Secretary of State's office.

2.6.214 DISCIPLINE (1) Failure to comply with the requirements of these rules may result in disciplinary action, including suspension or termination. Any supervisor who becomes aware of any violation of these rules by an employee they supervise shall take appropriate disciplinary action, according to the state discipline

policy set forth in ARM ~~2-21.6504~~ 2.21.6505 through 2.21.6509; and 2.21.6515; ~~and 2.21.6522.~~

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to amend ARM 2.6.214 to remove references to rules that have been repealed and are therefore no longer applicable.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Brett Dahl, Department of Administration, 1625 11th Avenue, Helena, Montana, 59620; telephone (406) 444-2421; fax (406) 444-2592; or e-mail bdahl@mt.gov, and must be received no later than 5:00 p.m., March 27, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Brett Dahl at the above address no later than 5:00 p.m., March 27, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be greater than 25 persons based on an estimated number of contracts issued yearly.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.asp>. 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may

be unavailable during some periods, due to system maintenance or technical problems.

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

By: /s/ Sheryl Olson  
Sheryl Olson, Deputy Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State February 19, 2008.

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

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.111.407 nonroutine applications, ) ON PROPOSED AMENDMENT  
24.111.502 licensing by examination, )  
24.111.503 licensing by endorsement, )  
24.111.511 natural substance formulary, )  
24.111.602 apprenticeship requirements, )  
and 24.111.604 licensing by examination )

TO: All Concerned Persons

1. On March 26, 2008, at 9:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Alternative Health Care Board (board) no later than 5:00 p.m., on March 24, 2008, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdahc@mt.gov.

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

24.111.407 NONROUTINE APPLICATIONS (1) All applications for direct-entry midwife and direct-entry midwife apprentice licensure ~~will~~ must be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

(2) An application for naturopathic physician licensure must be considered nonroutine in nature requiring board review and approval prior to issuance of the license if it discloses:

(a) that the applicant has a prior felony conviction of any nature or a prior misdemeanor conviction relating to sex, drugs, or violence. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) that the applicant has had two or more alcohol related convictions over any period of time or has had one alcohol related conviction within the past five years;

(c) that the applicant's health care professional license was disciplined or was voluntarily surrendered in another state or jurisdiction;

(d) that the applicant's education program does not have board approval and accreditation or preaccreditation status from the Council on Naturopathic Medicine Education (CNME);

(e) that the applicant passed a licensing examination other than NPLEX; or

(f) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-26-201, 37-27-105, MCA

IMP: 37-1-101, 37-26-401, 37-26-402, 37-26-403, 37-26-405, 37-27-201, 37-27-203, 37-27-205, MCA

REASON: Per 37-1-101, MCA, the department receives and processes only routine license applications for all department boards, while the boards must process all nonroutine applications. Because the board meets only quarterly, requiring board review of all naturopathic physician license applications has caused licensing delays and hardship. The board is amending this rule to enable department staff to process most naturopathic physician applications and issue licenses without board review while still ensuring adequate protection of the public. Subsection (2)(f) is intended to give discretion to staff to defer to the board's judgment whenever staff deems board review is necessary or advisable for the public protection. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.111.502 LICENSING BY EXAMINATION (1) Applicants for naturopathic physician licensure by examination shall ~~submit a completed application with the proper fees and supporting documents to the board office. Supporting documents shall include:~~

(a) submit a completed application on a form furnished by the department together with the required fees;

~~(a)(b) written documentation of good moral character consisting of submit three letters of reference, at least one of which must be from a licensed naturopathic physician, attesting to the applicant's good moral character;~~

~~(b)(c) cause the naturopathic medicine college which conferred an N.D. or N.M.D. degree on the applicant to submit an official transcript of the applicant's naturopathic medicine education directly to the board office; a copy of a certified transcript sent directly from an approved naturopathic medical college, which prepares candidates for licensure as a naturopathic physician, showing evidence the applicant has graduated and received a degree from the college;~~

~~(e)(d) cause the interstate reporting service of the North American Board of Naturopathic Examiners (NABNE) to submit directly to the board office, evidence of the applicant's passing score on the Naturopathic Physician Licensing Examination (NPLEX) as provided in (2). any other documents, affidavits and certificates required by 37-26-402 and 37-26-403, MCA, and this chapter.~~

~~(2) All applicants must take the Naturopathic Physicians Licensing Examination (NPLEX) as endorsed by the board, or any other examination to be prescribed or endorsed by the board, and have their scores reported to the board~~

office by the proper North American Board of Naturopathic Examiners (NABNE) interstate reporting service, or its equivalent. Except as provided in (5), applicants for naturopathic physician licensure in Montana must either:

(a) have passed:

(i) all five individual basic science NPLEX examinations (Part I);

(ii) all eight individual clinical science NPLEX examinations (Part II) or passed the said Part II under the compensatory scoring model described in (3), prior to August 1, 2007;

(iii) the homeopathy NPLEX examination prior to February 1, 2008; and

(iv) the minor surgery NPLEX clinical examination; or

(b) have passed:

(i) all five individual basic science NPLEX examinations (Part I);

(ii) the single integrated NPLEX Part II - Core Clinical Science Examination;

and

(iii) the minor surgery NPLEX clinical examination; or

(c) have passed:

(i) the single integrated NPLEX Part I - Biomedical Science Examination;

(ii) the single integrated NPLEX Part II - Core Clinical Science Examination;

and

(iii) the minor surgery NPLEX clinical examination.

(3) A minimum converted score of 75 is required to pass the Part I - Biomedical Science Examination. A minimum converted score of 75 is required to pass the Part II - Core Clinical Science Examination. A minimum converted score of 75 is required to pass the minor surgery examination. A minimum converted score of 75 is required to pass the homeopathy examination. The converted score is a scaled score and not a percentage. The board will accept the compensatory scoring model for the eight individual clinical science NPLEX examinations under (2)(a)(ii) provided all eight examinations were taken prior to August 1, 2007.

(a)(4) Applicants shall contact NABNE for NPLEX test dates and locations. NABNE may be contacted at 9220 SW Barbur Blvd., Suite 119, #321, Portland, OR 97219-5434, (503) 778-7990, or via the Internet at www.nabne.org.

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

(5) An applicant seeking licensure under this rule based upon a licensure examination other than the NPLEX shall submit proof satisfactory to the board of the applicant's score on the examination, the score deemed passing by the examination's developer, and the examination's acceptance by a licensing authority in any other state or territory of the United States, the District of Columbia, or a foreign country. Upon receipt, the board will determine whether to prescribe or endorse the proffered examination pursuant to its authority under 37-26-201 and 37-26-402, MCA, based upon the examination's substantial equivalency to the NPLEX examination.

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

IMP: 37-1-131, 37-26-402, 37-26-403, MCA



REASON: The board determined it is reasonably necessary to amend this rule in response to changes made to the Naturopathic Physician Licensing Examination (NPLEX) by the North American Board of Naturopathic Examiners (NABNE). The five individual basic science NPLEX examinations presently in use are being converted to a single integrated examination called the Part I - Biomedical Science Examination. The eight individual clinical science NPLEX examinations formerly in use have been converted to a single integrated examination called the Part II - Core Clinical Science Examination. The rule amendment clarifies that the compensatory scoring model for the eight individual clinical science examinations will still be accepted so long as all examinations were taken prior to the availability of the single integrated Part II - Core Clinical Science Examination. Formerly, the homeopathy examination was a separate add-on examination required for licensure in Montana but homeopathy is now incorporated into the integrated Part II - Core Clinical Science Examination. The minor surgery examination has been and for the foreseeable future will continue to be a separate add-on examination that is required for licensure in Montana. The changes being made to the NPLEX by NABNE are occurring over time. The rule amendment specifies the examination requirements throughout the transition period. Section (5) specifies how the board will determine whether an applicant who passed a naturopathic licensing examination other than NPLEX is eligible for licensure in Montana by endorsement or reciprocity under ARM 24.111.503.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.111.503 LICENSING OF OUT-OF-STATE APPLICANTS BY ENDORSEMENT (1) A license to practice as a naturopathic physician in the state of Montana may be issued without examination to an applicant at the discretion of the board, provided the applicant meets all of the following requirements:

(a) who has submitted a completed application and correct fee;

(a)(b) verification, in the form of a certified transcript sent directly from the college, that the candidate has who graduated and holds a degree/diploma from an approved naturopathic medical college that prepares candidates for licensure as a naturopathic physician, provided that such program, at the time of the candidate's graduation, is equivalent to or exceeds the minimum naturopathic medical educational standards required by the board's laws and rules;

(b)(c) the candidate who holds a valid current unencumbered license to practice as a naturopathic physician in another state or jurisdiction. Official written verification of such licensure status must be received by the board from the other state or jurisdiction;

(c)(d) the candidate has completed and filed with the board a notarized application for licensure and the required application fee who is of good moral character as evidenced by three letters of reference at least one of which must be from a licensed naturopathic physician; and

(d)(e) the candidate who has successfully passed a naturopathic physician licensure examination in another state or jurisdiction meeting or exceeding the

~~requirements of ARM 24.111.502(2) and (3) or (5). Written official verification of successful completion of the licensure examination and of licensure in good standing must be requested of the state or jurisdiction by the candidate, and must be received by the board directly from the state or jurisdiction; except:~~

~~(i) NPLEX exam scores must be verified by proper NPLEX score reporting agencies and procedures;~~

~~(ii) Candidates who have taken the NPLEX examination must have successfully passed, at minimum, sections on basic sciences, clinical science with minor surgery and homeopathic add-ons.~~

~~(e) The candidate must be of good moral character as evidenced by written documentation to be provided by the candidate, consisting of three letters of reference, at least one of which must be from a licensed naturopathic physician.~~

~~(2) It is the applicant's responsibility to cause the licensing authority of the state or jurisdiction from which the applicant is endorsing to send official verification of licensure directly to the board.~~

~~(3) It is the applicant's responsibility to cause the naturopathic medical college that conferred the applicant's N.D. or N.M.D. degree to send an official transcript of the applicant's naturopathic medical education directly to the board.~~

~~(4) It is the applicant's responsibility to cause verification of passing scores on the NPLEX or other licensing examination used to qualify for initial licensure in another state or jurisdiction, to be reported directly to the board by the official score reporting service utilized by the examination owner.~~

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

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

REASON: It is reasonable and necessary to amend this rule to clarify the requirements by which an applicant holding a current, unencumbered naturopathic physician license in another state or jurisdiction may be licensed in Montana by endorsement without retaking the licensure examination. As part of an ongoing rule review, the board is amending this rule for better organization and to lessen confusion among applicants.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

#### 24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE

FORMULARY LIST (1) through (3)(g)(i) remain the same.

(ii) trimethoprim/sulfamethoxazole;

(h) quinolones:

(i) ciprofloxacin; and

(ii) levaquin.

(4) through (13)(d) remain the same.

(e) heparin;

(e) through (i) remain the same but are renumbered (f) through (j).

(14) through (17) remain the same.

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

IMP: 37-26-301, MCA

REASON: The formulary committee established by 37-26-301, MCA, recommended to the full board that this rule be amended to include the three drugs listed in this proposal and the board proposes to amend the rule accordingly. Some naturopaths' clinical practices include IV therapy and heparin is an anticoagulant appropriate for such use. Ciprofloxacin and levaquin are commonly used in the treatment of urinary tract infections. Some of the older antimicrobials currently listed in the formulary have become less effective as resistance to them has increased and the board concluded that updating the formulary with the newer drugs is necessary to enable naturopaths to provide effective primary care to their patients. The three proposed additions to the formulary are routinely covered in both the naturopaths' medical education and continuing education programs as agents for use in clinical practice.

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP

REQUIREMENTS (1) through (6)(a) remain the same.

(i) documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must show include at least five prenatal visits exams, one of which must have been performed before the beginning of ~~on or before~~ of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit postpartum exam. Ten of the 15 continuous care births must have ~~occurred~~ been performed under the personal supervision of a qualified supervisor.

(b) through (8) remain the same.

(a) Documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must show include at least five prenatal visits exams, one of which must have been performed before the beginning of ~~occurring on or before~~ the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit postpartum exam. Ten of the 15 continuous care births must have ~~occurred~~ been performed under the direct supervision of a qualified supervisor.

(9) and (10) remain the same.

AUTH: 37-1-131, 37-27-105, MCA

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

REASON: It is reasonable and necessary to amend this rule to clarify that an apprentice must provide documentation of five prenatal exams per continuous care birth and not a minimum of five prenatal exams among all 15 continuous care births. The meaning of the current rule relating to the five prenatal exams was debated in a recent licensure situation and the board determined that the rule should be clarified. To ensure that apprentices obtain experience relating to all stages of a woman's pregnancy rather than just near the end of it, the board is amending this rule to require that one of the five prenatal exams per continuous care birth be performed early in the pregnancy in order for the birth to qualify as a continuous care birth. The term "visit" is replaced with the more precise term "exam" and the term "postnatal" is replaced by "postpartum" to be consistent with the terminology used in the enabling legislation for direct-entry midwives.

24.111.604 LICENSING BY EXAMINATION (1) through (1)(d) remain the same.

(i) documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must ~~show~~ include at least five prenatal visits exams, one of which must have been performed before the beginning of ~~occurring on or before~~ the 28th week of gestation, as determined by last menstrual period or sonogram, and include one ~~postnatal visit~~ postpartum exam. Ten of the 15 continuous care births must have ~~occurred~~ been performed under the direct supervision of a qualified supervisor.

(2) and (3) remain the same.

AUTH: 37-27-105, MCA

IMP: 37-27-201, 37-27-202, 37-27-203, MCA

REASON: It is reasonably necessary to amend this rule to clarify that an applicant for licensure by examination must provide documentation of five prenatal exams per continuous care birth and not a minimum of five prenatal exams among all 15 continuous care births. The meaning of the current rule relating to the five prenatal exams was debated in a recent licensure situation and the board determined that the rule should be clarified. To ensure that applicants obtain experience relating to all stages of a woman's pregnancy rather than just near the end of it, the board is amending this rule to require that one of the five prenatal exams per continuous care birth be performed early in the pregnancy in order for the birth to qualify as a continuous care birth. The term "visit" is replaced with the more precise term "exam" and the term "postnatal" is replaced by "postpartum" to be consistent with the terminology used in the enabling legislation for direct-entry midwives.

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 Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdahc@mt.gov](mailto:dlibsdahc@mt.gov), and must be received no later than 5:00 p.m., April 3, 2008.

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

6. The Alternative Health Care Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons

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

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

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

ALTERNATIVE HEALTH CARE BOARD  
MICHAEL BERGKAMP, N.D., CHAIRPERSON

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

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

Certified to the Secretary of State February 19, 2008

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PROPOSED  
of ARM 24.210.641 unprofessional ) AMENDMENT  
conduct )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On March 29, 2008, the Board of Realty Regulation (board) proposes to amend the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation no later than 5:00 p.m., on March 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail bmcaldmond@mt.gov.

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

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(y) remain the same.

(z) paying ~~consideration~~ a commission in connection with to a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter; however, payment to the principal or ~~reducing.~~ Reducing the commission owed by the principal ~~who pays the commission~~ is not considered payment of a commission to an unlicensed person. ~~Licensees may not solicit business by offering gifts, rebates, or promotional items;~~

(aa) through (6) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board determined it is reasonably necessary to amend this rule and delete the prohibition of business solicitation through the offering of gifts, rebates, or promotional items. Following the board's August 2007 amendment of this rule, the United States Department of Justice advised the board that the language may be

improper. This proposed amendment returns the rule language to substantially the same form as existed prior to the 2007 rule amendment.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [bmcalmond@mt.gov](mailto:bmcalmond@mt.gov), to be received no later than 5:00 p.m., March 27, 2008.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [bmcalmond@mt.gov](mailto:bmcalmond@mt.gov). The comments must be received no later than March 27, 2008.

6. If the board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 635 persons based on approximately 6350 licensees.

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

8. The Board of Realty Regulation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park

Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to bmcaldmond@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF REALTY REGULATION  
MARILYN FLOBERG, CHAIRPERSON

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

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

Certified to the Secretary of State February 19, 2008



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

In the matter of the amendment of ARM )  
37.30.405 pertaining to Vocational )  
Rehabilitation Program payment for )  
services )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On March 19, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on March 10, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain the same.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2007~~ 2008 U.S. Department of Health and Human Services poverty guidelines for households of different sizes.

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

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA

IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-205, 53-7-310, MCA

4. The department is proposing to amend ARM 37.30.405, Vocational Rehabilitation Program: Payment for Services. This rule sets forth the criteria that allow for the department to pay for services being made available to persons who

are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

The proposed amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2007 United States Department of Health and Human Services poverty guidelines for households. The proposed rule change would revise this level by replacing the year 2007 guidelines with the year 2008 guidelines.

The department some time ago in reviewing the possible means by which to set maximum income levels for purposes of determining eligibility for financial support in the purchase of vocational rehabilitation services determined that these poverty guidelines were the most appropriate means. The poverty guidelines have been established by the federal government for use in many respects inclusive of eligibility determinations for certain federally funded assistance programs. The guidelines are based upon an established methodology and are annually revised. There is broad national acceptance and use of the guidelines. The department considered establishing its own methodology but found that it did not have the resources or expertise by which to develop and maintain its own methodology.

This proposed change, implementing the most recent set of relevant poverty level income amounts, is necessary so as to maintain the currency of the financial criteria. The older amounts as time passes, fail to account for various economic changes such as inflation, that are factors in dynamically defining and distinguishing a class of persons with limited income who are at or below the poverty level for purposes of federal programs and via this incorporated reference are the intended beneficiaries of the vocational rehabilitation services. Implementation of the most recent poverty guidelines assures the continuation of the appropriate coverage population.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 27, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to [dphslegal@mt.gov](mailto:dphslegal@mt.gov). The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

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

will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ Cary B. Lund  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State February 19, 2008.

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

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING
37.70.601 pertaining to Low Income ) ON PROPOSED AMENDMENT
Energy Assistance Program )
(LIEAP) )

TO: All Interested Persons

1. On March 19, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on March 10, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-9744; e-mail dphhslegal@mt.gov.

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

37.70.601 BENEFIT AWARD (1) through (1)(b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

Table with 7 columns: # BEDROOMS, NATURAL GAS, ELECTRIC, PROPANE, FUEL OIL, WOOD, COAL. Rows include ONE, TWO, THREE, and FOUR bedrooms.

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 477</u>	<u>\$ 616</u>	<u>\$ 900</u>	<u>\$1,023</u>	<u>\$ 527</u>	<u>\$ 281</u>
<u>TWO</u>	<u>694</u>	<u>896</u>	<u>1,308</u>	<u>1,486</u>	<u>765</u>	<u>409</u>
<u>THREE</u>	<u>947</u>	<u>1,221</u>	<u>1,782</u>	<u>2,026</u>	<u>1,042</u>	<u>557</u>
<u>FOUR</u>	<u>1,302</u>	<u>1,680</u>	<u>2,452</u>	<u>2,787</u>	<u>1,434</u>	<u>766</u>

(ii) MULTI-FAMILY

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 304</u>	<u>\$ 371</u>	<u>\$ 464</u>	<u>\$ 718</u>	<u>\$ 310</u>	<u>\$ 156</u>
<u>TWO</u>	<u>458</u>	<u>558</u>	<u>699</u>	<u>1,082</u>	<u>466</u>	<u>234</u>
<u>THREE</u>	<u>672</u>	<u>819</u>	<u>1,026</u>	<u>1,587</u>	<u>684</u>	<u>344</u>
<u>FOUR</u>	<u>785</u>	<u>957</u>	<u>1,199</u>	<u>1,854</u>	<u>799</u>	<u>402</u>

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 404</u>	<u>\$ 522</u>	<u>\$ 761</u>	<u>\$1,087</u>	<u>\$ 445</u>	<u>\$ 238</u>
<u>TWO</u>	<u>609</u>	<u>785</u>	<u>1,146</u>	<u>1,637</u>	<u>669</u>	<u>357</u>
<u>THREE</u>	<u>894</u>	<u>1,152</u>	<u>1,682</u>	<u>2,402</u>	<u>982</u>	<u>525</u>
<u>FOUR</u>	<u>1,044</u>	<u>1,346</u>	<u>1,965</u>	<u>2,806</u>	<u>1,147</u>	<u>614</u>

(iii) MOBILE HOME

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 303</u>	<u>\$ 369</u>	<u>\$ 463</u>	<u>\$ 597</u>	<u>\$ 309</u>	<u>\$ 155</u>
<u>TWO</u>	<u>443</u>	<u>540</u>	<u>676</u>	<u>873</u>	<u>452</u>	<u>227</u>
<u>THREE</u>	<u>587</u>	<u>716</u>	<u>897</u>	<u>1,157</u>	<u>599</u>	<u>301</u>
<u>FOUR</u>	<u>655</u>	<u>799</u>	<u>1,001</u>	<u>1,291</u>	<u>668</u>	<u>336</u>

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 403</u>	<u>\$ 519</u>	<u>\$ 759</u>	<u>\$ 903</u>	<u>\$ 444</u>	<u>\$ 237</u>
<u>TWO</u>	<u>589</u>	<u>760</u>	<u>1,108</u>	<u>1,321</u>	<u>649</u>	<u>346</u>
<u>THREE</u>	<u>781</u>	<u>1,007</u>	<u>1,470</u>	<u>1,751</u>	<u>860</u>	<u>459</u>
<u>FOUR</u>	<u>871</u>	<u>1,124</u>	<u>1,641</u>	<u>1,954</u>	<u>959</u>	<u>513</u>

(d) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

4. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. ARM 37.70.601(1)(c) contains tables of benefit amounts that are used to determine the size of an eligible household's benefit. The amount of benefits a household will receive depends on multiple factors, including income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. A household's benefit also depends on the amount of funds available to pay LIEAP benefits for the current heating season, as federal funding varies from year to year.

Each year the base benefit amounts in ARM 37.70.601(1)(c) are revised to take into account changes in fuel prices, the number of households that will be eligible for benefits, and LIEAP funding, all of which change from year to year. The current benefit tables were prepared in summer 2007 based on estimates of the amount Congress would appropriate for LIEAP for the 2007-2008 heating season. The department must use estimates because Congress often does not finalize the LIEAP appropriation until after the beginning of the LIEAP heating season on October 1.

The current benefit amounts are based on total funding of \$12,289,462 for the 2007-2008 heating season, consisting of an estimated federal appropriation of \$11,842,000 plus \$446,842 of funds carried over from 2006-2007. However, the department is now able to pay larger benefits for 2007-2008 than previously anticipated, due to the receipt of additional federal funds of \$3,689,679. The amendment of ARM 37.70.601(1)(c) is necessary to increase the benefit amounts in the base benefit tables as a result of the increased federal funding.

Approximately 19,000 households are expected to receive LIEAP benefits during the current heating season. All households will receive a larger benefit due to the increased funding. Households that have already received a LIEAP payment for 2007-2008 will receive a second payment which is equal to the difference between the benefit the household is entitled to receive under the amended benefit tables and the benefit they received based on the current benefit tables. Payments to households that have not yet received a LIEAP payment for 2007-2008 will be computed using the increased amounts in the amended benefit tables.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 27, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to [dphslegal@mt.gov](mailto:dphslegal@mt.gov). The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the

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

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

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

/s/ Barbara Hoffmann  
Rule Reviewer

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

Certified to the Secretary of State February 19, 2008.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rules I and II pertaining to general	)	ON PROPOSED ADOPTION
Medicaid services, physician	)	
administered drugs	)	

TO: All Interested Persons

1. On March 25, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on March 10, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I PHYSICIAN ADMINISTERED DRUGS, DEFINITIONS (1) "Centers for Medicare and Medicaid Services (CMS) Top 20" means the list of National Drug Codes (NDCs) as determined under Section 1927(a)(7)(B) of the Social Security Act requiring the Secretary of CMS to publish a list of the 20 multiple source physician administered drugs with the highest dollar volume dispensed under the Medicaid program.

(2) "Healthcare common procedures coding system (HCPCS)" means the national uniform coding method maintained by the CMS that incorporates the American Medical Association (AMA) Physicians Current Procedural Terminology (CPT) and the three HCPCS unique coding levels, I, II, and III.

(a) For purposes of physician administered drugs, HCPCS refers to billable codes that may be cross-walked to NDCs.

(3) "National Drug Codes (NDC)" means an 11 digit numerical code that identifies the manufacturer, drug, and package size assigned by the Federal Drug Administration (FDA).

(4) "Physician administered drugs" means covered outpatient drugs under section 1927(k)(2) of the Social Security Act that are typically furnished incident to a physician's service.

(a) These drugs are injectable or intravenous drugs administered by a medical professional in a physician's office or other outpatient clinical setting.



(b) Reimbursement for physician administered drugs is allowed only if the drug is a covered drug under 42 USC 1396r-8.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, MCA

#### RULE II PHYSICIAN ADMINISTERED DRUGS, REQUIREMENTS

(1) Effective April 1, 2008, all billable claim lines submitted for physician administered drugs must include the NDC, the corresponding HCPCS code, and the units administered for each code.

(a) Claim lines billed for HCPCS that represent physician administered injections will be denied if there is no NDC on the line.

(b) Reimbursement will be made only on those drugs manufactured by companies that have a signed rebate agreement with the CMS.

(2) The requirements of this rule do not apply to claims reimbursed under all-inclusive payment methodologies.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, MCA

4. The Department of Public Health and Human Services (the department) is proposing new Rules I and II pertaining to general Medicaid services. The purpose of the proposed rules is to comply with requirements of the Deficit Reduction Act of 2005 (DRA), Public Law No. 109-171 pertaining to prescription drugs under the Medicaid program. Section 6002 of the DRA amends section 1903(i)(10) of the Social Security Act by prohibiting Medicaid Federal Financial Participation (FFP) for physician administered drugs unless states submit the utilization data described in section 1927(a) of the Act. It also amends section 1927 of the Act to require the submission of utilization data for physician administered drugs. This rule was to have been effective January 1, 2008.

The Centers for Medicare and Medicaid Services (CMS) is requiring states to obtain rebates on at least the top 20 multiple source physician administered drugs with the highest dollar volume dispensed under the Medicaid program and manufactured by companies that have a signed rebate agreement with CMS. States may require reporting of National Drug Codes (NDCs) on all physician administered drugs for rebate purposes. Because the cost of programming to collect this data is high and the rebate estimated to be generated by collecting on only the CMS Top 20 is low, the department has elected to enforce collection of all reimbursable NDC codes for rebate purposes.

Because the programming to collect NDCs is complicated and expensive, the department requested and was granted an extension by CMS. This extension expires March 31, 2008.

#### RULE I

The proposed rule is to define the terms used in the other proposed rule.

## RULE II

The purpose of this rule is to implement the provisions of DRA.

Effective April 1, 2008 the department will require providers to report NDCs along with healthcare common procedures coding system (HCPCS) codes on all payable physician administered drugs. This does not apply to providers who are paid an all inclusive rate per visit (i.e., Rural Health Clinics, Indian Health Services) because the drug is considered bundled into the payment for the primary service provided at the visit.

Payment to the provider for physician administered drugs is currently made using the reimbursement methodology for provider type (i.e., Resource based relative value scale (RBRVS), Outpatient prospective payment system (OPPS), or fee schedule) based on the billed HCPCS code. These reimbursement methodologies will not change.

The department will deny reimbursable claim lines with dates of service on or after April 1, 2008 that do not report an NDC or are not manufactured by companies that have a signed rebate agreement with CMS.

For claims in which a line is denied because of no NDC, providers will have 365 days from the date of service to submit an adjustment or new claim to receive payment. Any impact for lines denied because of no NDC will be due to providers not timely resubmitting corrected claims.

Rebateable drugs are readily available to providers. Over 400 drug manufacturers have signed rebate agreements with CMS. This is the preponderance of companies doing business in the United States. The odds of a provider reporting an NDC that is not manufactured by a company with a signed rebate agreement are nominal.

### Persons affected

The proposed change will affect approximately 5000 professional providers (physician, mid-level, etc.) and approximately 350 outpatient providers (hospitals, birthing facilities, etc.).

### Fiscal effects

Rebates are obtained from the drug manufacturers within three months of reporting the NDCs. The rebates are deposited into the state general fund and then federal matching assistance percentage (FMAP) is returned to the federal government based on the date of service. The department expects the proposed Rules I and II to bring in rebates of approximately \$81,396 for SFY 08 and approximately \$325,584 for SFY 09.

SFY 08 expected rebate:  
68.53% federal share for April - June = \$55,781  
31.47% state share for April - June = \$25,615  
Total SFY 08=\$81,396

SFY 09 expected rebate:  
68.53% federal share for July - September = \$55,781  
31.47% state share for July - September = \$25,615

68.38% federal share for October - June = \$166,976  
31.62% state share for October - June = \$77,212  
Total SFY 09=\$325,584

5. The department intends to apply the proposed new rules effective April 1, 2008. Since the billing requirements are simply administrative, there will be no detrimental effects.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210 no later than 5:00 p.m. on March 27, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

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

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

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

/s/ John Koch  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State February 19, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the transfer of ARM 8.11.101 ) NOTICE OF TRANSFER  
through 8.11.120, pertaining to licensed )  
addiction counselors ) (Licensed Addiction Counselors)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Licensed Addiction Counselors Program was transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, chapter 154.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.11.101	24.154.401	Fees
8.11.102	24.154.201	Procedural Rules
8.11.103	24.154.202	Public Participation Rules
8.11.104	24.154.301	Definitions
8.11.105	24.154.420	Nonresident Chemical Dependency Counselor Services
8.11.106	24.154.405	Education Requirement
8.11.107	24.154.409	Required Supervised Experience
8.11.108	24.154.410	Documentation Required for Verification of 1000 Hours Supervised Counseling Experience
8.11.109	24.154.411	Direct Supervision - Minimum Hours Required
8.11.110	24.154.407	Application Procedures
8.11.111	24.154.415	Certification Process
8.11.112	24.154.416	Written Examination
8.11.113	24.154.417	Oral Examinations
8.11.114	24.154.421	Counselors Certified in Other States
8.11.115	24.154.2101	Renewals
8.11.116	24.154.2105	Continuing Education Requirements
8.11.117	24.154.2106	Course Criteria
8.11.118	24.154.2107	Continuing Education Procedures and Documentation
8.11.119	24.154.2401	Complaint Procedure
8.11.120	24.154.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this program was transferred from the Department of Commerce to the Department of Labor and Industry by the

2001 Legislature by Chapter 483, Laws of Montana 2001.

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

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

Certified to the Secretary of State February 19, 2008

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

In the matter of the amendment of ARM 24.121.301 ) NOTICE OF AMENDMENT  
definitions, 24.121.407 premises and general ) AND ADOPTION  
requirements, 24.121.601 and 24.121.605 )  
applications for licensure, 24.121.803, 24.121.805, )  
24.121.807, and 24.121.809 school-facility and )  
operation, 24.121.1105 teacher-training curriculum, )  
24.121.1301 salons/booth rental, 24.121.1501, )  
24.121.1507, 24.121.1509, 24.121.1511, )  
24.121.1513, 24.121.1515, 24.121.1517, )  
24.121.1519, and 24.121.1521 sanitary standards, )  
24.121.2301 unprofessional conduct, and the )  
adoption of NEW RULE I anonymous complaints, )  
NEW RULE II disinfecting agents, and NEW RULE )  
III blood spills )

TO: All Concerned Persons

1. On October 4, 2007, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-5 regarding the proposed amendment and adoption of the above-stated rules, at page 1502 of the 2007 Montana Administrative Register, issue no. 19.

2. On October 29, 2007, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the November 6, 2007, deadline.

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

COMMENT 1: In reference to ARM 24.121.601, one commenter stated that although applicants should have to complete more class hours to qualify for an additional license, the extra hours should be equitable regardless of whether a barber seeks a cosmetology license or a cosmetologist seeks a barbering license. The commenter stated that 125 hours is not enough time to learn how to properly clipper cut hair and 25 hours is not enough time to properly learn shaving as shaving alone was a 4-week program mixed in with other studies.

RESPONSE 1: The board wholly understands the concerns raised by the commenter but declines to modify the hours required in (7) or (8) because the board concluded that 150 hours is enough time for cosmetologists to adequately learn the basic skills of clipper cuts (which a cosmetologist already performs) and shaving,

while 150 hours is not enough time for a licensed barber to learn the additional skills, such as waxing, artificial nails, and facials, needed to obtain a cosmetologist license.

COMMENT 2: In reference to ARM 24.121.1105, one commenter stated that the words, "withdrawal forms," or the word, "forms" should be stricken from (1)(c)(iii) because schools have different withdrawal procedures and may not use an actual form. The commenter also suggested including the subject of student recruitment with public relations in (1)(b)(v) because if not specifically listed, it won't be taught.

RESPONSE 2: The board agrees with the commenter and is striking "forms" from (1)(c)(iii), (2)(c)(iii), and (3)(c)(iii). The board is not adding the subject of student recruitment to (1)(b)(v) as it is already under "Business Methods" in this rule.

COMMENT 3: In reference to ARM 24.121.1511, one commenter suggested deleting metal implements from (3)(a) and adding the term to (3) since metal implements need to be totally immersed, not just sprayed and wiped. This would make (3) more clear as to wiping and spraying nonimmersible and electrical items.

RESPONSE 3: The board agrees and is amending (3) accordingly.

COMMENT 4: In reference to ARM 24.121.1517(2)(e)(i), one commenter opined that the word "phenol" may cause problems because tuberculocidals are phenolics.

RESPONSE 4: The board notes that (2)(e)(i) states that phenol is prohibited for chemical exfoliation purposes and is amending the rule exactly as proposed.

COMMENT 5: One commenter suggested changing "and" to "or" in (3)(a) of NEW RULE II because using "and" implies that licensees will be expected to have two disinfectants on site, one for everyday use and one for blood spills. The commenter does not believe this was the board's intent and stated that it is not consistent with the National-Interstate Council of State Boards of Cosmetology's standard set by the Centers for Disease Control.

RESPONSE 5: The board agrees with the commenter and is amending (3)(a) accordingly.

4. The board has amended ARM 24.121.301, 24.121.407, 24.121.601, 24.121.605, 24.121.803, 24.121.805, 24.121.807, 24.121.809, 24.121.1301, 24.121.1501, 24.121.1507, 24.121.1509, 24.121.1513, 24.121.1515, 24.121.1517, 24.121.1519, 24.121.1521, and 24.121.2301 exactly as proposed.

5. The board has amended ARM 24.121.1105 and 24.121.1511 with the following changes, stricken matter interlined, new matter underlined:

24.121.1105 TEACHER-TRAINING CURRICULUM (1) through (1)(c)(ii) remain as proposed.

(iii) student registration, withdrawal forms, and hours (tracking, completing, calculating, and verifying);

(iv) through (2)(c)(ii) remain as proposed.

(iii) student registration, withdrawal forms, and hours (tracking, completing, calculating, and verifying);

(iv) through (3)(c)(ii) remain as proposed.

(iii) student registration, withdrawal forms, and hours (tracking, completing, calculating, and verifying);

(iv) through (3)(e) remain as proposed.

24.121.1511 SANITIZING AND DISINFECTING IMPLEMENTS AND EQUIPMENT (1) and (2) remain as proposed.

(3) All implements, including metal, must be completely immersed in a board approved disinfecting agent of proper strength and for the necessary time period according to manufacturer instructions.

(a) All nonimmersible equipment ~~and metal implements~~ must be sanitized with a detergent solution and wiped or sprayed with a board approved disinfecting agent.

(4) through (11) remain as proposed.

6. The board has adopted NEW RULE I (24.121.404) and NEW RULE III (24.121.1522) exactly as proposed.

7. The board has adopted NEW RULE II (24.121.1514) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II DISINFECTING AGENTS (1) through (3) remain as proposed.

(a) a disinfectant that is effective against HIV-1, human Hepatitis B virus, ~~and~~ or Tuberculocidal for equipment and implements that have come in contact with blood, bodily fluids, and/or mucous membrane; and

(b) remains as proposed.

BOARD OF BARBERS AND COSMETOLOGISTS  
WENDELL PETERSEN, PRESIDING OFFICER

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

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

Certified to the Secretary of State February 19, 2008



BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS  
AND AUDIOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
24.222.301 definitions, 24.222.502 and )  
24.222 506 licensure, 24.222.507 )  
temporary practice permits, 24.222.701 )  
and 24.222.702 supervision, 24.222.703 )  
functions of aides or assistants, and )  
24.222.2102 continuing education )

TO: All Concerned Persons

1. On December 20, 2007, the Board of Speech-Language Pathologists and Audiologists (board) published MAR Notice No. 24-222-22 regarding the proposed amendment of the above-stated rules, at page 2054 of the 2007 Montana Administrative Register, issue no. 24.

2. On January 14, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the January 22, 2008, deadline.

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

COMMENT 1: One commenter offered general support of the proposed changes.

RESPONSE 1: The board acknowledges and appreciates all rulemaking comments.

COMMENT 2: One commenter suggested deleting all references to level III speech-language pathology aides/assistants throughout the board's rules.

RESPONSE 2: The board views all levels of registered aides/assistants as necessary and is not deleting the level III aides/assistants from the rules.

COMMENT 3: A commenter suggested adding several supervisor qualifications to the definition of supervision in ARM 24.222.301.

RESPONSE 3: The board notes that the supervisor requirements are adequately set forth at ARM 24.222.701 and is amending the rule exactly as proposed.

COMMENT 4: One commenter supported deleting the board's proposed amendments to the supervision schedule in ARM 24.222.702 and provided entirely different requirements.

RESPONSE 4: The board and its supervision committee discussed the issue extensively and considered numerous supervision schedules before proposing the clearest supervision requirements that still ensure adequate public protection. The board is amending the rule exactly as proposed.

COMMENT 5: One commenter supported deleting the board's proposed amendments to ARM 24.222.703(4) in their entirety.

RESPONSE 5: The board and its supervision committee worked extensively on this rule to delete the term "nonallowable functions" and clarify the ability of aides/assistants I to perform diagnostic evaluations under specific conditions. The board is amending the rule exactly as proposed.

COMMENT 6: A commenter suggested increasing the continuing education (CE) requirements for speech-language pathology aides/assistants II and audiology aides/assistants from ten to 20 units in ARM 24.222.2102.

RESPONSE 6: The board discussed CE requirements for all levels of aides/assistants and decided not to increase the CE for these aides/assistants. The board is amending the rule exactly as proposed.

4. The Board of Speech-Language Pathologists and Audiologists has amended ARM 24.222.301, 24.222.502, 24.222.506, 24.222.507, 24.222.701, 24.222.702, 24.222.703, and 24.222.2102 exactly as proposed.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
DARRELL MICKEN, Au.D, CHAIRPERSON

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

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

Certified to the Secretary of State February 19, 2008

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 42.4.118, 42.4.201, 42.4.202, ) ADOPTION  
42.4.203, 42.4.204, 42.4.205, and )  
42.4.207, and adoption of New Rule I )  
(42.4.208) relating to alternative )  
energy tax credits )

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-790 regarding the proposed amendment of ARM 42.4.118, 42.4.201, 42.4.203, 42.4.204, and 42.4.205 at page 1913 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 12, 2007, to consider the proposed amendment. Oral and written testimony received at the hearing is summarized as follows, along with the response of the department:

COMMENT NO. 1: James C. Wangerin, Certified Public Accountant, appeared at the hearing and testified that he was in favor of the rule regarding the recognition of an energy credit for each taxpayer, two credits per couple. However, he stated he was concerned about incorrect instructions that had been previously given to department staff regarding the application of this credit.

Mr. Wangerin stated that he believes there is an estimated \$10 million in Montana tax that has been wrongfully assessed and he requested the department send a letter to all taxpayers who have filed an Energy Conservation Installation Credit (ENRG-C) and Alternative Energy System Credit (ENRG-B) schedule explaining the department's change of position.

RESPONSE NO. 1: The department appreciates Mr. Wangerin's support of this amendment to the rule with regard to alternative energy systems credit.

With regard to Mr. Wangerin's concern about incorrect instructions to department staff, the department does not believe department staff was operating under incorrect instructions. The department's hearings officer rendered a decision in 2005, which indicated that the Energy Conservation Installation Credit (ENRG-C) of \$500 should be allowed for each taxpayer, rather than each household. Upon further review, it was determined that this interpretation was also applicable to the Alternative Energy System Credit (ENRG-B) credits. The department advised tax practitioners of this change at various times and updated forms and tax booklets as necessary.

Mr. Wangerin did not provide any evidence to support his allegation that there is an estimated \$10 million in Montana tax that has been wrongfully assessed, therefore the department cannot respond to this statement.

The suggestion is not a comment on the rules themselves, but is instead

relevant to administrative implementation with the context of limited budgets. The department is responsible for providing information to taxpayers on hundreds of provisions of law relating to 39 taxes and fees. Because of budget limitations on the department's expenditures, the department generally uses mass public education efforts to advise taxpayers instead of individual notification. The adoption of these and prior rules on this topic are, in and of themselves, one form of public education.

COMMENT NO. 2: John Fitzpatrick, Executive Director of Governmental Affairs for NorthWestern Energy appeared at the hearing and testified that he was very concerned about the department's intent to review energy bills or energy audits to verify savings of 5% or more from the previous year. Mr. Fitzpatrick suggested that this rule would be very difficult to manage because there are so many variables, including variables which are beyond the control of households and would impact any form of viable audit trail using this method. Nobody has control over the climate, if we go through an exceptionally hot period in the summertime, energy bills will go up, notwithstanding conservation measures that may have been implemented or employed earlier in the year. Likewise, if we get an exceptionally cold period in the winter time consumption can go back up again. Residents of the dwelling moving in or out can have a significant impact on the energy usage. Mr. Fitzpatrick suggested the department adopt an audit methodology to see if the capital investment was made and not try to get into worrying about if an individual household actually achieved 5% savings or not. He suggested that the expense of managing this type of process would outweigh the benefit.

Mary Whittinghill, Executive Director, Montana Taxpayers Association (MonTax) appeared at the hearing and supported Mr. Fitzpatrick's concerns regarding the intent to review an energy bill or energy audit for a 5% savings. She further stated that MonTax believes it would be a complicated process in managing this savings.

Mr. Wangerin also supported removing the 5% language because in many cases a 5% savings cannot be demonstrated.

The American Association of Retired Persons (AARP) Montana, submitted written comments regarding concern for the 5% language. AARP stated they support the need to rein in an abuse of the tax credit but are concerned about their members who use medical and other life support equipment in their homes. As health and wellness needs change over lifetimes, it is possible that medical equipment is needed without allowing for planning or efforts to make use of energy comparables in successive years. AARP members are very active using weatherization and conservation strategies as a means of survival, and they would likely be in strong support of an objective criterion for evaluating applications for the tax credit. However, AARP believes that the 5% criteria proposed in the rule will not work, and will have detrimental effects on elders who are trying to age in their homes and taking advantage of every tax option they can.

RESPONSE NO. 2: The department thanks the participants who commented with regard to the 5% savings language and agrees that it should not be adopted. It should be noted that the 5% savings language that was proposed applied only to investments not on the list of qualified measures. The current rule states that for

such investments that are not on the list of qualified measures, taxpayers must prove that such "non-listed" investments result in a substantial reduction in energy use. Since "substantial reduction" is not defined and is a fuzzy target, the department proposed making the energy reduction target fixed and definite at 5% in the interest of greater certainty and predictability for the taxpayers. Once the department proposed this fixed target for "non-listed" investments, the measurement problem described by those making comments came into sharp focus. It is logical that if it is not reliably possible to measure a 5% reduction in energy use, it is even less possible for a taxpayer to measure an undefined substantial reduction in energy use. Thus, the public comments have led the department to the conclusion that the only way to provide predictable and certain guidance to taxpayers wishing to claim the credit is to rely exclusively on lists of qualified investments and examples, for information purposes, of what does not qualify. The department has further concluded that due to changing energy conservation technology that lists of qualified capital investments and examples of nonqualified items should be updated annually.

After reaching this conclusion, the department contacted NorthWestern Energy, AARP-Montana, and Representative Jon Sonju about adopting the approach of establishing definite lists of qualified energy conservation investments, providing examples of items that do not qualify, and conducting an annual update process for both. Representative Sonju was contacted as the sponsor of unsuccessful legislation (HB 748) in the 2007 Legislative Session encouraging the department to adopt definite rules embodying lists of qualified and unqualified investments. William Thomas of NorthWestern Energy in an e-mail message of January 23, 2008, forwarded to the department by John Fitzpatrick, indicated general support for the new listing and updating approach with the comment, "Our thinking here is very much in agreement with what is embodied in the draft document" (referring to a draft of the department's new approach). NorthWestern Energy also had specific suggestions that were incorporated as noted in the response to Comment 16 below. Claudia Clifford of AARP Montana stated in an e-mail message of January 24, 2008, that "You(r) intent to create a list of what qualifies and what does not, using the list in the current rules and proposed rules seems like a good way to go to us." Representative Sonju in an e-mail message of January 21, 2008, referred to the new approach as a ". . . win/win for your department and the taxpayers." Representative Sonju also made a suggestion which is responded to under Comment 12.

The department believes that the approach of definite lists, examples of nonqualified items and an annual update process for both responds effectively to the comments of those who were concerned about the uncertainties involved in having taxpayers measure a 5% reduction in energy use for certain items. The department appreciates greatly the dialogue with those who made comments on this rule and that that dialogue has led to a set of rules that lends much greater certainty and clarity to the energy conservation credit and is, in Representative Sonju's words, a "win/win" for the department and the taxpayers.

COMMENT NO. 3: Mr. Wangerin stated he was opposed to special treatment on Energy Star homes manufactured outside of Montana. Credit should be allowed in the same way as for houses built in Montana (Exhibit A refers to the Department

of Environmental Quality's (DEQ) web site which states the homes are certified by states where they are manufactured). He refers to DEQ's web site that promotes Energy Star homes manufactured in Idaho, Washington, Oregon, or California.

RESPONSE NO. 3: The department has verified with the Department of Environmental Quality that Montana's standard building code requirements for all manufactured or modular homes shipped into and sold in Montana must be met. Therefore, the Energy Star upgrade would indicate that the building was exceeding Montana standard building code requirements.

COMMENT NO. 4: Mr. Wangerin testified that he believes the department violated the requirements of 2-4-302, MCA, because it did not notify the primary sponsor for 15-32-109, MCA. He further stated that the proposed regulations do not follow the intent of 15-32-102 and 15-32-109, MCA.

RESPONSE NO. 4: The department complied with the requirements of 2-4-302, MCA, when the rules were first adopted in 2002 and notified not only the sponsor of the legislation but many other legislators. The department respectfully disagrees with Mr. Wangerin because it believes the regulations do follow the intent of 15-32-102 and 15-32-109, MCA.

COMMENT NO. 5: Mr. Wangerin stated he was opposed to prescriptive path as part of a building definition. It conflicts with the definitions in 15-32-102, MCA. He suggested different definitions for the terms "capital investment" and "energy conservation purposes." He stated that prescriptive path should not be added because other physical attributes of building outside of prescriptive path are recognized as saving energy.

RESPONSE NO. 5: The department has removed the reference to "prescriptive path" in the rules with the deletion of section (4) in ARM 42.4.204 as shown below. Therefore, the definition of "prescriptive path" will also be deleted from ARM 42.4.201.

COMMENT NO. 6: Mr. Wangerin testified that he was opposed to the list of standard items that are standard components of a building. The language should not indicate exclusion of standard components of a building. The choice of which components to use can dramatically affect the energy efficiency of the home. All the items listed in ARM 42.4.204(1) are standard components of a home.

RESPONSE NO. 6: The department appreciates Mr. Wangerin's comments and the confusion that this may cause by using the term "standard component" and has amended the rule accordingly as shown below.

COMMENT NO. 7: Mr. Wangerin stated he was opposed to the list excluding maintenance and repair. Some of the items in the list of eligible items are maintenance and repair and should not be excluded if it is done for an energy

conservation purpose. Maintenance and repair can dramatically affect the energy efficiency of the home.

RESPONSE NO. 7: Maintenance and repair are considered normal upkeep and a standard requirement for home ownership. These areas do not necessarily lend themselves to energy conservation credit as anticipated in the law.

COMMENT NO. 8: Mr. Wangerin testified that he is opposed to the list because it excludes space heaters, portable air conditioners, and appliances because they are not capital investments. It is necessary to allow energy conserving expenditures (like Energy Star appliances and zone heating and air conditioning) to reduce the amount of energy required for proper utilization of the building. Energy Star appliances are capital investments required for proper utilization of the building.

RESPONSE NO. 8: The items identified by Mr. Wangerin are not installed as required in 15-32-102, MCA. The appliances are not part of the physical attributes of the building, nor are they part of the water, heating, or cooling system of the building, 15-32-109, MCA. Based on the decision of the department's hearings officer in 2006, appliances are deemed personal property and, therefore, do not meet the requirements for these credits. Simply put, appliances are not a capital investment in a building.

COMMENT NO. 9: Mr. Wangerin testified that the creation of a list of energy conserving expenditures not qualifying for energy credit is a new program to be implemented by the department and the primary sponsors should have been notified of proposed regulations to implement a new program listing nonqualifying expenditures (15-32-109, MCA). The list is a direct conflict of the list of qualifying items contained in regulations previously implemented by 15-32-109, MCA.

RESPONSE NO. 9: This is not a new program, but an expansion of existing rules that were adopted in 2002, at which time the primary sponsors of the various legislation were notified where appropriate. The department does not believe the new rules are in direct conflict with 15-32-109, MCA.

COMMENT NO. 10: Mr. Wangerin stated that the department is implementing 15-32-106, MCA, for the first time and, therefore, should have notified the bill sponsor of this action. He quotes 15-32-106, MCA, as stating the Department of Revenue may deny a deduction or credit that it finds to be impractical or ineffective. He further states that the legislation affects more than one program. Previous rules were part of a program to provide examples of what capital investments do qualify for energy conservation credits. The proposed rule changes are part of a new program to provide examples of what capital investments do not qualify for energy conservation credits. He stated that the proposed rule changes probably get their impetus from HB 748, which died in committee in the Senate. The fact that there was a bill that passed the House is more indication that it is a new program. Of course, it is important to note that the Senate did not pass the bill.

Further he stated that the sponsors of 15-1-116, MCA, should have been notified because the rules impact that statute.

RESPONSE NO. 10: The department thanks Mr. Wangerin for pointing out that 15-32-106, MCA, should be included as an implementing cite to these rules. The department has amended the rules as shown below to include that statute. With regard to notification to the sponsor of the bill that amended 15-32-106, MCA, two areas must be addressed. First, the department had not intended to implement that statute with the rule proposal notice so the sponsor notification would not have applied. Second, 2-4-302(8), MCA, requires a former legislator who wishes to receive notice of rulemaking action to notify the Secretary of State with their name, address, e-mail address, and telephone number. The sponsor of 15-32-106, MCA, was Senator Duane Grimes and he has not requested future notification through the Secretary of State.

The department conducts a biennial review of all of its rules and the amendments proposed in these rules are the result of that review and policy discussions. The department disagrees with the statement that this is a new program because of a bill that did not pass. The department testified before the 2007 Legislature that the department would be conducting a biennial review of these rules irrespective of the proposed legislation. The department understood the concerns raised by the Legislature and would take those concerns into account when reviewing these rules.

Section 15-1-116, MCA, is a property tax statute that, although it addresses manufactured homes, has no bearing on these rules. Therefore, no sponsor notification was necessary.

COMMENT NO. 11: Mr. Wangerin stated the rules were unlawfully implemented prior to adoption, by using lists of items ineligible for credit that were not yet adopted as administrative rules. The department was using the lists proposed in the rules with the 2007 tax instructions for ENRG-C of investments that will not qualify such as: carpet, roof repair, paint, foundation repair, siding with little insulation, portable air conditioners, space heaters, and household appliances such as Energy Star stoves, washers, and dryers prior to the rules being adopted.

RESPONSE NO. 11: In consulting with DEQ, the department continually updates the energy conservation credit to incorporate changes found in technology. When these updates occur, we advise taxpayers, tax practitioners, and department staff of new qualifying or nonqualifying items. The department believes the rules are a result of those changes and fully within the scope of the law.

COMMENT NO. 12: Representative Jon Sonju suggested the department look at sheet rock to see if it has an R-value for energy conservation.

RESPONSE NO. 12: The department contacted several construction personnel and they were not aware of any sheet rock in today's market with energy conservation savings above the standard values. As shown in the new rule below, the department will consider any new product that may be brought to its attention.



COMMENT NO. 13: On December 21, 2007, Mr. Wangerin sent requests to numerous legislators requesting their opposition to the rules. Nine legislators submitted the following comments:

Representative Jon Sonju - On December 21, 2007, Representative Sonju stated in an e-mail request that the proposed changes are unclear and confusing and the department should review the rules.

Representative Gary MacLaren - On December 21, 2007, Representative MacLaren stated in an e-mail request that he formally objected to MAR Notice No. 42-2-790. The determination not to notify the legislative sponsor is absolutely unacceptable.

Senator Dave Lewis - On December 21, 2007, Senator Lewis stated in an e-mail request that he objected to MAR Notice No. 42-2-790.

Representative William Jones - On December 21, 2007, Representative Jones asked Mr. Wangerin in an e-mail message to "forward his objection to MAR Notice No. 42-2-790 to the appropriate place."

Representative Ray Hawk - On December 21, 2007, Representative Hawk stated in an e-mail comment that he objected to MAR Notice No. 42-2-790 on the basis that it appears that the primary sponsor of the bill has not been notified.

Representative Bob Lake - On December 21, 2007, Representative Lake stated in an e-mail comment that he was formally objecting to MAR Notice No. 42-2-790. He further stated, "The bill sponsor must be notified of any rule considered that interprets the legislative intent of the passed legislation."

Representative Chas Vincent - On December 21, 2007, Representative Vincent stated in an e-mail comment the he would like to object to MAR Notice No. 42-2-790. He further stated, "It was the intent of Representative Sonju to clarify, not confuse, what is and isn't to be considered a conservation credit."

Representative Tom McGillvray - On December 21, 2007, Representative McGillvray stated in an e-mail comment, "There appears to be some concern about MAR Notice 42-2-790. Therefore, I wish to object to the proposed rule changes and suggest a poll be taken of the legislature to confirm that the rule is consistent with legislative intent."

Representative George Everett - On December 22, 2007, Representative Everett stated in an e-mail comment, "I received correspondence from James C. Wangerin, CPA, on 12/21/07 regarding the above-subject notice. I also spoke to Representative Jon Sonju about his bill H.B. 748. I feel there is enough ambiguity between the existing code/rules and the newly created administrative rules. Too many citizens have been concerned over their financial obligations created by the DOR's indiscriminate treatment of the energy credit deduction. I want to submit my protest against the administrative rule change as noticed above."

RESPONSE NO. 13: The department thanks the legislators for their time and comments regarding these rules. The department believes that it has properly complied with the sponsor notification and the rules have been thoroughly reviewed, along with the comments provided by interested parties. Also, see Response No. 10 above regarding the notification to the sponsor of 15-32-106, MCA.

In particular, the department has responded to comments on a lack of clarity

in the original proposals made by Representative Sonju, Representative Chas Vincent and Representative George Everett, by changing, in these final rules to the approach of: 1) definite list of qualified investments; 2) examples of items that do not qualify; and 3) an annual update process for both. (See the discussion above under Response No. 2.) This change of approach adds a much higher level of clarity and certainty for taxpayers.

COMMENT NO. 14: Ms. Whittinghill questioned the intent to disallow a credit if the action to achieve the energy savings required "human action" as stated in ARM 42.4.204(d).

Mr. Wangerin also commented that he was opposed to the department including items in the list that would require human actions. He stated that it is confusing to allow energy conserving expenditures requiring human action in a list of allowed items but exclude them in a list of items not allowed. Nonprogrammable thermostats can be used to create zone heating or cooling and save energy. Honeycomb cellular window shades have an R-value of .9 and double paned windows an R-value of 1.9. The energy savings on the shades pays for them in less than two years. Decks and outdoor grills can be used as an alternative to air conditioning requiring energy. Cooking indoors adds heat to the interior of the home. Using the deck until the evening breeze cools down the home naturally can eliminate the need for air conditioning. Air conditioning actually increases the heat transferred into the house since it increases the differential in temperature. Use of deck as an outdoor kitchen and dining area can allow for zone cooling instead of cooling the entire house. Decks may have a retractable awning which shades the home and thereby reduces cooling requirements. Air conditioning averages 7% of the energy costs in Montana.

RESPONSE NO. 14: There are too many variables with regard to human actions that might occur when it comes to conserving energy. Even if there were the same set of circumstances with similar buildings and capital investments, the actions of the residents may vary so much that energy savings could be obtained in one building and not in the other. Items requiring regular human action to achieve energy savings do not reliably guarantee that an energy conservation purpose will actually be realized.

COMMENT NO. 15: Ms. Whittinghill further stated that it was her understanding that the geothermal credit addressed in ARM 42.4.118 is up to \$1500 and she believes that applies to the residence, so the rule that should have been amended was ARM 42.4.202, which actually talks about the credit and Form 2 and the ENRG-C form. She stated that this seems to be confusing and there should be some technical way to make this easier for the taxpayers and CPAs to understand that a person can qualify for both the property tax exemption and the credit.

RESPONSE NO. 15: The department would like to thank Ms. Whittinghill for her comments and can appreciate that there could be potential for confusion regarding the difference in the rules. For clarification purposes, ARM 42.4.118 currently addresses ENRG-B credits. It appears Ms. Whittinghill has confused the

ENRG-C and ENRG-B credits in two subchapters. The rules in Title 42, chapter 4, subchapter 2, only address ENRG-C credits. ENRG-B credits are specifically addressed in subchapter 1 and that was why ARM 42.4.118 was amended.

COMMENT NO. 16: John Fitzpatrick, NorthWestern Energy, suggested minor amendments to ARM 42.4.204.

RESPONSE NO. 16: The department thanks Mr. Fitzpatrick for his suggested amendments and has amended the rule as shown below.

3. As a result of the comments received and further review of the rules, the department has determined that ARM 42.4.202 and 42.4.207 should be amended as shown below and further amends ARM 42.4.201, 42.4.203, 42.4.204, and 42.4.205 with the following changes, stricken matter interlined, new matter underlined:

42.4.201 DEFINITIONS The following definitions apply to this subchapter:

(1) through (14) remain as proposed.

~~(15) "Prescriptive path" refers to the structural components of a building or residence that enclose the habitable space and includes:~~

~~(a) windows;~~

~~(b) exterior doors;~~

~~(c) ceilings;~~

~~(d) exterior walls;~~

~~(e) floors over unconditioned spaces;~~

~~(f) the walls of a crawlspace below a conditioned space;~~

~~(g) the walls of a finished basement;~~

~~(h) foundations.~~

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

42.4.202 INDIVIDUAL INCOME TAX CREDIT FOR ENERGY CONSERVING EXPENDITURES (1) A credit against individual income tax for energy-conserving expenditures provided in 15-32-109, MCA, is claimed by filing an Individual Income Tax Return Form-2 with Form ENRG-C. The credit is not allowed unless the return and form ENRG-C, providing the information prescribed in the form, are filed with the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

AUTH: 15-1-201, MCA

IMP: 15-32-106, 15-32-109, MCA

42.4.203 CREDIT FOR ENERGY CONSERVATION INVESTMENT

(1) through (5) remain as proposed.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.204 DETERMINATION OF CAPITAL INVESTMENTS FOR QUALIFYING ENERGY CONSERVATION CREDIT (1) The following capital investments are among those that ~~can result in~~ exclusively qualify for the conservation of energy credit for tax year 2008:

(a) through (k) remain as proposed.

(l) replacement of incandescent light fixtures with light fixtures of a more efficient type such as those with electronic ballast and compact or linear fluorescent lamps and LED lights;

(m) and (n) remain as proposed.

(o) installation of a new domestic hot-water heaters, heating, or cooling systems, so long as the replacement or installation of the new system reduces the waste or dissipation of energy, or reduces the amount of energy required.

~~(2) Investments in an existing building or new construction for which no capital investment for energy conservation purposes is substantiated do not qualify for the energy conservation credit.~~

~~(a) In addition, standard components of conventional buildings will typically not qualify for the energy conservation credit. Examples of such standard components that do not qualify for the credit include but are not limited to:~~

~~(i) carpeting, padding, or other flooring of any type;~~

~~(ii) paint;~~

~~(iii) roof vents;~~

~~(iv) awnings that are not a component of a qualified "passive solar system";~~

~~(v) garage doors, whether insulated or not, that are installed in an existing or new building that does not consume any energy; or~~

~~(vi) any item with an R-value of less than 1.~~

~~(b) Expenditures for maintenance and repairs to a building do not qualify for the credit. Examples of such expenditures include, but are not limited to patching holes, replacing a foundation, replacing or reshingling a roof, or replacing existing asbestos insulation around heating pipes with other insulation.~~

~~(c) Space heaters, portable air conditioners, and appliances such as ovens, stoves, refrigerators, dishwashers, clothes washers, and dryers that are not attached fixtures are not capital expenditures, and therefore do not qualify for the credit.~~

~~(d) In determining the validity of energy conservation credit claims, the department will consider whether the claimed expenditure will reduce energy consumption because the item of investment produces the energy savings without any human action required. If human action, whether on a regular or irregular basis, is required to achieve energy savings, the department will not allow the investment for purposes of the credit. Accordingly, new nonprogrammable thermostats, moveable shades, decks, outdoor grills installed as fixtures to the real estate, and like investments which may or may not achieve any energy savings depending on whether the owner or occupant chooses to use the investment to save energy will ordinarily be disallowed.~~

~~(3)~~(2) If the new system described in (1)(o) differs in style or type from the previous system, such as, if one or more window air-conditioning units is replaced with a central air system, the new system must exceed the requirement in ARM 42.4.206(1)(c). If the replacement system exceeds the established standards, only the additional cost shall be considered when computing the credit.

~~(4) The lists outlined in (1) and (2) are not to be considered exhaustive. The department will consider other investments in the prescriptive path of a building or residence that reduce the waste or dissipation of energy, or reduce the amount of energy required for the heating, cooling, or lighting of buildings by at least 5% when compared to the prior year. The department may review energy bills, energy audits, or other documentation to verify the energy savings of 5%. The usage of the structure must be comparable in both years. The department may consider the cost of the investment against the expected savings in determining whether the investment qualifies including whether a reasonable person would make the investment for energy savings when the expected savings could be achieved through a less expensive option.~~

~~(5) The department may request assistance from the department of environmental quality to determine if an investment made by a taxpayer qualifies as an energy conservation investment for the purpose of the energy conservation credit.~~

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

#### 42.4.205 CALCULATION OF THE ENERGY CONSERVATION CREDIT

(1) through (6) remain as proposed.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

#### 42.4.207 RECORD RETENTION REQUIREMENTS (1) remains the same.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-106, 15-32-109, MCA

4. In addition to the amendments shown above, the department has determined a new rule is necessary to explain how the qualifying criteria will be established annually. The text of this new rule is as follows:

#### NEW RULE I (42.4.208) ANNUAL UPDATE OF CAPITAL INVESTMENTS QUALIFYING FOR THE ENERGY CONSERVATION CREDIT (1) Each

September, the department will review ARM 42.4.204 to consider other capital investments that qualify for the energy conservation credit for the following tax year.

(2) The department will consider any information received that may indicate that capital investments should be added or deleted from the capital investments in ARM 42.4.204. The department will consult with the Department of Environmental Quality to determine whether capital investments should be added or deleted.

(3) The following standards for items that do not qualify for the credit will be applied in the annual review of capital investments. The examples under each standard are provided to aid the public in understanding the type of items that do not qualify for the credit.

(a) Components of conventional buildings will typically not qualify for the energy conservation credit. Examples of such components that do not qualify for the

credit include:

- (i) carpeting, carpet padding, or other flooring of any type;
- (ii) paint;
- (iii) roof vents;
- (iv) awnings that are not a component of a qualified "passive solar system";
- (v) garage doors, whether insulated or not, that are installed in an existing or new building that does not consume any energy; or

(vi) any item with an R-value of less than 1.

(b) Expenditures for maintenance and repairs to a building do not qualify for the credit. Examples of such expenditures include:

- (i) patching holes;
- (ii) replacing a foundation;
- (iii) replacing siding;
- (iv) replacing or reshingling a roof; or
- (v) replacing existing asbestos insulation around heating pipes with other insulation.

(c) Items that are not improvements to real property do not qualify for the credit. Examples of such items include:

- (i) space heaters;
- (ii) portable air conditioners;
- (iii) appliances such as ovens, stoves, refrigerators, dishwashers, clothes washers, and dryers that are not attached fixtures are not capital expenditures, and therefore do not qualify for the credit.

(d) Any item that requires periodic human action, whether on a regular or irregular basis, to achieve energy savings, does not qualify for the credit. Examples of such items include:

- (i) nonprogrammable thermostats;
- (ii) moveable shades;
- (iii) decks; and
- (iv) outdoor grills installed as fixtures to the real estate.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

5. Therefore, the department amends ARM 42.4.201, 42.4.202, 42.4.203, 42.4.204, 42.4.205, and 42.4.207 with the amendments listed above, adopts New Rule I (ARM 42.4. 208), and amends ARM 42.4.118 as proposed.

6. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned

persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State February 19, 2008

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.



**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2007. This table includes those rules adopted during the period January 1, 2008, through March 31, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2007, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2007 and 2008 Montana Administrative Register.

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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 January 2008 appear. Vacancies scheduled to appear from March 1, 2008, through May 31, 2008, 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 February 1, 2008.

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 JANUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Agriculture Development Council</b> (Agriculture)			
Mr. Verges Ageson Guildford Qualifications (if required): agriculture producer	Governor	Franklin	1/16/2008 7/1/2010
Mr. Ervin Schlemmer Joliet Qualifications (if required): agriculture producer	Governor	reappointed	1/16/2008 7/1/2010
<b>Board of Chiropractors</b> (Labor and Industry)			
Dr. Scott Hansing Helena Qualifications (if required): a practicing chiropractor	Governor	Prideaux	1/23/2008 1/1/2011
<b>Board of Personnel Appeals</b> (Labor and Industry)			
Mr. Jack Holstrom Helena Qualifications (if required): attorney with labor-management experience	Governor	not listed	1/16/2008 1/1/2012
<b>Board of Physical Therapy Examiners</b> (Labor and Industry)			
Dr. Ron Peterson Cascade Qualifications (if required): doctor of medicine	Governor	Melvin	1/23/2008 7/1/2009
<b>Board of Private Security</b> (Labor and Industry)			
Mr. Mark Chaput Billings Qualifications (if required): electronic security company	Governor	not listed	1/18/2008 8/1/2010

## BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Building Codes Council</b> (Labor and Industry)			
Commissioner Carol Brooker Plains	Governor	McCourt	1/29/2008 10/1/2008
Qualifications (if required): public member			
Mr. Steven Meisner Missoula	Governor	Poulsen	1/29/2008 10/1/2008
Qualifications (if required): building inspector			
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services)			
Mr. Jamee Greer Missoula	Governor	Kukes	1/23/2008 8/29/2009
Qualifications (if required): public representative			
<b>Historical Preservation Review Board</b> (Historical Society)			
Ms. Donna Coate Forsyth	Governor	Rea	1/16/2008 10/1/2011
Qualifications (if required): public representative			
Mr. Robert Valach Lewistown	Governor	reappointed	1/16/2008 10/1/2011
Qualifications (if required): public representative			
Ms. Miki Wilde East Helena	Governor	Doeden	1/16/2008 10/1/2011
Qualifications (if required): public representative			

## BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Alfalfa Seed Committee</b> (Agriculture)			
Mr. Tom Matchett Billings	Governor	reappointed	1/16/2008 12/21/2010
Qualifications (if required): alfalfa seed grower			
Mr. Tom Neibur Malta	Governor	reappointed	1/16/2008 12/21/2010
Qualifications (if required): alfalfa seed grower with alfalfa leaf-cutting bees			
<b>Montana Noxious Weed Management Advisory Council</b> (Agriculture)			
Ms. Pachy Burns Big Timber	Director	reappointed	1/18/2008 6/30/2009
Qualifications (if required): representative of a consumer group			
Ms. Margie Edsall Sheridan	Director	Eddie	1/18/2008 6/30/2009
Qualifications (if required): representative of western counties			
Mr. Jim Gordon Huntley	Director	Philipps	1/18/2008 6/30/2009
Qualifications (if required): representative of herbicide dealers and applicators			
Mr. Gary Olsen Harlowton	Director	reappointed	1/18/2008 6/30/2009
Qualifications (if required): representative of eastern counties			



**BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Noxious Weed Management Advisory Council (Agriculture) cont.</b>			
Mr. Jim Story Corvallis	Director	Marks	1/18/2008 6/30/2009
Qualifications (if required): representative of biological research and control			
Mr. Terry Turner Havre	Director	reappointed	1/18/2008 6/30/2009
Qualifications (if required): representative of the Montana Weed Control Association			
Mr. Todd Wagner Glasgow	Director	Dahlberg	1/18/2008 6/30/2009
Qualifications (if required): representative of agriculture crop production			
<b>Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)</b>			
Ms. Stacey Barta Big Timber	Director	Helland	1/18/2008 9/17/2010
Qualifications (if required): from an Eastern weed district			
<b>State Emergency Response Commission (Military Affairs)</b>			
Commissioner Joe Brenneman Kalispell	Governor	Tinsley	1/23/2008 10/1/2011
Qualifications (if required): representative of the association of counties			
Sheriff Clifford Brophy Columbus	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of a law enforcement association			

**BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Ms. Sally Buckles Boulder	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of an emergency medical services association			
Captain Tom Butler Belgrade	Governor	Tooley	1/23/2008 10/1/2011
Qualifications (if required): representative of the Department of Justice			
Mr. Jim DeTienne Helena	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS			
Mr. Tom Ellerhoff Helena	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Department of Environmental Quality			
Major Don Emerson Fort Harison	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Montana National Guard			
Ms. Jolene Jacobson Polson	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of a tribal emergency response commission			
Mr. Ron Jendro Helena	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Department of Fish, Wildlife and Parks			

## BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Jim Johnson Missoula Qualifications (if required): representative of a railroad company	Governor	reappointed	1/23/2008 10/1/2011
Mr. Tom Kuntz Red Lodge Qualifications (if required): representative of a fire service association	Governor	Larson	1/23/2008 10/1/2011
Mr. Joe Lamson Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	Mead	1/23/2008 10/1/2011
Mr. Jim Lewis Missoula Qualifications (if required): representative of a trucking association	Governor	Stang	1/23/2008 10/1/2011
Mr. Joe Marcotte Billings Qualifications (if required): representative of Montana hospitals	Governor	reappointed	1/23/2008 10/1/2011
Mr. Dave Mason Helena Qualifications (if required): representative of the fire services training school	Governor	Weedon	1/23/2008 10/1/2011
Mr. J. Charles Mazurek Clancy Qualifications (if required): representative of the insurance industry	Governor	not listed	1/23/2008 10/1/2011

## BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Dan McGowan Helena	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Disaster and Emergency Services			
Ms. Cindy McIlveen Butte	Governor	Burton	1/23/2008 10/1/2011
Qualifications (if required): representative of the League of Cities and Towns			
Mr. Michael Mercer Great Falls	Governor	Brueske	1/23/2008 10/1/2011
Qualifications (if required): representative of the National Weather Service			
Ms. Stephanie Nelson Bozeman	Governor	Moore	1/23/2008 10/1/2011
Qualifications (if required): representative of a public health organization			
Mr. Kerry O'Connell Big Timber	Governor	Williams	1/23/2008 10/1/2011
Qualifications (if required): representative of an emergency management association			
Mr. Bill Rhoads Butte	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of a utility company			
Ms. Cheryl Richman Helena	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Department of Transportation			

**BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Royce A. Shipley Great Falls	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the U.S. Air Force			
Ms. Mary Simmons Helena	Governor	Johnson	1/23/2008 10/1/2011
Qualifications (if required): representative of the Department of Public Health and Human Services			
Mr. Michael Vogel Bozeman	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the university system			
Mr. Scott Willis Billings	Governor	not listed	1/23/2008 10/1/2011
Qualifications (if required): representative of the petroleum industry			
Ms. Sheena Wilson Helena	Governor	reappointed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Governor's Office			
Mr. Ron Zellar Helena	Governor	not listed	1/23/2008 10/1/2011
Qualifications (if required): representative of the Department of Agriculture			

## BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Employee Charitable Giving Campaign Advisory Council (Administration)</b>			
Ms. JereAnn Nelson Helena	Director	Kirby	1/4/2008 1/4/2010
Qualifications (if required): Department of Administration representative			
Mr. Dave Paton Helena	Director	Bush	1/4/2008 1/4/2010
Qualifications (if required): Department of Administration representative			
<b>Statewide Independent Living Council (Public Health and Human Services)</b>			
Ms. Kathy Bean Helena	Governor	Smith	1/18/2008 12/1/2010
Qualifications (if required): agency representative			
Mr. Chris Cragwick Missoula	Governor	Moorehead	1/18/2008 12/1/2010
Qualifications (if required): public representative/disabilities community/youth member			
Ms. Nickie Fee Great Falls	Governor	reappointed	1/18/2008 12/1/2010
Qualifications (if required): public representative			
Mr. Bob Maffit Helena	Governor	Swanson	1/18/2008 12/1/2010
Qualifications (if required): Independent Living Center representative			

**BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Independent Living Council</b> (Public Health and Human Services) cont.			
Ms. Evelyn Oats Box Elder	Governor	reappointed	1/18/2008 12/1/2010
Qualifications (if required): Section 121 representative			
<b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services)			
Ms. Ruby Clark Poplar	Governor	reappointed	1/23/2008 1/1/2011
Qualifications (if required): family of survivor			
Ms. Tana Ostrowski Missoula	Governor	reappointed	1/23/2008 1/1/2011
Qualifications (if required): advocate for brain injured			
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice)			
Mr. Paul Babb Butte	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Mr. Larry Curran Butte	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Mr. Dennis Daneke Missoula	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			

**BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.</b>			
Mr. James Dinsmore	Governor	reappointed	1/1/2008
Hall			12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Barbara Evans	Governor	reappointed	1/1/2008
Missoula			12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Rebecca Guay	Governor	reappointed	1/1/2008
Anaconda			12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Kathy Hadley	Governor	reappointed	1/1/2008
Deer Lodge			12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Director Jeff Hagener	Governor	reappointed	1/1/2008
Helena			12/31/2008
Qualifications (if required): Director of the Department of Fish, Wildlife and Parks			
Mr. John Hollenback	Governor	reappointed	1/1/2008
Gold Creek			12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Sally Johnson	Governor	reappointed	1/1/2008
Missoula			12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			



**BOARD AND COUNCIL APPOINTEES FROM JANUARY 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.</b>			
Mr. Milo Manning Anaconda	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Director Richard Opper Helena	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): Director of the Department of Environmental Quality			
Director Mary Sexton Helena	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): Director of the Department of Natural Resources and Conservation			
Ms. Robbie Taylor Butte	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Mr. James Yeoman Anaconda	Governor	reappointed	1/1/2008 12/31/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2008 through MAY 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Athletics</b> (Labor and Industry)                      Ms. Jana Smith-Streitz, Butte                      Qualifications (if required): public representative</p>	Governor	4/25/2008
<p>Mr. John Paul Noyes, Kalispell                      Qualifications (if required): public representative</p>	Governor	4/25/2008
<p><b>Board of Dentistry</b> (Labor and Industry)                      Dr. George Olsen, Missoula                      Qualifications (if required): dentist</p>	Governor	3/29/2008
<p><b>Board of Nursing Home Administrators</b> (Labor and Industry)                      Ms. Lori Henderson, Havre                      Qualifications (if required): nursing home administrator</p>	Governor	5/28/2008
<p><b>MSU Billings Executive Board</b> (University System)                      Ms. Tauzha Rukstad, Shepherd                      Qualifications (if required): public representative</p>	Governor	4/15/2008
<p><b>MSU Great Falls College of Technology Executive Board</b> (University System)                      Mr. Dave Warner, Great Falls                      Qualifications (if required): public representative</p>	Governor	4/15/2008
<p><b>MSU Northern Local Executive Board</b> (University System)                      Ms. Pamela A. Hillery, Havre                      Qualifications (if required): public representative</p>	Governor	4/15/2008

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2008 through MAY 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Heritage Preservation and Development Commission</b> (Commerce) Ms. Vicki Hucke, Helena Qualifications (if required): Tourism Advisory Council representative	Governor	5/23/2008
Ms. Leslie Schmidt, Bozeman Qualifications (if required): having experience in historic preservation	Governor	5/23/2008
Ms. Maureen Wicks, Ledger Qualifications (if required): Montana historian	Governor	5/23/2008
<b>Montana State University Executive Board</b> (University System) Mr. Bill Bryan, Bozeman Qualifications (if required): public representative	Governor	4/15/2008
<b>Montana-Canadian Provinces Relations Advisory Council</b> (Commerce) Rep. Hal Jacobson, Helena Qualifications (if required): Legislative representative	Governor	4/6/2008
Lt. Governor John Bohlinger, Helena Qualifications (if required): Lieutenant Governor	Governor	4/6/2008
Sen. Sam Kitzenberg, Glasgow Qualifications (if required): Legislative representative	Governor	4/6/2008
Sen. Trudi Schmidt, Great Falls Qualifications (if required): Legislative representative	Governor	4/6/2008

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2008 through MAY 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana-Canadian Provinces Relations Advisory Council</b> (Commerce) cont.		
Rep. John L. Musgrove, Havre Qualifications (if required): Legislative representative	Governor	4/6/2008
Rep. Wayne Stahl, Saco Qualifications (if required): Legislative representative	Governor	4/6/2008
<b>Private Alternative Adolescent Residential or Outdoor Programs Board</b> (Labor and Industry)		
Rep. Paul Clark, Trout Creek Qualifications (if required): representative of outdoor adolescent treatment programs (small size)	Governor	4/19/2008
Commissioner Carol Brooker, Plains Qualifications (if required): public member	Governor	4/19/2008
Ms. Michele Manning, Thompson Falls Qualifications (if required): representative of residential adolescent treatment programs (large size)	Governor	4/19/2008
Ms. Mary Alexine, Eureka Qualifications (if required): representative of residential adolescent treatment programs (medium size)	Governor	4/19/2008
Mr. Daniel Bidegaray, Bozeman Qualifications (if required): public member	Governor	4/19/2008
<b>Public Employees' Retirement Board</b> (Administration)		
Mr. Troy W. McGee Jr., Helena Qualifications (if required): retired public employee	Governor	4/1/2008

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2008 through MAY 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Public Employees' Retirement Board</b> (Administration) cont.  Colonel Robert Griffith, Helena  Qualifications (if required): public member</p>	Governor	4/1/2008
<p><b>UM Helena College of Technology Executive Board</b> (University System)  Mr. Ray Peck, Helena  Qualifications (if required): public representative</p>	Governor	4/15/2008
<p><b>UM Montana Tech Executive Board</b> (University System)  Mr. Doug Peoples, Butte  Qualifications (if required): public representative</p>	Governor	4/15/2008
<p><b>UM Western Executive Board</b> (University System)  Ms. Mary Ann Sharon, Dillon  Qualifications (if required): public representative</p>	Governor	4/15/2008
<p><b>University of Montana Local Executive Board</b> (University System)  Mr. Bill Woody, Missoula  Qualifications (if required): public representative</p>	Governor	4/15/2008