

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of ARM 4.3.101, )	AMENDMENT
4.3.102, 4.3.201, 4.3.202, )	
4.3.203, 4.3.204, 4.3.501, )	NO PUBLIC HEARING
4.3.602, 4.3.603, and 4.3.604 )	CONTEMPLATED
relating to rural development )	
loans )	

TO: All Concerned Persons

1. On June 5, 2004, the Montana Department of Agriculture proposes to amend the above-stated rules relating to rural development loans.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on May 20, 2004 to advise us of the nature of the accommodation that you need. Please contact Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.3.101 ASSETS (1) Rural development loans through the Montana department of agriculture will be made from the assets of the former Montana rural rehabilitation corporation. ~~Whereas it is agreed that the~~ The word "assets" ~~as used herein~~ includes the basic assets and the income, proceeds and acquisitions ~~there from~~ therefrom.

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

REASON: Removes unnecessary words.

4.3.102 USAGE (1) The assets may be used for the purpose of aiding in the development of sub-standard income rural families and individuals who live in the state of Montana. Applicants must be unable to provide the needed funds themselves, and unable to acquire them from other sources at reasonable rates and terms. ~~Proposals may be accomplished directly or indirectly from assistance provided from the rural development unit's assets.~~

(2) A loan committee shall be maintained within the department of agriculture, to evaluate and act upon proposals received.

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

REASON: Redundant.

4.3.201 OBJECTIVES (1) The primary objectives of the junior agriculture loan programs (livestock, agri-business) ~~is~~ are to:

(a) further encourage Montana's rural youth to enter into ~~worth-while~~ agricultural projects;

(b) preserve interest in Montana's agricultural future; and

(c) provide financing experience and training through personal involvement and accomplishments, ~~improve quality and quantity of Montana agricultural products to reflect greater profits to efficient producers, and allow implementation of additional facilities for production, marketing, processing, and distribution of all agricultural products.~~

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

REASON: To clarify the objectives of the loan program.

4.3.202 QUALIFICATIONS (1) A complete Application must be made to the Montana department of agriculture. ~~All pertinent forms relating to a project must accompany the application before committee action will be considered.~~

(2) remains the same.

(3) Active membership in the FFA ~~future farmers of America, 4-H, future homemakers of America~~ or other recognized rural youth organization is ~~required~~ desired. ~~F.F.A. or F.H.A. members must be in good standing and may not have exceeded three years beyond high school graduation. Active 4-H members are eligible between the ages of nine and 21. Prospective club members must reach their birthday during the 4-H club year. Parents or guardians must be willing to cooperate with the borrower and have ample facilities available for implementation of the project.~~

~~(4) Montana department of agriculture may make direct loans, if the prospective borrower is unable to obtain a loan as described above from within the community in which they are living.~~

~~(5)~~(4) A three-member loan committee must be established in the local community from which an application is received. This committee should be composed of any three of the following: agriculture education instructors, county extension agents, home demonstration agents, agricultural loan officers, and others. ~~Others may include agriculture representatives from their local lender or other individuals as approved by~~

~~the department. This committee is established to pass upon the eligibility of applicants for loans and to make recommendations concerning the making and servicing of the loan proposal.~~

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

REASON: To remove nonessential wording and to update all agencies to current names.

4.3.203 CLOSING REQUIREMENTS (1) A joint bank account ~~must~~ may be established at the time the loan funds are disbursed. ~~The applicants cash investment must be deposited in conjunction with the department of agriculture's loan check.~~ The project supervisor, or another member of the local loan committee, shall be designated to counter-sign checks drawn on this account by the borrower.

(2) All livestock presently owned and those purchased by the borrower must be listed on the security agreement provided by the department. ~~The department of agriculture must have one completed and signed copy of the security agreement in its loan file.~~

(3) ~~One signed copy of the department's promissory note must be returned to the department and included in the loan file.~~ All loan security instruments shall be filed appropriately and the borrower must pay all necessary fees.

~~(4) The borrower is required to file the financial statement, as provided by the department, with the county clerk and recorder's office. Any fee required for filing must be paid by the borrower.~~

~~(5) When the department of agriculture is taking a lien on the borrower's registered brand, the borrower must pay the required filing fee to the Montana department of livestock.~~

~~(a) remains the same, but is renumbered (c).~~

~~(b) remains the same, but is renumbered (a).~~

~~(c) All livestock must be retained by adequate fences, and not allowed to run at large.~~

~~(d) remains the same, but is renumbered (b).~~

~~(6) remains the same, but is renumbered (4).~~

~~(7) remains the same, but is renumbered (5).~~

~~(8) remains the same, but is renumbered (6).~~

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

REASON: Remove redundancies, be more specific in the needs of the loan program closing requirements.

4.3.204 LIMITATIONS (1) ~~Interest rates as established by the director of the Montana department of agriculture on July 1 of each year shall not exceed the reasonable market rate per annum. The established interest rate at the onset of a loan shall remain unaffected for the duration of that loan~~

~~contract~~ The director of the Montana department of agriculture shall establish interest rates for loans yearly. Loans will bear simple interest charged yearly on the unpaid balance. The interest rate on established loans may be reviewed and adjusted to correspond with the established rate at three-year intervals.

(2) No loan shall exceed \$3,500 for age nine to 11 and \$8,500 for age 12 to 21 for any one individual borrower or \$14,000 for any chapter or club. Loans may be renegotiated providing the borrower does not exceed the maximum loan limits at any time.

~~(a) Several members of a rural family may obtain loans, with each member being eligible for the individual maximum.~~

~~(b) Chapter or club loans will be allowed only if they do not exceed 30% of the available funds.~~

~~(c) Priority will be given to individual applicants over club or chapter applications.~~

(3) through (4) remain the same.

(5) The department of agriculture may immediately terminate a loan agreement if the applicant ceases to be a member of a farm youth organization, or is unable to fulfill the terms of the loan agreement. In the event that any mortgaged property is sold during the program loan period without prior approval by the department, the balance of the loan may be immediately due and payable.

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

REASON: Clarification of limitations and to put similar wording in all loan program rules.

4.3.501 OBJECTIVE (1) Participation loans are made to sub-standard income rural individuals to assist them in securing funds for operating expenses and real estate purchases. ~~The rural development unit~~ agricultural finance program may participate in farm and ranch real estate and operating loans with the ~~farmers home administration~~ USDA farm service agency. Interest rates shall be established annually ~~each July~~ by the director of agriculture, but in no case shall it exceed the reasonable market rate.

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

REASON: Reflect agencies' current titles.

4.3.602 QUALIFICATIONS (1) Application must be made to the Montana department of agriculture. All application documents must be completed and presented to the department before the department loan committee will consider the request. ~~Examples of required documents are financial statements, credit references, and loan applications.~~

(2) and (3) remain the same.

(4) An applicant's net worth including that of spouse and minor children cannot exceed ~~\$100,000~~ \$250,000 at the time of application as determined using generally accepted accounting principles (GAAP) ~~standard accounting procedures.~~ ~~The total value of an applicant's assets including those of spouse and minor children cannot exceed \$350,000 including all real and personal property:~~

(a) through (7) remain the same.

(8) A two-member local committee must be established by the applicant to review the loan request. The committee shall be composed of an officer from a bank in the borrower's home community or bank where the borrower normally conducts business, and an agricultural specialist. Examples of agricultural specialists are county extension agents, vocational agriculture education teachers, and farm service agency district supervisors. This committee will review the loan application eligibility of applicant(s) and make recommendations concerning ~~making and servicing~~ the proposed loan. ~~A bank official will assist the borrower and department in closing approved loans.~~

(9) remains the same.

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

REASON: Remove unnecessary wording; and, in (4), to change limit from total assets to net worth, thus making the program available to more producers who are unable to obtain funds at acceptable rates from commercial lenders. Section (8) is changed because the agricultural finance officer may close these loans.

4.3.603 CLOSING REQUIREMENTS (1) A joint bank account with the borrower and the department may be established at the time the loan funds are disbursed ~~and the loan funds and the applicant's cash investment there deposited.~~ A member of the local loan committee or other representative of the Montana department of agriculture may be designated to countersign checks drawn on this account by the borrower.

(2) remains the same.

(3) The department may, ~~if it deems necessary,~~ require an appraisal from a qualified appraiser on property to be financed or used to secure a loan or to determine the value of the applicant's assets.

(4) The department may loan up to 80% of the value of secured property. The department may require collateral in addition to property being financed with loan funds. ~~All collateral required by the department will be listed on the security agreement and the financing statement or mortgage.~~

(5) through (9) remain the same.

(10) A representative of the Montana department of agriculture may at a reasonable time visit personally with applicant(s) for the purpose of ~~inspecting facilities, machinery, collateral, assets, etc. and otherwise~~



~~investigating verifying~~ the applicant's collateral, qualifications and abilities to conduct the proposed agricultural enterprise.

(11) and (12) remain the same.

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

REASON: Removes redundant wording.

4.3.604 LIMITATIONS (1) remains the same.

(2) Loans may be ~~refinanced~~ renegotiated up to the maximum of \$50,000.

(3) Interest rates for loans shall be established yearly ~~on July 1~~ by the director of the Montana department of agriculture. Loans will bear simple interest charged yearly on the unpaid balance. ~~The interest rate on established loans may be reviewed and adjusted to correspond with the established rate of three year intervals.~~

(4) and (5) remain the same.

(a) depreciable ~~P~~roperty and equipment suitable for use in agriculture or agri-business. ~~Examples are livestock used for breeding purposes, farm machinery, and trucks;~~

(b) depreciable ~~A~~gricultural improvements suitable for farming which are located on agricultural land. ~~Examples are confinement systems for livestock or poultry, barns and other buildings, grain storage facilities, and irrigation systems;~~

(c) ~~A~~nnual operating expenses ~~involved in farming activities;~~

(d) and (e) remain the same.

(6) and (7) remain the same.

(a) ~~H~~loans for depreciable agricultural property or equipment shall not exceed seven years;

(b) ~~H~~loans for depreciable agricultural improvements or agricultural land shall not exceed 10 years; and

(c) remains the same.

~~(8) No more than one half of rural development assets available for loans yearly shall be used for lending under this program.~~

AUTH: 80-2-106, MCA

IMP: 80-2-103, MCA

REASON: Allows the loan committee to be more responsive to borrowers' needs and removes redundant wording.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than June 3, 2004.

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 Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than June 3, 2004.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 persons based on 200 existing or potential borrowers.

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

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

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck  
Ralph Peck  
Director

/s/ Tim Meloy  
Tim Meloy, Attorney  
Rules Reviewer



Ralph Peck  
Director

Certified to the Secretary of State, April 26, 2004.

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 8.111.409 ) AMENDMENT  
pertaining to cash advances )  
made to borrowers or third ) NO PUBLIC HEARING  
parties ) CONTEMPLATED

TO: All Concerned Persons

1. On July 12, 2004, the Board of Housing proposes to amend ARM 8.111.409 concerning cash advances made to borrowers or third parties.

2. The Board of Housing 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 Housing no later than 5:00 p.m. on June 28, 2004, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, 301 South Park Ave., 2nd Floor, P.O. Box 200528, Helena, MT 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; e-mail dihall@state.mt.us.

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

8.111.409 CASH ADVANCES (1) As part of the loan amount, the board may advance at closing either to the borrower or to third parties as directed by the borrower, an amount not to exceed ~~\$2500~~ \$10,000 to allow the borrower to satisfy any liens on the property or make repairs to the property, and in addition, a maximum amount not to exceed the actual closing costs for items such as, but not limited to, appraisals, title policies, recording of documents and other closing costs. The board may also advance at closing either to the borrower or to third parties as directed by the borrower, an amount in excess of the above advance of ~~\$2500~~ \$10,000 as approved by the board on a case-by-case basis. Such amounts so advanced shall be added to the initial loan balance. To receive a cash advance, the borrower must submit a request in writing on forms supplied by the board.

AUTH: 90-6-136, MCA  
IMP: 90-6-134, MCA

REASON: Amendment of the above rule is necessary because the number of requests for cash advances that exceed \$2,500 has increased significantly. The Board therefore determined that staff does not need to approach the Board for approval of each request up to \$10,000. The Board increased the maximum loan

amount from \$70,000 to \$100,000 and was of the opinion that the initial lump sum should be raised as well. Staff will continue to keep the Board informed on a semi-yearly basis as to what lump sums are requested under \$10,000 and present the Board with any requests over the \$10,000.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Housing, 301 South Park Ave., 2nd Floor, P.O. Box 200528, Helena, MT 59620-0528, by facsimile to (406) 841-2841, or by e-mail to [mrude@state.mt.us](mailto:mrude@state.mt.us) to be received no later than 5:00 p.m., July 5, 2004.

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 the request along with any comments they have to the Board of Housing, 301 South Park Ave., 2nd Floor, P.O. Box 200528, Helena, MT 59620-0528, by facsimile to (406) 841-2841, or by e-mail to [mrude@state.mt.us](mailto:mrude@state.mt.us) to be received no later than 5:00 p.m., July 5, 2004.

6. If the Board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,000 based on the 20,000 persons who could benefit from this program.

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

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the

Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding single family housing programs, multifamily housing programs, affordable housing revolving loan account, or general procedural rules. The written request may be mailed or delivered to the Board of Housing, Montana Department of Commerce, P.O. Box 200528, Helena, MT 59620-0528, faxed to the Board at (406)841-2841, e-mailed to dihall@state.mt.us or submitted at any rules hearing held by the Board.

9. The Board of Housing will meet in Bozeman on July 12, 2004, at 8:30 a.m. to consider the comments made by the public, the proposed responses to those comments, and to take final action on the proposed amendment. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendment beyond the July 5, 2004, deadline.

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

DEPARTMENT OF COMMERCE  
BOARD OF HOUSING

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

By: /s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State April 26, 2004.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of ARM	)	AMENDMENT
10.16.3136 relating to special	)	
education	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 7, 2004, the Superintendent of Public Instruction proposes to amend ARM 10.16.3136 relating to special education.

2. The Superintendent of Public Instruction 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 Legal Division of the Office of Public Instruction no later than 5:00 p.m. on May 17, 2004 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, FAX: (406) 444-2893, e-mail opirules@state.mt.us.

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

10.16.3136 SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS (1) through (5) remain the same.

(6) Paraprofessional personnel (e.g., teacher aide or instructional assistant) shall meet current ~~office of public instruction~~ board of public education accreditation standards under ARM ~~10.55.707~~ 10.55.715.

AUTH: Sec. 20-7-402, MCA  
IMP: Sec. 20-7-403, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction proposes to amend this rule to correct the reference to the board of public education accreditation rule that applies to teacher aides and instructional assistants.

4. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to the Superintendent of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501 or by e-mail to opirules@state.mt.us to be received no later than 5:00 p.m. on June 3, 2004.

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 Superintendent of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501, or by e-mail to [opirules@state.mt.us](mailto:opirules@state.mt.us). A written request for hearing must be received no later than 5:00 p.m. on June 3, 2004.

6. If the Superintendent of Public Instruction receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana administrative Register. Ten percent of those persons directly affected has been determined to be 234 persons based on 2344 special education paraprofessionals in the State of Montana.

7. The Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rules promulgated by the Superintendent of Public Instruction. Such written request may be mailed or delivered to the Legal Division of the Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

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

/s/ Linda McCulloch  
Linda McCulloch  
Superintendent of Public Instruction

/s/ Catherine K. Warhank  
Catherine K. Warhank  
Rule Reviewer

Certified to the Secretary of State April 26, 2004.



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

In the matter of the repeal ) NOTICE OF PUBLIC HEARING ON  
or amendment of ARM ) PROPOSED REPEAL OR AMENDMENT  
12.9.204 pertaining to Lone )  
Pine Game Preserve )

TO: All Concerned Persons

1. On June 2, 2004, at 7:00 p.m. the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) will hold a public hearing at Lone Pine State Park Visitor's Center, at the end of Lone Pine Road, off of Foy's Lake Road, Kalispell, Montana, to consider the repeal or amendment of ARM 12.9.204, pertaining to Lone Pine Game Preserve near Kalispell.

2. The commission and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 14, 2004, to advise us of the nature of the accommodation that you need. Please contact John Fraley, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 751-4564; fax (406) 257-0349; email jffraley@state.mt.us.

3. The commission and department desire to receive comment on two different rule proposal options regarding Lone Pine Game Preserve. Option A provides for repeal of the rule, and option B provides for amendment of the rule.

OPTION A - RULE REPEAL

ARM 12.9.204, the rule proposed to be repealed, is on page 12-612 of the Administrative Rules of Montana.

AUTH: 87-1-301, MCA  
IMP: 87-1-305, MCA

OPTION B - AMENDMENT

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

12.9.204 LONE PINE GAME PRESERVE ~~(1) The Lone Pine Game Preserve is reestablished with the following boundaries: Beginning at the northeast corner of section 19, township 28 north, range 21 west, following the north boundary of section 19 in a westerly direction one mile; thence continuing in a northerly and westerly direction following the Kalispell Foy's~~

~~Lake highway to where it turns in a southwesterly direction following the same highway to Foy's Lake; thence in a southeasterly direction following the highway to section line between sections 25 and 26, township 28 north and range 21 west; thence in a southerly direction following the Foy's Lake Patrick Creek highway to where the said highway turns in a southeasterly direction following the said highway to a point in section 6, township 27 north and range 21 west; thence in an easterly direction following the Kalispell-Patrick Creek highway to a point in section 5, township 27 north, range 21 west, to a point where said highways turn in a northerly direction following the Kalispell Patrick Creek highway to the point of beginning.~~

(1) The boundary of the Lone Pine Game Preserve is adjusted as delineated on the April 2004, Lone Pine Game Preserve Map, incorporated by reference as part of this rule. This map may be obtained by contacting the department region one headquarters at 490 North Meridian Road, Kalispell, MT 59901, (406) 752-5501.

AUTH: 87-1-301, MCA

IMP: 87-1-305, MCA

4. On March 11, 2004, Jim Watson and Carol Bibler properly petitioned the department and commission to remove their land from the Lone Pine Game Preserve. The commission established Lone Pine Game Preserve on May 4, 1940, granting a petition from a group of landowners near Kalispell. The establishment of preserves as a technique to enhance game populations in Montana dates back to 1911 with the creation of the Snow Creek, Pryor Mountain and Gallatin Preserves. This management technique is no longer used by the department or commission as a way to increase game populations, and department biologists believe there is no longer a biological reason to maintain this preserve.

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

The commission desires to receive comment on two different options regarding the Lone Pine Preserve. Option A is to abandon the preserve completely while Option B removes only the petitioner's land from the preserve. Option A is the preferred alternative since the Watson/Bibler ranch lies in the middle of the preserve. Removing this land while

maintaining the rest of the preserve would leave the preserve on either side of a non-preserve area. This situation could make enforcement of the preserve difficult.

Department biologists estimate that deer populations recovered in this area within a decade of establishing the preserve. The deer population in hunting district 120 is healthy and expanding into suburban, residential, and agricultural land each year. Deer populations within the preserve are increasing to the point that deer are or will become a nuisance in the area. A number of deer have collided with automobiles on the roads around the preserve. Deer depredation of landscaping in residential areas within the preserve is a continuing problem. Petitioners and the department staff know that mountain lions are attracted to the preserve and pose a danger to children and domestic animals. Mountain lion predation on livestock and a domestic animal have already occurred. The department has also received complaints from landowners in this area regarding impacts from ground squirrels; they would like the ability to control them.

The petitioners also state that hunting can safely take place on their land if removed from the preserve. The terrain of the ranch provides a sufficient backstop for responsible hunters, and petitioners can control the location and number of hunters in the area. Although development is occurring in much of the area outside the petitioners' land, there are some areas where safe hunting could take place, particularly with archery or shotgun.

While petitioners believe that hunting may safely take place on their property, they point out that people who are opposed to the discharge of firearms near their homes have the ability to restrict their use in these areas of the preserve by means of covenants. They have the right to disallow hunting on their own property as well. A number of subdivisions located within the preserve already have covenants that restrict the use of firearms and/or hunting within the subdivision.

The department owns and manages Lone Pine State Park within the Lone Pine Preserve area. The department would not open the state park to hunting under either of the alternatives proposed.

The possession of firearms is another issue that petitioners raised in regard to private property being included in a game preserve. Section 87-5-401, MCA, states, "a person may not carry or discharge firearms" within the boundaries of a game preserve. This prohibition stops wildlife management authorities from using hunting to reduce game numbers or to directly address mountain lion or other predator issues. Petitioners are hindered from safely and humanely dispatching injured livestock and controlling aggressive predators, or protecting their home.

In conjunction with this rulemaking, the department is preparing an environmental assessment of the alternatives proposed in this rulemaking action. The environmental assessment will be available for public review and comment on May 10, 2004.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Dan Vincent, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 752-5501; fax (406) 256-0341; email [dvincent@state.mt.us](mailto:dvincent@state.mt.us). Any comments must be received no later than June 4, 2004.

6. Dan Vincent or another hearing examiner appointed by the department has been designated to preside over and conduct the hearing.

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

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

By: /s/ M. Jeff Hagener  
M. Jeff Hagener,  
Secretary Fish, Wildlife and  
Parks Commission and  
Director of the Department of  
Fish, Wildlife and Parks

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

Certified to the Secretary of State April 26, 2004

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption ) AMENDED NOTICE OF  
of proposed New Rules I through ) PUBLIC HEARING ON  
III pertaining to criminal ) PROPOSED ADOPTION  
justice information )

TO: All Concerned Persons

1. On April 22, 2004, the Montana Department of Justice published MAR Notice No. 23-12-147 regarding the public hearing on the proposed adoption of the above-stated rules at page 888 of the 2004 Montana Administrative Register, Issue Number 8. The notice of proposed adoption is amended because 2-4-305, MCA, requires an agency to explain the necessity of repeating statutory language. New Rules I and III both include language already used in statute. This notice amends the Department's statement of reasonable necessity to explicitly state why the statutory language is repeated in New Rules I and III.

2. Paragraph 4 is amended as follows, new matter underlined:

4. The new rules are necessary to provide guidance about what constitutes public criminal justice information pursuant to the Criminal Justice Information Act. Issues have arisen regarding what information should be contained in initial offense reports and initial arrest records. New Rules I and II will help resolve such issues. New Rule III provides similar guidance for juvenile records. The new rules will assist criminal justice agencies in responding to public requests for information. The definition in New Rule I of "criminal justice agency" repeats, in part, the language of 44-5-103(7)(b), MCA. The rationale behind New Rules I and II is to provide guidance as stated above as to what information should be contained in initial offense reports and initial arrest records. The criminal justice agencies defined 44-5-103(7)(a), (c) and (d), MCA, are not entities that prepare initial offense reports and initial arrest records. The definition of "criminal justice agency" in New Rule I is needed to capture the law enforcement agencies that do prepare such reports and also needed to be consistent with the definition already provided in statute. New Rule III, governing juvenile records, uses much of the language of 41-5-215(1), MCA. The criminal justice agencies for whom these rules are meant to provide guidance requested that the rules also address requests for juvenile records. One goal of these New Rules is to standardize reports across agencies and to provide some guidance as to what is public and what is not. New Rule III is necessary to provide criminal justice agencies one easily accessible document to assist them in responding to public requests for information, including juvenile records.

In order to be consistent with Montana statutes and accomplish this goal it is necessary to repeat some of the language of 41-5-215, MCA.

3. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on May 7, 2004, to advise us of the nature of the accommodation that you need. Please contact Ali Bovington, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Fax (406) 444-3549; email [abovington@state.mt.us](mailto:abovington@state.mt.us).

4. Concerned persons may submit their data, views, or arguments concerning the proposed adoptions either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ali Bovington, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; Fax (406) 444-3549; email [abovington@state.mt.us](mailto:abovington@state.mt.us) to be received no later than May 20, 2004.

5. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, emailed to [abovington@state.mt.us](mailto:abovington@state.mt.us), or may be made by completing a request form at any rules hearing held by the Department.

By: /s/ Mike McGrath  
MIKE MCGRATH  
Attorney General

/s/ Ali Bovington  
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State April 26, 2004.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of ARM 8.35.407, ) PROPOSED AMENDMENT AND  
pertaining to fees, and the ) ADOPTION  
proposed adoption of NEW )  
RULE I, pertaining to the )  
abatement of renewal fees )

TO: All Concerned Persons

1. On June 2, 2004, at 10:00 a.m., a public hearing will be held in room 438, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice no later than 5:00 p.m., on May 27, 2004, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdotp@state.mt.us.

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

<u>8.35.407 FEES</u> (1) Fees adopted by the board under 37-	
24-310, MCA, are as follows:	
(a) Applications for licensure	<del>\$80</del>
<u>(i) registered occupational therapist</u>	<u>\$60</u>
<u>(ii) certified occupational therapist</u>	
<u>assistant</u>	<u>60</u>
(b) Initial licensure issuance	<del>80</del>
<u>(i) registered occupational therapist</u>	<u>60</u>
<u>(ii) certified occupational therapist</u>	
<u>assistant</u>	<u>60</u>
(c) License renewal	<del>80</del>
<u>(i) registered occupational therapist</u>	<u>60</u>
<u>(ii) certified occupational therapist</u>	<del>60</del>
<u>assistant</u>	<u>60</u>
(d) remains the same.	
(e) Temporary practice permit	<del>60</del> <u>50</u>
(f) Inactive renewal fee	<del>30</del> <u>15</u>
(g) remains the same.	
(h) License verification fee	<del>30</del> <u>15</u>
(2) remains the same.	

AUTH: 37-1-131, ~~37-1-134~~, 37-24-201, ~~37-24-202~~, MCA  
IMP: 37-1-134, 37-24-310, MCA

REASON: The Board of Occupational Therapy Practice has determined that there is reasonable necessity to amend ARM 8.35.407 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. The Board's current fund balance is \$51,731.27. The Board estimates that approximately 382 persons (310 active licensees, 28 inactive licensees, 4 temporary licensees and 40 new applicants) will be affected by the proposed fee changes. The estimated annual decrease in revenue is approximately \$16,300. With the proposed fee decrease the Board's projected annual revenue will be \$9,370. The Board's appropriation for fiscal year 2004 is \$23,960 and for fiscal year 2005 \$19,195. The Board believes that the proposed fee structure, along with the abatement of renewal fees proposed in NEW RULE I below, will address the Board's excess cash balance while maintaining fees set at a level commensurate with costs.

The Board also has determined there is reasonable necessity to clarify that application, new license issuance, and annual renewal fees are charged both to registered occupational therapists (OTRs) and to certified occupational therapy assistants (COTAs). Historically, both categories have been charged the same fees, and thus the fees provided for in the rule are not new. However, in order to provide greater clarity and accountability, the Board believes that it is appropriate to separately identify the two license classifications in its fee rule.

4. The proposed new rule provides as follows:

NEW RULE I ABATEMENT OF RENEWAL FEES (1) This rule provides for an abatement of certain fees when the board's cash balance is excessive.

(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for its licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed allowable maximums.

(a) The abatement of renewal fees may be the total amount of the renewal fee or a specified portion of that fee.

(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal for all classes is disproportionately high. In such case, the department must attempt in any future



abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The board, to the extent it provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule will not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance. (As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based upon a collection of three years' worth of fees for operational expenses.)

(4) This rule does not relieve the board from the duty of establishing fees at a level commensurate with costs.

AUTH: 37-1-131, 37-24-201, MCA

IMP: 17-2-302, 17-2-303, 37-1-131, 37-1-134, 37-24-310, MCA

REASON: The Board has determined that it is reasonably necessary to adopt NEW RULE I to ensure that the Board of Occupational Therapy Practice and the Department have a methodology in place to promptly address excess cash accumulations that have been generated by the Board's licensing programs. The Board intends to apply the abatement to the June 15, 2004, license renewals. Excess cash accumulations are generally prohibited in 17-2-302, MCA, and a reduction in fees is required pursuant to 17-2-303, MCA. As noted in the statement of reasonable necessity for the proposed amendments to ARM 8.35.407, the Board currently has an excess cash balance. The Board believes that because the existing licensees are the individuals who have historically paid the renewal fees that led to the excess cash balance, it is fair to target those individuals for the fee abatement. The Board has considered and rejected the alternative strategy of providing a larger percentage fee reduction applicable to all of its fees, on that basis and on the additional grounds that with a high enough percentage reduction to "spend down" the cash balance, those lower fees would understate the actual cost of operating the program. As noted above, the proposed fee modifications provide revenue that reasonably approximates, and is commensurate with, the program's operating costs.

The Department notes that at least one other of the administratively attached boards has an excessive cash balance, and has had to propose and adopt a similar rule in order to address the issue. The Department has prepared a model rule for fee abatements, which it is urging that the various boards adopt in advance, so that each board can

promptly remedy any such excess cash accumulation that might arise.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdotp@state.mt.us](mailto:dlibsdotp@state.mt.us) and must be received no later than 5:00 p.m., June 4, 2004.

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

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

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

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

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
ELSPETH RICHARDS, CHAIR

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

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Alternate Rule Reviewer

Certified to the Secretary of State April 26, 2004

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PROPOSED
of new rules I and II pertaining	)	AMENDMENT
to branding and inspection	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Concerned Persons

1. On June 5, 2004, the board of livestock proposes to adopt New Rule I and New Rule II pertaining to branding and inspections.

2. The board of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board of livestock no later than 5:00 p.m. on May 27, 2004, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts Street - Room 308, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-7323; TTD number: 1-800-253-4091; fax: (406)444-1929; e-mail: mbridges@state.mt.us.

3. The rules proposed for adoption provide as follows:

NEW RULE I EQUINE BREED REGISTRY MARK (1) A nationally or internationally recognized equine breed registry mark made on equine animals to designate a specific equine breed shall not be recorded as a brand, but may be recognized for breed identification purposes. Any official equine breed organization, association or registry's designated registry mark is acceptable for placement on an equine animal located in or brought into Montana.

(2) An equine breed registry mark is not proof of ownership, but merely identification of breed. All equine animal owners must comply with 81-3-102, MCA, and ARM 32.18.101 on ownership branding.

(3) Equine breed registry marks are allowed on equine animals only, and not on any other type of livestock.

AUTH: Sec. 81-1-102, 81-3-202, MCA

IMP: Sec. 81-1-102, MCA

REASON: The proposed new rule is necessary because the department inspectors are seeing a large increase in the importation of expensive horse breeds bearing "breed registry marks" into Montana. Additionally, due to the increase of this type of horse production in Montana, many producers are using or wish to use the breed registry mark on their horses. These registration marks are used to identify the horse breed, and the marks greatly increase the horse's value. The

proposed new rule will recognize and allow these marks for breed recognition purposes only, but will clarify these breed registry marks may not be used for proof of ownership purposes, but merely for identification of the breed. All existing statutes and rules on branding for proof of ownership must still be complied with by the horse owner.

NEW RULE II RESTRICTION ON INSPECTION BY STATE STOCK INSPECTOR OR DEPUTY STATE STOCK INSPECTOR (1) State stock inspectors and deputy state stock inspectors are prohibited from inspecting livestock owned by themselves, their immediate family members, or other relatives.

(2) Any violation of this rule may cause initiation of appropriate state personnel disciplinary sanctions, which may include termination of the inspector's employment.

AUTH: Sec. 81-3-202, MCA  
IMP: Sec. 81-3-203, MCA

REASON: The proposed new rule is necessary to avoid conflicts of interest and the appearance of impropriety which may arise if an inspector is allowed to inspect animals owned by the inspector or any of the inspector's relatives. The proposed rule will also notify inspectors of possible sanctions for violation of the rule.

4. Concerned persons may submit their data, views or arguments concerning the proposed adoption in writing to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2002, by faxing to (406) 444-1929, or by e-mailing to mbridges@state.mt.us, to be received no later than 5:00 p.m. June 3, 2004.

5. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the address above. A written request for hearing must be received no later than 5:00 p.m. June 3, 2004.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5,340 based upon the 53,400 registered brands in the state.

7. An electronic copy of this Notice of Public Hearing is available through the department's site at [www.liv.state.mt.us](http://www.liv.state.mt.us).

8. The Montana department of livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street, Room 308, PO Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Marc Bridges"; or e-mailed to [mbridges@state.mt.us](mailto:mbridges@state.mt.us). Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges  
Marc Bridges, Exec. Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Carol Grell Morris  
Carol Grell Morris,  
Rule Reviewer

Certified to the Secretary of State April 26, 2004.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.30.101,	)	ON PROPOSED AMENDMENT
37.30.401, 37.30.405,	)	
37.30.406 and 37.30.407	)	
pertaining to the Montana	)	
Vocational Rehabilitation	)	
Financial Standard	)	

TO: All Interested Persons

1. On May 26, 2004, at 10:00 a.m., a public hearing will be held in Room 306 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 17, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.30.101 DEFINITIONS (1) "Applicant" means a person who has made formal application to the department to receive vocational rehabilitation or other services administered by the Montana vocational rehabilitation program inclusive of the blind and low vision services program of the department.

(2) "Blindness" means a visual disability as defined at 53-7-301, MCA.

(3) "Consumer" means a person who has been determined by the department in accordance with these rules and state and federal statutes and federal regulations pertaining to vocational rehabilitation services, and other applicable laws, to be eligible to receive vocational services administered by the Montana vocational rehabilitation program and who is receiving services in accordance with an individualized plan for employment (IPE).

~~(3)~~ (4) "Department" means the department of public health and human services.

~~(4)~~ (5) "Dependent" means any relative to a person by blood or marriage or anyone living in the same household with whom a person has a close interpersonal relationship and for

whom a person provides a majority of their financial support.

~~(5)~~ (6) "Disability" means an existing physical or mental impairment including blindness which significantly limits, or, if not corrected, may significantly limit a person's activities or ability to function in a normal manner.

~~(6)~~ (7) "Extended employment" means a supervised work program as defined at 53-7-202, MCA.

~~(7)~~ (8) "Financial resource" means financial assets, inclusive of stocks, bonds, certificates of deposit and similar type assets, that can be readily converted to cash, available to the person at the time of the eligibility determination and during the course of the person's receipt of services under an ~~individualized plan for employment~~ IPE. Financial assets do not include resources as provided for in ARM 37.30.411.

~~(8)~~ (9) "Income" means income as defined in ARM 37.2.702.

~~(9)~~ (10) "Independent living plan" means the written individualized independent living plan (IILP) prepared by the department for persons receiving independent living rehabilitation services. This plan specifies the independent living goals and needs of the person and the services the department may provide to the person in order to assist the person attaining an improved quality of life.

~~(10)~~ (11) "Individualized plan for employment (IPE)" means the plan signed by the person and the qualified Montana vocational rehabilitation counselor which specifies the vocational rehabilitation goals and needs of the consumer and the services the department may provide to the consumer in order to assist the vocational rehabilitation of the consumer.

~~(11)~~ (12) "Montana vocational rehabilitation program (MVR)" means the program of federal and state authorized vocational rehabilitation services for persons with disabilities provided through the department's disability services division, inclusive of the blind and low vision services program and those federal programs authorized at 29 USC 701, et seq.

~~(12)~~ (13) "Occupational license" means a license as defined at 53-7-101 and 53-7-301, MCA.

~~(13)~~ (14) "Orthotic device" means a device that activates or supplements a weakened limb or neuromuscular function.

~~(14)~~ (15) "Person with a most significant disability" means a person with a disability:

(a) who has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome;

(b) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) who has:

(i) one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple



sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease or another disability; or

(ii) a combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

~~(15)~~ (16) "Person with a significant disability" means a person with a disability:

(a) who has a severe physical or mental impairment that seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome;

(b) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) who has:

(i) one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease or another disability; or

(ii) a combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

~~(16)~~ (17) "Programs of higher education" are programs of formal education that lead to an advanced academic degree such as an A.A., A.S., B.A., B.S., M.A. and or Ph.D. Programs of higher education do not include career, vocational, or other specialized programs that do not lead to an academic degree.

~~(17)~~ (18) "Prosthetic appliance" means an artificial device as defined at 53-7-101 and 53-7-301, MCA.

~~(18)~~ (19) "Rehabilitation facility" or "rehabilitation program" means a facility or program operated primarily for the provision of vocational rehabilitation services to persons with disabilities.

~~(19)~~ (20) "Serious limitation" or "seriously limits" means a reduction in capacity due to severe physical or mental impairment to the degree that the person requires vocational rehabilitation services or accommodations not typically made for other persons in order to prepare for, secure, retain or regain employment.

~~(20)~~ (21) "Sheltered employment" means a program of services as defined at 53-7-202, MCA.

~~(21)~~ (22) "Support services" means support services as

defined at 53-7-202, MCA.

~~(22)~~ (23) "Vocational rehabilitation services" means vocational rehabilitation services provided in 34 CFR 361.48. Vocational rehabilitation services for the purposes of ARM Title 37, chapter 30, subchapters 1 through 7 do not include vocational rehabilitation extended employment services, independent living rehabilitation services and visual medical services as defined in this chapter.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-101, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-108, 53-7-109, 53-7-201, 53-7-202, 53-7-203, 53-7-204, 53-7-205, 53-7-206, 53-7-301, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, 53-7-315, 53-19-101, 53-19-102, 53-19-103, 53-19-104, 53-19-105, 53-19-106, 53-19-110 and 53-19-112, MCA

37.30.401 VOCATIONAL REHABILITATION PROGRAM: PURPOSE OF FINANCIAL NEED DETERMINATION STANDARD PURCHASE OF SERVICES

~~(1) The financial need standard provides a formula and certain values by which the department may determine the existence and extent of an individual's financial need.~~

~~(2) (1) The department, as provided in this subchapter, may expend monies for the purchase of vocational rehabilitation services for persons who are applicants seeking to be determined eligible for vocational rehabilitation services or who have been determined to be eligible for to be consumers of vocational rehabilitation services and who the department determines to be in financial need in accordance with these rules.~~

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

37.30.405 VOCATIONAL REHABILITATION PROGRAM: DETERMINATION AND USE OF FINANCIAL NEED PRIOR TO SERVICE FINANCIAL RESPONSIBILITY OF CONSUMER FOR COST OF SERVICES PAYMENT FOR SERVICES

~~(1) A consumer is financially responsible for the payment for the cost of vocational rehabilitation services specified in the consumer's IPE to the extent that the department determines in accordance with ARM 37.30.407 that the consumer has income and financial resources available for that purpose.~~

~~(a) The consumer may commit and expend further income and financial resources for the costs of the services in the IPE if the counselor and the consumer agree a portion of that income or resources can be contributed.~~

~~(1) The consumer, except as otherwise specifically authorized in this subchapter, is responsible for paying the costs for the provision of any vocational rehabilitation services that are authorized to be provided to the consumer through the consumer's IPE.~~

~~(2) An applicant or a consumer is not responsible for paying the costs for the provision of the following vocational rehabilitation services:~~

(a) assessment for determining eligibility and priority for vocational rehabilitation services except for trial work experience type services provided to a person with a significant disability during an exploration of the person's abilities, capabilities and capacity to perform in work situations;

(b) vocational rehabilitation counseling and guidance;

(c) referral and related services;

(d) job development and placement related services;

(e) personal assistance services; and

(f) any auxiliary aid or service or other rehabilitation technology, including reader services, that the department determines a person with a disability may require in order to apply for or receive vocational rehabilitation services.

~~(2) (3) A consumer who is eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under Titles II and XVI of the Social Security Act is not financially responsible for the payment for any of paying the costs of vocational rehabilitation for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE.~~

(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 2003 U.S. department of health and human services poverty guidelines for households of different sizes.

(b) The maximum allowable value for financial resources is calculated at 50% of the maximum allowable annual income level.

~~(3) A consumer is financially responsible for the payment of the cost of the vocational rehabilitation services specified in the consumer's IPE, except for rehabilitation technology, to the extent that the consumer is eligible for benefits of another governmental program or other source of funding that is available for the payment of the cost of the specified services.~~

(5) The department does not 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 those costs are reimbursable through another governmental program or there is another source of funding that is available to be applied to the costs of all or a portion of the services.

(a) If benefits from any other program or other source sources of funding are not immediately available for the payment of any or all of the costs of the vocational rehabilitation services for the consumer, specified in the consumer's IPE, the department may temporarily fund the consumer's vocational rehabilitation pay for the costs for the provision of services until those other benefits or other sources of funding become available.

(b) If the determination of the availability of benefits

~~from another source or other sources of funding would delay the provision of vocational rehabilitation services to a consumer who is at extreme medical risk or who is to receive an immediate job placement opportunity, the department may make payment for temporarily pay for the costs for the provision of services to the consumer until those other benefits become available. The department makes the determination of extreme medical risk is based upon medical evidence provided by an appropriate licensed professional.~~

~~(4) (6) The financial responsibility of a consumer for the payment of the costs for the provision of services is initially determined by the department prior to the provision to the consumer of any services listed in the consumer's IPE.~~

~~(a) The financial responsibility responsibility of a consumer is redetermined at any time that there is a change in the income and resources available to the consumer.~~

~~(5) The following services are available regardless of the person's financial responsibility status:~~

~~(a) assessment for determining eligibility and priority for vocational rehabilitation services except for trial work experiences type services provided to a person with a significant disability during an exploration of the person's abilities, capabilities and capacity to perform in work situations;~~

~~(b) vocational rehabilitation counseling and guidance;~~

~~(c) referral and related services;~~

~~(d) job development and placement related services;~~

~~(e) personal assistance services; and~~

~~(f) any auxiliary aid or service, including reader services, that a person with a disability may require under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) or regulations implementing those laws, in order for the person to participate in the vocational rehabilitation.~~

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102 and 53-7-105, 53-7-108 and 53-7-310,

MCA

37.30.406 VOCATIONAL REHABILITATION PROGRAM: INFORMATION FOR DETERMINATION OF FINANCIAL NEED ~~(1) The individual is the primary source of the financial information necessary for the determination by the department of financial need. The department, within its discretion, may obtain information about an individual's financial resources and requirements from any reliable source.~~

(1) The department may obtain information about an applicant's or a consumer's financial resources and requirements from the person or any other reliable source.

(2) An individual's An applicant's or a consumer's consent is necessary for the department to obtain any personal financial information not otherwise available to the department under law.

(a) If an individual applicant or a consumer is an unemancipated minor, the consent of the individual's person's

parents or guardian is necessary for the department to obtain any personal financial information concerning the person or individual's person's parents not otherwise available to the department under law.

~~(3) The department does not expend program funds for funding vocational rehabilitation services for a person~~ An applicant or a consumer who fails to provide necessary financial information to the department either directly or by consent to release cannot be determined by the department to be eligible for vocational rehabilitation services.

(4) In accordance with departmental policies, any financial or other information obtained with an ~~individual's applicant's or a consumer's~~ consent or the consent of the ~~individual's person's~~ parents is confidential.

(5) Any financial information relied upon by the department in determining an ~~individual's applicant's or a consumer's~~ financial resources or financial requirements ~~shall be made~~ is available to the person upon the ~~individual's person's~~ request.

~~(6) The counselor may obtain information about an individual's financial resources and requirements from the individual or any other reliable source.~~

(6) A consumer must report to the department any changes in income or resources. Failure to report changes in income or resources results in termination of the consumer's eligibility for the vocational rehabilitation services.

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

37.30.407 VOCATIONAL REHABILITATION PROGRAM: DETERMINATION OF FINANCIAL RESPONSIBILITY INCOME AND FINANCIAL RESOURCES ~~(1) A consumer is financially responsible for the payment for the cost of vocational rehabilitation services specified in the consumer's IPE to the extent the consumer's income and financial resources are more than the relevant standard in the vocational rehabilitation program's table of income and financial resource standards specified in Montana Vocational Rehabilitation Policy 0, "Montana Vocational Rehabilitation Financial Need Standard".~~

~~(2) (1) A~~ An applicant's or a consumer's income and financial resources include, if married, that of the spouse and, if unemancipated, that of the parents or guardian.

(2) An applicant's or a consumer's income does not include income expended on disability related medical, psychological or rehabilitation expenses incurred in the course of being determined eligible for vocational rehabilitation services and of the provision of vocational rehabilitation services.

~~(3) The financial responsibility determination, except as otherwise provided, is~~ An applicant's or a consumer's income and financial resources are based on the consumer's person's next 12 months' projected income and financial resources.

(a) For an applicant or a consumer who is employed seasonally, income is calculated based on income history.

(b) For an applicant or a consumer who is self-employed, income does not include business expenses.

(4) The following assets are excluded as financial resources:

(a) ~~the consumer's, the consumer's spouse's or the consumer's parents' home~~ the home of the applicant or consumer, the spouse or the parents, in the case of a minor;

(b) a small business or farm owned by the applicant or consumer, the ~~consumer's~~ spouse or the ~~consumer's~~ parents, in the case of a minor, if that business or farm is determined by the department to be the primary source of income or is a major asset for the applicant or consumer, the ~~consumer's~~ spouse or the ~~consumer's~~ parents ~~or is a major asset;~~

(c) the applicant's or consumer's or the ~~consumer's~~ spouse's individual retirement accounts; and

(d) the applicant's or consumer's trust funds established as a result of disability to assist with the present and future medical and independent living expenses of the applicant or consumer.

~~(5) The department hereby adopts and incorporates by reference the vocational rehabilitation income and financial resource table, dated September 1, 2002, and published by the department as Policy O, "Montana Vocational Rehabilitation Financial Need Standard", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210.~~

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

3. The rules proposed for amendment are ARM 37.30.101, "Definitions"; ARM 37.30.401, "Vocational Rehabilitation Program: Purpose of Financial Need Determination Standard"; ARM 37.30.405, "Vocational Rehabilitation Program: Determination and Use of Financial Need Prior to Services"; ARM 37.30.406, "Vocational Rehabilitation Program: Information For Determination; Financial Need"; and ARM 37.30.407, "Vocational Rehabilitation Program: Financial Responsibility". These rules pertain to the respective financial responsibilities of the Department and the consumers of vocational rehabilitation services for the costs for the delivery of vocational rehabilitation services.

Generally, the proposed changes to ARM 37.30.101, 37.30.401, 37.30.405, 37.30.406 and 37.30.407 reformat the provisions of these rules to consolidate duplicative provisions and language through the consolidation of provisions into appropriate rule locations.

The proposed changes to ARM 37.30.101 provide for definitions of the terms "consumer" and "work experience". The term "consumer" is the operative term of art currently for those persons who are

determined to be eligible for and who are being provided vocational rehabilitation services. The term is proposed to be incorporated into the rules governing eligibility to receive vocational rehabilitation services. Consequently, a definition of the term is warranted to serve to orient readers as to its significance in the context of the rules. Consideration was given to not providing a definition of the term but was not determined to be a viable approach since for some readers there would be potential ambiguities as to the scope and applicability of the term.

The term "work experience" encompasses a type of service experience that is available through the vocational rehabilitation program. The term appears in the rules as they exist and as proposed for amendment. The term is in need of definition since the service in nature has particular features that need to be connoted by definition. The Department considered not providing the definition but concluded that the lack of definition would leave the nature and application of the service ambiguous, confusing consumers and leading to the potential misapplication of the service.

ARM 37.30.401 provides a general statement as to the purpose of the eligibility rules appearing in subchapter 4. The proposed changes provide a more succinct statement of that purpose while clearly predicating receipt of services upon application and eligibility. These changes are preferred in that they provide for more explicit administrative authority over the eligibility determination and the receipt of services resulting therefrom.

The proposed changes to ARM 37.30.405 in part provide expressly in a rule provision the formula basis for the standards for the allowable level of income and allowable value of resources in determinations as to consumer responsibility for payment for the cost of services obtained in pursuit of the vocational goal. The current standards, expressed in a table of income levels and resource amounts adopted by the Department in a policy that is in turn referenced at ARM 37.30.407. The resource standard as proposed is in turn predicated upon the income standard. This approach would eliminate the publication of an income/resource table. The table was not particularly necessary since there were simple underlying formulas by which to derive the applicable income and resource amounts. This approach is the preferred one since it allows the standard to be directly applied to each circumstance without reference to an extraneous document. This approach is the more desirable one since it establishes a readily understood and calculated formula to replace the current table of discrete standards appearing in a referenced table as adopted in policy. This simplifies for staff and consumers the determination of the applicable standards by which fiscal responsibility for the payment of costs of services can be determined.

A further change in ARM 37.30.405 is to change the basis of the

income standard to the federal poverty index (FPI), rather than as is currently the case, the consumer price index (CPI). The FPI is being substituted for the CPI in order to conform this aspect of eligibility with the eligibility standards of certain other benefit programs administered by the Department. The FPI is a more appropriate basis for the income standards in benefit programs since it reflects the more essential aspects of costs of living for persons of limited means. The Department considered not applying the FPI in lieu of the currently applied CPI but determined that doing so would leave less conformity among the benefit programs for both the consumers and purposes of administration. It would also continue to subject the eligibility process to the CPI standard which is less reflective of the economic factors, appearing in the FPI, that are more appropriate for purposes of benefit determinations.

Several of the changes proposed for ARM 37.30.405 expressly delineate the responsibilities of applicants for and consumers of vocational rehabilitation services for personal payment for services being procured to further their vocational rehabilitation goals. These responsibilities have not been clearly expressed in the rules. This proposed course will serve to fully inform applicants and consumers of their respective financial responsibilities. Choosing to not delineate these would continue to leave ambiguities for consumers and the program personnel as to some of those responsibilities in certain situations.

Other changes proposed for ARM 37.30.405 also expressly delineate the responsibilities of the consumer to procure services through benefits, inclusive of payments, derived from other programs. This requirement is necessary to assure that the limited resources of the vocational rehabilitation program are appropriately conserved in order to meet the needs of other consumers. Absent this proposed change, there is greater likelihood that consumers will not pursue and apply other benefits and payments to the purchase of these services resulting in greater per capita expenditures for the vocational rehabilitation program.

Finally, the catchphrase in ARM 37.30.405 is being corrected to reflect the correct title. In MAR Notice No. 37-251, published on page 2618 on September 26, 2002, in issue number 18 of the 2002 Montana Administrative Register, the catchphrase to ARM 37.30.405 read "Vocational Rehabilitation Program: Financial Responsibility of Consumer for Cost of Services", however the actual existing catchphrase in the Administrative Rules of Montana read "Vocational Rehabilitation Program: Determination and Use of Financial Need Prior to Service". To correct this problem the Department is changing the catchphrase to "Vocational Rehabilitation Program: Payment for Services".

The proposed changes to ARM 37.30.406 generally concern elimination of duplicative language and rewriting of rule text



for purposes of clarification of the limitations and requirements. The proposed new section (6) expressly creates the requirement for consumers to report to the Department on an ongoing basis changes in income and resources, and provides that failure to do so will result in termination of eligibility. This proposed change is necessary to further ensure that program resources are not expended in the purchase of services for persons who may no longer be eligible for services. This course is preferred in that failure to expressly provide for this responsibility on the part of consumers will leave the program vulnerable to expenditures upon persons no longer eligible for services.

The proposed changes to ARM 37.30.407 eliminate the reference to and adoption by incorporation for the existing table of income and resource standards. This follows upon the proposed change to ARM 37.30.405 expressly incorporating directly into that rule formulas for those two standards. In addition, there is a proposed change to state an exclusion from an applicant's or consumer's income comprised of expenditures on disability related medical, psychological or rehabilitation expenses necessary for the determination of the applicant's eligibility for services or necessary for the receipt of services. This proposed change is appropriate to further program goals and legal responsibilities of assuring that a person with impairing disabilities can expend without loss of eligibility sums of monies on necessary accommodations for the person's impairments arising out of disability.

The reasonable necessity for the proposed changes to these rules is generally related to a reorientation of the framework of financial responsibility of consumers of vocational rehabilitation services for the costs of vocational rehabilitation services that the consumers obtain in pursuit of their vocational goals. The rules, as they currently are framed and written, appear to provide a financial benefit funded by the vocational rehabilitation program. This is misleading since the intended function of the rules is to assign responsibilities as between the program and the individual consumer for the payment of the costs for the procurement of the services arranged for by the program to foster the consumer's vocational goals. The Department proposes the changes generally to clarify for consumers, providers, and others that the function of this set of rules is to assign financial responsibilities rather than award a benefit.

The necessity of these changes is further reinforced by the ongoing changes in the availability of funding for the Montana Vocational Rehabilitation program and the services that the program arranges for consumers in the program. There are increasing demands for the limited resources of the program due to caseload increases, the desire of consumers to obtain more and differing services and the increasing costs of the services. These changes increase the overall demand for fiscal resources

to support the program while at the same time there has been reduced growth in fiscal support for the program. Consequently, the State is having to further existing measures and impose new measures that provide more detailed fiscal oversight over the expenditures of the program.

These proposed changes are expected to be budget neutral in the near term. Current expenditures per current consumer would not be directly affected by the adoption of the proposed changes to these rules. The proposed changes, in further structuring and clarifying the process of assigning fiscal responsibilities for the payment for the cost of services obtained by consumers are expected to reduce prospectively the growth in total expenditures by the vocational rehabilitation program.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 3, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 26, 2004.

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

In the matter of the )  
amendment of ARM 37.86.1102 )  
pertaining to outpatient )  
drugs, requirements )

NOTICE OF EXTENSION OF  
COMMENT PERIOD ON  
PROPOSED AMENDMENT

TO: All Interested Persons

1. On March 25, 2004, the Department published MAR Notice No. 37-322 regarding the public hearing on the proposed amendment of the above-stated rule at page 628 of the 2004 Montana Administrative Register, issue number 6. The Department is extending the time period to submit comments on these proposed changes at the request of interested parties.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 12, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. Written data, views or arguments may be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 14, 2004. Data, views or arguments may also be submitted by facsimile to (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 26, 2004.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 37.108.507	)	AMENDMENT
pertaining to components of	)	
quality assessment activities	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On June 5, 2004, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 27, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2003~~ 2004 measures:

(a) through (3) remain the same.

(4) The department ~~hereby~~ adopts and incorporates by reference the HEDIS year ~~2003~~ 2004 measures for the categories listed in (1)(a) through (1)(e). The HEDIS year ~~2003~~ 2004 measures are developed by the national committee for quality assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2003~~ 2004 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036 or on the internet at [www.ncqa.org](http://www.ncqa.org).

AUTH: Sec. 33-36-105, MCA

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

3. The Department is proposing to change the date referred to in this rule in order to incorporate the most up-to-date health plan employer and information set (HEDIS) measures developed by the National Committee for Quality Assurance, which are utilized to evaluate the effectiveness of quality control activities of managed care health plans and to allow consumers

to compare the quality of those plans using the same set of measures.

ARM 37.108.507 requires health carriers to report their quality assessment activities to the Department using HEDIS measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from adopted 2003 measures to the proposed 2004 measures are as follows:

- (a) A random number table for measures using the hybrid method is added.
- (b) Concerning childhood immunization status:
  - \* for OPV/IPV, Hepatitis B and HiB Antigens, the text from "by the second birthday" is changed to "on or before the second birthday".
  - \* In Table E1A: "Codes to Identify Childhood Immunizations", CPT code 90709 is added to identify rubella.
- (c) Concerning comprehensive diabetes care:
  - \* The HbA1c rate has been changed to define poor control as greater than (>) 9%.
  - \* In Table E13-B: "Codes to Identify Diabetics Using Claims/Encounter Data", the third column of the second table is retitled "UB-92 Revenue Codes"; DRG code 205 is deleted from diabetes diagnosis and replaced with DRG code 295; CPT codes 99289 and 99290 are deleted from "Outpatient/Nonacute Inpatient"; DRG code 462 is deleted and replaced with code UB-92 Revenue Code 456; and UB-92 Revenue Code 45X is deleted from "Acute Inpatient/Emergency Department" and replaced with codes 450, 451, 452 and 459.
- (d) Concerning HbA1c Screening and Control, plans can use either the formula on page 119 to convert glyohemoglobin to HbA1c or a conversion formula provided by their lab vendor, and plans should have documentation of the lab vendor's conversion formula available for the HEDIS Compliance Auditor.
- (e) Concerning exclusions, under the first bullet, the reference to Table E11-B is changed to Table E13-B to identify a diagnosis of diabetes.
- (f) In "General Guideline 12 for Data Collection and Reporting: Measures for Rotation", comprehensive diabetes care is removed from the list of measures eligible for rotation and significant changes were made to each measure indicator.
- (g) Under "Guidelines for Calculations and Sampling", the following was added to the note: "To reduce the sample size for the Comprehensive Diabetes Care measure, plans should first take the inverse of the HbA1c rate (100 minus the HbA1c rate) and then reduce using the

lowest of the various indicators."

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

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 3, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on June 3, 2004.

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

Dawn Sliva  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 26, 2004.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 2.43.1002, )  
2.43.1003, and 2.43.1004 )  
pertaining to investment )  
guidelines for the defined )  
contribution retirement plan )

TO: All Concerned Persons

1. On March 11, 2004, the Public Employees' Retirement Board published MAR Notice No. 2-2-344 regarding a public hearing on the proposed amendment of ARM 2.43.1002, 2.43.1003, and 2.43.1004 at page 533 of the 2004 Montana Administrative Register, Issue Number 5.

2. The Board has amended ARM 2.43.1002, 2.43.1003, and 2.43.1004 as proposed.

3. A public hearing was held on March 31, 2004. No comments or testimony were received.

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

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

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

Certified to the Secretary of State April 26, 2004.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 2.43.1802 )  
and 2.43.1803 pertaining to )  
investment guidelines for the )  
deferred compensation plan )

TO: All Concerned Persons

1. On March 11, 2004, the Public Employees' Retirement Board published MAR Notice No. 2-2-345 regarding a public hearing on the proposed amendment of ARM 2.43.1802 and 2.43.1803 at page 537 of the 2004 Montana Administrative Register, Issue Number 5.

2. The Board has amended ARM 2.43.1802 and 2.43.1803 as proposed.

3. A public hearing was held on March 31, 2004. No comments or testimony were received.

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

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

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

Certified to the Secretary of State April 26, 2004.



BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of new ) NOTICE OF ADOPTION  
Rule I through IX regarding )  
definitions, education provider )  
requirements, table funding, license )  
transfers and renewals, letters of )  
credit and surety bonds, revocation, )  
suspension or surrender of licenses, )  
and the complaint process, proposed )  
for adoption under the Montana Broker )  
and Loan Originator Licensing Act )

TO: All Concerned Persons

1. On March 11, 2004, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-2-343 regarding the public hearing on the proposed adoption of the above-stated rules at page 524 of the 2004 Montana Administrative Register, Issue Number 5.

2. The agency has adopted new Rules III, ARM 2.59.1703, VI, ARM 2.59.1706, VII, ARM 2.59.1707 and IX, ARM 2.59.1709 exactly as proposed. The agency has adopted new Rules I, ARM 2.59.1701, II, ARM 2.59.1702, IV, ARM 2.59.1704, V, ARM 2.59.1705 and VIII, ARM 2.59.1708, with the following changes, stricken matter interlined, new matter underlined:

RULE I (2.59.1701) DEFINITIONS For purposes of the Montana Mortgage Broker and Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(2) "Employed by" means:

(a) an individual performing a service for a mortgage broker liable for withholding taxes pursuant to Title 26 of the United States Code; or

(b) any individual acting as an independent contractor for a mortgage broker if that individual is under exclusive written agreement to broker loans only through their ~~employing~~ sponsoring mortgage broker or if the ~~employing~~ sponsoring mortgage broker undertakes accountability for the regulated mortgage loan activities of the independent contractor.

(3) "Fraudulent or dishonest dealings" means financial misconduct prohibited by statutes governing:

(a) mortgage brokers in this and other states; and

(b) other segments of the financial services industry, including but not limited to:

(i) securities brokerages;

(ii) banks and trust companies;

- (iii) escrow offices;
- (iv) title insurance companies; or
- (v) other licensed or chartered financial institutions.

(4) "Initiation of an investigation" means any administrative, civil, or criminal proceeding initiated by a state, municipal or federal governmental entity, the federal home loan mortgage corporation or the federal national mortgage agency and such proceeding is evidenced by a written formal complaint or charge filed by the investigating agency.

(5) "Material change" means:

- (a) a change in the nature of the business;
- (b) a change in the board of directors or the principal officers;
- (c) a change in the share ownership of the company that could affect control; or
- (d) the acquisition ~~of~~ or disposition of another company.

(6) "Table funding" means the closing of a loan naming a mortgage broker, a mortgage broker's business entity or a loan originator as the lender on the mortgage loan note, which note is then sold within three business days of closing to another party.

(7) "Work in a related field" means:

- (a) for a mortgage broker, three years:
  - (i) as a mortgage broker, a branch office manager of a mortgage broker business;
  - (ii) as a mortgage banker, or responsible individual or branch manager of a mortgage banking business;
  - (iii) as a real estate loan officer;
  - (iv) as a branch manager of a real estate lender;
  - (v) as a loan originator; or
  - (vi) as a mortgage broker licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department; and
- (b) for a loan originator, six months:
  - (i) as a loan originator in a mortgage broker business;
  - (ii) as a loan originator in a mortgage banking business;
  - (iii) as a real estate loan officer;
  - (iv) as a loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department;
  - (v) as a real estate loan processor ~~or clerk; or~~
  - (vi) as ~~an escrow~~ a residential real estate loan closing agent; or
  - (vii) other work or educational experience as approved by the department.

AUTH: 32-9-130, MCA

IMP: 32-9-103, 32-9-109, 32-9-115, 32-9-116, 32-9-117, 32-9-123, MCA

RULE II (2.59.1702) PROOF OF EXPERIENCE

(1) Satisfactory proof of experience may include but is not limited to:

(a) valid copies of W-2 or 1099 tax forms verifying employment;

(b) valid copies of form 1120 corporate tax returns signed by the broker or manager as owner of the business; or

(c) signed letters from a lender on the lender's letterhead verifying that the broker has competently originated loans for the required time period.

AUTH: 32-9-130, MCA

IMP: 32-9-109, MCA

RULE IV (2.59.1704) LICENSE RENEWAL (1) The renewal fees shall be \$300 for mortgage brokers and \$250 for loan originators. The renewal application forms will be sent by the department to each licensed mortgage broker or loan originator in April. The application must be postmarked or received by May 31.

(2) The continuing education year will be from June 1 to May 31.

(3) The renewal application must be accompanied by evidence that the continuing education requirement has been met and a recent credit report from one of the three recognized credit reporting agencies. They are experian, equifax, and transunion.

(4) Mortgage brokers must include evidence of an irrevocable letter of credit or surety bond.

(5) Mortgage brokers or loan originators shall continuously satisfy all requirements of initial licensure to be eligible for renewal. A renewal application may not be processed or granted until all required information is received.

(6) Failure to renew licenses by May 31 but before July 1 will result in a \$250 late fee per license in addition to regular renewal fees.

(7) If the attempt to renew is after June 30, the license is considered expired. Expiration terminates the right to engage in any residential mortgage broker or loan originator activities. The mortgage broker or loan originator must then apply as a new licensee.

(8) The department will not accept applications for original licensure of mortgage brokers or loan originators in the months of May and June because of the volume of license renewals during those months.

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-118, 32-9-123, MCA

RULE V (2.59.1705) LICENSING EXAMINATION AND CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee or applicant shall receive credit for participation in a program if it is presented by a provider approved by the department and the department has approved the program pursuant to this rule.

(2) To receive approval of a licensing examination or continuing education course, the examination or course provider must file an application with the department, which includes, but is not limited to the following items:

- (a) a description of the examination or course provider's experience in teaching courses;
- (b) a complete list of all examiners or instructors for the course, including their qualifications and experience with examinations and teaching courses similar to the course submitted for approval;
- (c) a description of each examination or course; and
- (d) all examination or course materials and lesson plans.

(3) Courses and licensing examinations must reflect the activities performed by prospective mortgage brokers and loan originators and must provide prospective mortgage brokers and loan originators with a basic knowledge of and competency in the following:

- (a) basics of home purchase and ownership;
- (b) the mortgage industry, generally;
- (c) loan evaluation and documentation;
- ~~(d) operation of a mortgage brokerage firm;~~
- ~~(e)~~(d) features of various loan products;
- ~~(f)~~(e) state and federally required disclosures;
- ~~(g)~~(f) the Montana Residential Mortgage Broker and Loan Originator Licensing Act; and
- ~~(h)~~(g) other state and federal laws applicable to the mortgage industry.

(4) Appropriate subjects for licensing examinations may include:

- (a) the Montana Residential Mortgage Broker and Loan Originator Licensing Act;
- (b) state and federal consumer protection acts;
- (c) the federal Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage Disclosure Act, Community Reinvestment Act, and the regulations promulgated pursuant to these acts;
- (d) trust account and recordkeeping requirements of the Montana Residential Mortgage Broker and Loan Originator Licensing Act;
- (e) real estate and appraisal law;
- (f) arithmetical computation common to mortgage lending, including but not limited to:
  - (i) the computation of an annual percentage rate;
  - (ii) finance charges;
  - (iii) amount financed;
  - (iv) payment and amortization;
  - (v) credit evaluation; and
  - (vi) calculating debt-to-income; and
  - (g) ethics in the mortgage industry.

(5) The provider shall file an application with the department which includes a copy of ~~any~~ examinations to be used, if any, in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised courses, examinations or grading scales to be used shall be submitted to the department for approval at least 30 days prior to use. Course materials may be submitted

in electronic format. The department will consider examinations and continuing education disseminated by written or electronic means, including by the internet.

(6) The department shall review applications filed and determine whether to approve or deny the proposed provider. If the department approves the course or provider, the department shall issue a certificate of approval that will be effective for two years from the date of issuance.

(7) The department shall provide a list of approved providers. The list shall indicate whether a provider is approved to present licensing examination and/or continuing education programs.

(8) A course provider that desires to renew the certificate of approval must apply to the department and file the items required in (2) no later than 60 days before the certificate expires.

(9) The department may audit an approved course or examination at any time. If the course provider or examination administrator has not complied with the requirements of this rule, the department may suspend or terminate the approval and require the surrender of the certificate of approval.

(10) The department may revoke, suspend or terminate approval of any provider or individual course upon a finding that:

(a) any provider officer or employee who has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions for any purpose other than instruction;

(b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score; or

(c) the provider has not conducted at least one continuing education program during the preceding ~~12~~ 24-month period.

(11) A provider shall designate one person as its contact person who shall be available to the department during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(12) Providers shall not use any words, symbols or other means to indicate that either the provider or a program has received the department's approval unless such approval has been issued and remains in effect.

~~(13) A licensee may not repeat a continuing education course with the same education provider within a three year period.~~

~~(14)~~(13) The fee for review of an initial and biennial ~~renewal~~ education provider application is \$350. All fees are nonrefundable and must be submitted with the application.

~~(15)~~(14) An education course relative to commercial lending or commercial loan brokering may not be used to

satisfy continuing education requirements under this subchapter.

~~(16)~~(15) An education provider shall maintain student records for three years.

AUTH: 32-9-130, MCA

IMP: 32-9-118, MCA

RULE VIII (2.59.1708) PROHIBITION ON TABLE FUNDING REQUIRES LICENSURE (1) Any person not exempted from the Montana Mortgage Broker and Loan Originator Licensing Act under 32-9-104, MCA, who closes a mortgage loan naming themselves as the lender and who, within three days of closing, consummates sale of the mortgage loan note to another party, commonly known as "table funding" as defined in ARM 2.59.1701, must be licensed as a mortgage broker or loan originator.

AUTH: 32-9-130, MCA

IMP: 32-9-103, 32-9-108, MCA

3. The department received five written comments on the proposed rules and eight individuals testified on the proposals at the public hearing held on March 31, 2004. The department will address the comments received based on the subject matter of those comments.

COMMENT 1: Numerous commentors felt that the experience requirements for loan originators found in Rule I(7)(b) were too restrictive and did not recognize a wide enough range of potentially relevant experience. Some comments suggested specific fields of experience (insurance producers, mortgage loan buyers, etc.) that would be appropriate for licensing requirements. However, there was much disagreement expressed in the comments on specifically what fields of experience should be included.

RESPONSE: The department has amended the proposed rule to allow loan originator licensing applicants to submit any work or educational experience they have for consideration of approval by the department.

COMMENT 2: Several commentors felt that the definition of "employed by" found in Rule I(2)(b) should not refer to an independent contractor relationship.

RESPONSE: The department was specifically asked to include this definition by a large national mortgage brokerage company because all of its loan originators are independent contractors and would not be subject to licensing and regulation were the definition removed. The department, for this reason, has not amended the original proposal.

COMMENT 3: A comment was made that the term "table funding", defined in Rule I(6), was used in a different manner by many Montana mortgage brokers.

RESPONSE: The fact that there is some confusion with the term "table funding" is exactly why the department chose to define the phrase in these rules. In creating the definition, the department relied on a working glossary of mortgage terms prepared by the Mortgage Bankers Association of America. The department did make minor revisions to the definition based on the comments received.

COMMENT 4: Some of those providing comments suggested that Rule II regarding documentation for proof of experience should include other items than those proposed and that the department should not be requiring the filing of income tax returns.

RESPONSE: The department has amended the proposal so that the list of items which could be used to establish proof of experience is not all inclusive. Items other than those listed may be submitted for approval. In regard to the submission of tax returns, that item is included on the list only for the purpose of establishing the length of experience which a mortgage broker entity may have and all applicants are free to utilize other documents for proof of experience.

COMMENT 5: In regard to Rule IV on license renewals, comments were received that the continuing education (CE) year should be the same as the licensing year and that applicants for renewal should not be required to submit a credit report.

RESPONSE: In regard to the CE year, because Rule IV establishes the deadline for renewal applications as one month before the end of the license year, the CE year must necessarily end at the time renewal applications are due. In addition, the department believes it is appropriate to require a credit report with each application for renewal because that is a means of establishing whether there has been a "material change" in the status of the licensee as stated in 32-9-117, MCA.

COMMENT 6: In regard to Rule V on licensing examinations and CE provider requirements, comments were received that testing should not include operation of a mortgage brokerage firm, that there should be clarification on whether all CE courses should have exams, that it may be appropriate for a licensee to repeat a class during any three year period, that it should be clear that mortgage brokers and loan originators will be tested on subjects relating to their licensing status and that some provision will be made for internet testing and education.

RESPONSE: The department has significantly amended this rule to address the comments. Language requiring courses and exams to cover operation of a mortgage brokerage firm has been removed. Language has been added to make CE course

examinations optional. The prohibition on repeating a CE course within a three-year period has been removed. Language has been added to assure that brokers and loan originators will be tested on their respective duties and provision has been made for internet examinations and CE courses.

COMMENT 7: One commentor stated that the definition of "initiation of an investigation" found in Rule I(4) could benefit from the inclusion of a more specific standard.

RESPONSE: The department agrees with this comment and has added language to the definition to clarify what constitutes the "initiation of an investigation".

COMMENT 8: One writer asked if the department could exempt licensees from all CE requirements during their first year of licensure.

RESPONSE: The department does not believe it has the legal authority to exempt first year licensees because 32-9-118, MCA, requires all mortgage brokers and loan originators to submit evidence of the completion of 12 hours of CE credit at the time of license renewal, which necessarily includes the first year of licensure.

COMMENT 9: One comment was received that the \$350 fee for review of an initial and biennial CE provider application found in Rule V(13) was too high for someone who might want to offer a limited number of courses annually.

RESPONSE: The department believes that the \$350 fee found in this rule is appropriate given the amount of information that must be reviewed before a certificate of approval is issued to a CE provider. This review effort is necessary regardless of the number of CE classes to be offered by the applying provider.

COMMENT 10: One comment was received that Rule V(10) should not establish a requirement that a CE instructor must conduct at least one program each year.

RESPONSE: The department agrees that the language at issue may be too restrictive and has changed the time period to 24 months. In addition, the department believes that most CE providers will be licensed in the name of an organization or business entity and, therefore, the rule would not apply to individual instructors.

COMMENT 11: Many commentors provided the department with suggestions on alternative language which were more grammatical changes than substantive changes.

RESPONSE: The department has incorporated the suggested changes.



By: /s/ Steve Bender  
Steve Bender, Acting Director  
Department of Administration

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

Certified to the Secretary of State April 26, 2004.

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT AND  
of ARM 8.111.502, 8.111.508, ) REPEAL  
8.111.509, 8.111.510, )  
8.111.512, 8.111.513, )  
8.111.514, and 8.111.515 and )  
the repeal of 8.111.511 )  
pertaining to loans made from )  
TANF housing assistance funds )

TO: All Concerned Persons

1. On February 26, 2004, the Board of Housing published MAR Notice No. 8-111-42 regarding the proposed amendment and repeal of the above-stated rules at page 363 of the 2004 Montana Administrative Register, Issue No. 4.

2. No comments or testimony were received.

3. The department has amended and repealed the rules as proposed.

DEPARTMENT OF COMMERCE  
BOARD OF HOUSING

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

By: /s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State April 26, 2004.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 17.40.206, 17.40.212 )  
and 17.40.213 pertaining to ) (WATER AND WASTEWATER  
certification and fees for ) OPERATORS)  
water and wastewater operators )

TO: All Concerned Persons

1. On March 11, 2004, the Department of Environmental Quality published MAR Notice No. 17-207 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 543, 2004 Montana Administrative Register, issue number 5.

2. The Department has amended the rules exactly as proposed.

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

COMMENT NO. 1: In regards to the Department's proposed amendments to ARM 17.40.206(7), assessments are not only a way to control the quality, they are also teaching tools. Will the proposed amendment accomplish the end objective of water quality operators learning the required material? Will the proposed amendment make this process more difficult?

RESPONSE: The amendment regarding the examination review policy was proposed in order to uphold the integrity of the testing process and the Department's certification program, due to concerns regarding maintaining the security and validity of exam material. The Department administers examinations to potential operators to ensure the operators demonstrate a particular level of competency. Passing a certification exam demonstrates that operators have learned basic skills and have the ability to perform the duties of the job, based on the size and type of water or wastewater system they will operate and/or maintain. However, passing an examination is not the only requirement necessary to ensure that an applicant has learned the necessary competencies. Other requirements are also evaluated such as education, experience, compliance monitoring and continuing education requirements. These requirements are in place to ensure that the State of Montana maintains a quality and federally-approved program to benefit our operators, system owners, and the citizens of Montana as well as to ensure that public health, safety, and the environment are protected.

Although the Department agrees that examinations can be used as teaching tools, there are other methods for examinees to gain the requisite knowledge to become a competent operator. For instance, the Department provides applicants with study guide material that contains: a copy of an operator's "Needs-

to-Know" criteria, other reference materials to study, practice questions, formula sheet, rule summary guide for water operators, a groundwater manual for water operators, a basic wastewater manual for wastewater operators, and other helpful study hints. Also, the Department co-sponsors a spring and fall water school that includes an exam-preparatory track for potential operators, and offers assistance to other training providers throughout Montana with exam-preparatory training.

The Department does not believe the proposed amendment will make the examination process more difficult. Before initiating rule proposals, the Department evaluates all aspects and possible consequences of the proposed amendments by meeting with various interested parties, including stakeholder groups, before initiating rule proposals. For purposes of this rulemaking, the Department met with the Water and Wastewater Advisory Council. This Council is comprised of seven members appointed by the Governor and includes water and wastewater operators throughout the state. Based on discussions with the Council, it was determined that the proposed amendment would ensure that public health, safety, and the environment were protected without adding unnecessary burdens to system owners and/or operators. For these reasons, the Department is amending the rule as proposed.

COMMENT NO. 2: With respect to the proposed amendments to ARM 17.40.212, it is recommended that the Department not look for ways to complicate or increase requirements. There have already been significant cost increases with the mandated monthly and yearly water testing. Small schools and communities have trouble keeping qualified/certified individuals in these positions, and although public safety is important, we cannot afford to place additional burdens on these entities by complicating the process, increasing the burden or costs.

RESPONSE: The proposed wastewater renewal fee increase is necessary to allow the Department to continue to maintain a credible Wastewater Operator Certification Program. The Water and Wastewater Operator Certification Program is funded by two sources: (1) operator certification fees and (2) federal funds. The federal funds cannot be used for administration or operating costs associated with the Wastewater Operator Certification Program. Since 2002, the number of wastewater applications and examinations administered has increased by approximately 25%, and continues to grow each year. The proposed fee increase will allow the Wastewater Operator Certification Program to continue implementing a strong certification program, and provide improved testing, recording of training/education, and program information services. In addition, as stated in the Response to Comment No. 1, based on the Department's evaluation of the effects of the proposed fee increase, and discussions with the Council, it was determined that by providing additional funding for the Wastewater Operator Certification Program, public water and wastewater owners and operators would benefit from the improved services, and the increase would not be a significant

burden to system owners and/or operators. For these reasons, the Department is amending the rule as proposed.

COMMENT NO. 3: Regarding the Department's proposed amendment to ARM 17.40.206, how many applicants actually ask the Department if they can review their exams? Is the integrity of the program really going to be compromised by allowing a review of the exams? Having the ability to review the exam results afterwards shows the applicant's weak and strong areas, and by knowing the right answer helps teach the applicant the proper way to handle the procedure that was at issue. Reviewing the exams afterwards would also assist the Department staff to improve the quality of the exam and the testing procedures. A suggestion would be to have two forms of each examination, so the Department would have a pool of questions to choose from. This would prevent anyone from knowing exactly what is on the exam.

RESPONSE: Examinations can be used as teaching tools. In preparation for the examinations, applicants are provided with study materials, practice questions, reference materials, and exam-preparatory sessions. In addition, after the exam they are offered the opportunity to provide exam feedback. During the examination, the candidates can comment on or inquire about any exam question that they believe contains errors or is unclear. In addition, a "Mastery Sheet" would be provided to the candidates that summarizes the objectives of the examination and the skills mastered or the areas that require further work, allowing the applicants to see their weak and strong points.

Due to the large geographical region the Department serves, the Department does not receive many requests by examinees to review their examinations at the Department. Regardless, the potential for security breaches exists, and due to concerns regarding maintaining the security and validity of exam material, the amendment regarding the examination review policy was proposed. This in turn will uphold the integrity of the testing process and the Department's certification program, which also ensures safe drinking water supplies, and the protection of public health and safety. For these reasons, the Department is amending the rule as proposed.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Tom Livers  
TOM LIVERS, DEPUTY DIRECTOR

Reviewed by:

James M. Madden  
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, April 26, 2004.

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

In the matter of the adoption	)	NOTICE OF ADOPTION,
of new rules I through V, the	)	AMENDMENT AND REPEAL
amendment of ARM 37.106.2801,	)	
37.106.2802, 37.106.2803,	)	
37.106.2804, 37.106.2805,	)	
37.106.2809, 37.106.2814,	)	
37.106.2815, 37.106.2816,	)	
37.106.2821, 37.106.2823,	)	
37.106.2824, 37.106.2828,	)	
37.106.2829, 37.106.2830,	)	
37.106.2835, 37.106.2836,	)	
37.106.2838, 37.106.2839,	)	
37.106.2843, 37.106.2846,	)	
37.106.2847, 37.106.2855,	)	
37.106.2859, 37.106.2861,	)	
37.106.2865, 37.106.2866,	)	
37.106.2872, 37.106.2873 and	)	
37.106.2874, and the repeal of	)	
ARM 37.106.2884 pertaining to	)	
the minimum standards for	)	
assisted living facilities	)	

TO: All Interested Persons

1. On February 12, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-318 pertaining to the public hearing on the proposed adoption, amendment and repeal of the above-stated rules relating to minimum standards for assisted living facilities, at page 261 of the 2004 Montana Administrative Register, issue number 3.

2. The Department has adopted rules II [37.106.2891] and IV [37.106.2895] as proposed.

3. The Department has amended ARM 37.106.2801, 37.106.2803, 37.106.2804, 37.106.2815, 37.106.2828, 37.106.2829, 37.106.2830, 37.106.2835, 37.106.2839, 37.106.2855, 37.106.2859, 37.106.2861, 37.106.2865, 37.106.2872, 37.106.2873 and 37.106.2874 and repealed 37.106.2884 as proposed.

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

RULE I [37.106.2898] REQUIREMENTS FOR SECURED UNITS:  
CATEGORY C (1) In addition to meeting all other requirements for assisted living facilities stated in this subchapter, if a secured distinct part or locked unit within a category C assisted living facility is designated for the exclusive use of

residents with severe cognitive impairment, the facility must:

(a) and (b) remain as proposed.

(c) provide a common day or activities area, at a ratio of 30 square feet per resident on the unit. The dining area listed in (1)(b) or day rooms, sun porches and common areas accessible to all residents, may serve this purpose.

~~(2) Staff must remain awake, fully dressed and be available in the facility or on the unit at all times to provide supervision and care to the resident as well as to assist the resident in evacuation of the facility if a disaster occurs.~~

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

RULE III [37.106.2892] DIRECT CARE STAFF: CATEGORY C

(1) through (1)(h) remain as proposed.

(2) Staff must remain awake, fully dressed and be available in the facility or on the unit at all times to provide supervision and care to the residents as well as to assist the residents in evacuation of the facility if a disaster occurs.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

RULE V [37.106.2896] DISCLOSURES TO RESIDENTS: CATEGORY C (1) Each assisted living category C facility or unit must, prior to admission, inform the resident's ~~guardian, or if no guardian has been appointed, inform the family member or other appropriate person acting on the resident's behalf~~ legal representative in writing of the following:

(a) through (2) remain as proposed.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

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

37.106.2802 PURPOSE (1) The purpose of these rules is to establish standards for assisted living A, B and C facilities. Assisted living facilities are a setting for frail, elderly or disabled persons which provide supportive health and service coordination to maintain the resident's independence, individuality, privacy and dignity.

(2) remains as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2805 DEFINITIONS The following definitions apply in this subchapter:

(1) "Activities of daily living (ADLs)" means tasks

usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting and transferring.

(2) through (13) remain as proposed.

(14) "Mechanical assistance" means the use of any assistive device that aids in the mobility and transfer of the resident. Assistive devices include but are not limited to, braces, walkers, canes, crutches, wheelchairs and similar devices.

(14) through (21) remain as proposed but are renumbered (15) through (22).

(23) "Resident's legal representative" or "resident's representative" means the resident's guardian, or if no guardian has been appointed, then the resident's family member or other appropriate person acting on the resident's behalf.

(22) through (29) remain the same but are renumbered (24) through (31).

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2809 LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee shall be made to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to the ~~identity of:~~

(a) identity of each officer and director of the corporation, if organized as a corporation;

(b) identity of each general partner if organized as a partnership or limited liability partnership;

(c) through (g) remain as proposed.

(h) ~~the~~ resident agreement intended to be used as outlined in ARM 37.106.2823.

(2) through (5) remain as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2814 ADMINISTRATOR (1) remains as proposed.

(2) The administrator must meet the following minimum requirements:

(a) remains as proposed.

(b) ~~have~~ has successfully completed all of the self study modules of "The Management Library for Administrators and Executive Directors", a component of the assisted living training system published by the assisted living ~~federation of America~~ university ~~(ALFA)~~ (ALU) and ~~maintain current ALFA certification;~~ or

(c) remains as proposed.

(3) The administrator must show evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the



assisted living facility.

(a) A nursing home administrator license or the ~~ALFA~~ ALU certification ~~may be used for the required count as~~ 16 hours of annual continuing education but only for the calendar year in which the license or certification was initially ~~granted~~ obtained.

(4) through (7) remain as proposed.

(8) The administrator or designee shall initiate transfer of a resident through the resident and/or the resident's practitioner, appropriate agencies or the resident's ~~personal legal~~ representative or responsible party when the resident's condition is not within the scope of services of the assisted living facility.

(9) through (12) remain as proposed.

(13) The owner of an assisted living facility may serve as administrator, or in any staff capacity, if ~~they~~ the owner meets the qualifications specified in these rules.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2816 ASSISTED LIVING FACILITY STAFFING (1) through (4) remain as proposed.

(5) Direct care staff shall be trained in the use of the ~~Heimlich~~ abdominal thrust maneuver and basic first aid. If the facility offers cardiopulmonary resuscitation (CPR), at least one person per shift shall hold a current CPR certificate.

(6) The following rules must be followed in staffing the assisted living facility:

(a) direct care staff shall have knowledge of the resident's needs and any events about which the employee should notify the administrator or ~~their~~ the administrator's designated representative;

(b) the facility shall have a sufficient number of qualified staff on duty 24 hours a day to meet the scheduled and unscheduled needs of each resident, to respond in emergency situations, and all related services, including, but not limited to:

(i) through (iv) remain as proposed.

(v) assurance that each resident receives the supervision and care required by the service or health care plan to meet ~~their~~ the resident's basic needs;

(c) through (9) remain as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT PROCEDURE (1) remains as proposed.

(2) The facility shall determine whether a potential resident meets the facility's admission requirements and that the resident is appropriate to the facility's license endorsement as either a category A, category B or category C facility, as specified in 50-5-226(2) through (4), MCA.

(3) remains as proposed.

(4) The initial resident's needs assessment must include documentation of the following:

(a) cognitive patterns ~~such as~~ to include short-term memory, long term memory, memory recall, decision making change in cognitive status/awareness or thinking disorders;

(b) sensory patterns ~~such as~~ to include hearing, ability to understand others, ability to make self understood and ability to see in adequate light;

(c) activities of daily living (ADL) functional performance ~~such as~~ to include ability to transfer, locomotion, mobility devices, dressing, eating, use of toilet, bladder continence, bowel continence, continence appliance/programs, grooming and bathing;

(d) and (e) remain as proposed.

(f) weight/nutritional status ~~such as~~ to include current weight and nutritional complaints;

(g) remains as proposed.

(h) medication use ~~such as~~ to include ~~takes~~ taking prescription and/or over-the-counter, recent changes, currently taking an antibiotic, antipsychotic use, antianxiety/hypnotic use and antidepressant use; and

(i) through (5) remain as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2823 RESIDENT AGREEMENT (1) An assisted living facility shall enter into a written resident agreement with each prospective resident prior to admission to the assisted living facility. The agreement shall be signed and dated by a facility representative and the prospective resident or ~~their~~ the resident's legal representative. The facility shall provide the prospective resident or ~~their~~ the resident's legal representative and the resident's practitioner, if applicable, a copy of the agreement and shall explain the agreement to them. The agreement shall include at least the following items:

(a) through (f) remain as proposed.

(g) a statement that the agreed upon facility rate shall not be changed unless 30 day advance written notice is given to the resident and/or ~~their~~ the resident's legal representative; and

(h) remains as proposed.

(2) When there are changes in services, financial arrangements, or in requirements governing the resident's conduct and care, a new resident/provider agreement must be executed or the original agreement must be updated by addendum and signed and dated by the resident or ~~their~~ the resident's legal representative and by the facility representative.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2824 INVOLUNTARY DISCHARGE CRITERIA (1) Residents

shall be given a written 30 day notice when they are requested to move-out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, or the resident, ~~or~~ resident's ~~personal~~ legal representative ~~or responsible party~~ when:

(a) remains as proposed.

(b) the resident exhibits behavior or actions that repeatedly and substantially interferes with the rights, health, safety or well being of other residents and the facility has tried prudent and reasonable interventions;

(i) documentation of the interventions attempted by the facility shall become part of the resident's record;

(c) through (f) remain as proposed.

(2) The resident's 30 day written move-out notice shall, at a minimum, include the following:

(a) through (4) remain as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2836 FURNISHINGS (1) Each resident in an assisted living facility must be provided the following at a minimum by the facility:

(a) an individual towel rack;

(b) a handicap accessible mirror mounted or secured to allow for convenient use by both wheelchair bound residents and ambulatory persons;

(c) remains as proposed.

(d) an electric call system comprised of a fixed manual, pendant cordless or two way interactive, UL or FM listed system, ~~which must be provided connecting~~ connect resident rooms to the care staff center or staff pagers; and

(e) for each multiple-bed room, either flame-resistant privacy curtains for each bed or movable flame-resistant screens to provide privacy upon the request of a resident.

(2) remains as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2838 RESIDENT TOILETS AND BATHING (1) through (3)(b) remain as proposed.

(4) All doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside.

(a) Dutch doors, bi-folding doors, sliding pocket doors and other bi-swing doors may be used if they do not impede the bathroom access width and are approved by the department. A shared bathroom with two means of access is also acceptable.

(5) through (7) remain as proposed.

(8) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to ~~the adoption of this rule~~ December 27, 2002, or construction factors would make compliance extremely difficult or impossible

and if the department determines that the level of safety to residents and staff is not diminished.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA

IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2843 PERSONAL CARE SERVICES (1) through (1)(f) remain as proposed.

(2) Evidence that the facility is meeting each resident's needs for personal care services include the following outcomes for residents:

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

(b) behavioral and emotional well being of the resident includes:

(i) an opportunity to participate in age appropriate activities that are meaningful to the resident if desired;

(ii) a sense of security and safety;

(iii) a reasonable degree of contentment; and

(iv) a feeling of stable and predictable environment;

(c) unless medically required by a physician or other practitioner's written order, the resident is:

(i) through (viii) remain as proposed.

(ix) fully informed of the services ~~they can expect to be that are~~ provided by the facility;

(x) through (xii) remain as proposed.

(3) In the event of accident or injury to a resident requiring emergency medical, dental or nursing care or, in the event of death, the ~~personal care~~ assisted living facility shall:

(a) remains as proposed.

(b) immediately notify the resident's practitioner and ~~next of kin or responsible party~~ the resident's legal representative.

(4) A resident shall receive skin care that meets the following standards:

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

(b) an area of broken or damaged skin must be reported within 24 hours to the resident's practitioner. Treatment must be provided as ordered by the resident's practitioner.

(5) remains as proposed.

(6) The facility shall ensure records of observations, treatments and progress notes are entered in the resident's record and that services are in accordance with the resident health care plan.

(7) Direct care staff shall receive training related to maintenance of skin integrity and the prevention of pressure sores, by:

(a) through (d) remain as proposed.

(e) keeping the residents physically active and avoiding the overuse of wheelchairs, sitting for long periods of time no longer than one hour or remaining in one position for longer than two hours at one time, and other sources of skin breakdown in ADLs.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA  
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2846 MEDICATIONS: STORAGE AND DISPOSAL

(1) through (3) remain as proposed.

(4) Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's practitioner or pharmacist as part of the development of a resident's service plan. Residents may keep over-the-counter medications in their room with a written order by the resident's practitioner.

(5) remains as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA  
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2847 MEDICATIONS: PRACTITIONER ORDERS (1) remains as proposed.

(2) A prescription medication for which the dose or schedule has been changed by the practitioner must be ~~re-labeled~~ noted in the resident's medication administration record and the resident's service or health care plan by an appropriate licensed health care professional.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA  
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2866 CONSTRUCTION, BUILDING AND FIRE CODES

(1) remains as proposed.

(2) When a change in use and building code occupancy classification occurs, licensure approval shall be contingent on meeting the building code and fire marshal agencies' standards in effect at the time of such a change. Changes in use include adding a category B or C license endorsement to a previously licensed category A facility.

(3) through (13) remain as proposed.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA  
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

6. As a result of reviewing the proposed rules in order to respond to comments received, the Department is initiating the following changes in addition to those being made in response to public comment:

ARM 37.106.2805

In ARM 37.106.2805, the Department added the abbreviation "ADL" because it is referred to in the ensuing rules. No substantive changes were made.

ARM 37.106.2809

In ARM 37.106.2809(1) through (1)(b) and (1)(h) the Department  
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made a small grammatical correction in the placement of wording in this section and subsections. No substantive changes were made.

ARM 37.106.2814

In ARM 37.106.2814, the Department changed "assisted living federation of America" and "ALFA" to "assisted living university" and "(ALU)". ALFA has changed its name to ALU.

ARM 37.106.2816 and 37.106.2817

In ARM 37.106.2816(5) and 37.106.2817(2)(d), the Department changed the term "Heimlich" maneuver to "abdominal thrust". The Heimlich Maneuver is a registered trademark that cannot be used without the permission of the Heimlich Institute.

ARM 37.106.2821

In ARM 37.106.2821(4), the Department changed the phrase "such as" to "to include". The latter phrase appeared to be permissive language, which was not the Department's intention.

ARM 37.106.2836

The Department made minor grammatical changes to ARM 37.106.2836(1)(a), (b) and (d). No substantive changes were intended.

ARM 37.106.2838

The Department inserted the actual date of the rule's original adoption (December 27, 2002) to avoid confusion such as allowing conditions that exist at the time of the amendment of the rule.

ARM 37.106.2866

In ARM 37.106.2866(2), the Department added "or C". Category C of the facility was overlooked in this rule.

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

RULE I [37.106.2898] CATEGORY C REQUIREMENTS

COMMENT #1: Section (1) of RULE I [37.106.2898] appears to apply only to secured or locked units, while section (2) appears to apply to all category C beds. It is recommended that subsections (1)(a), (b) and (c) should be entitled "requirements for locked units" for category C facilities, and (2) appear as its own rule or under RULE III [37.106.2892] regarding staff requirements for all category C facilities.

RESPONSE: The Department agrees with the recommendation and will make the suggested changes. RULE I [37.106.2898] will be retitled "Category C: Requirements for Secured Units". Section (2) will be deleted from RULE I [37.106.2898] and added to RULE III [37.106.2892].

COMMENT #2: RULE I(1)(b) and (c) [37.106.2898] require 30 feet of space for dining and activities. This rule seems to imply that one large space must be provided. It is recommended that this rule be amended to allow flexibility by stating that "sufficient" space be provided to meet the dining, activities and socialization needs of the residents.

RESPONSE: The Department agrees in part. Several areas may be used to meet the activities and dining space requirements. Day rooms, sun porches, and other areas fully accessible to all residents may be counted toward the required 30 square foot per resident requirements. Small home-like areas are often preferable over one large area. Dining areas may be used as an activities area. The Department will modify subsection (1)(c) to provide that in addition to the dining area mentioned in (1)(b), day rooms, sun porches, and other common areas accessible to all residents are allowable.

The Department disagrees with inserting the term "sufficient". The spaces provided must be at least 30 square feet per resident. Design should maximize autonomy and control for residents with dementia and encourage them to make decisions regarding their own environment. "Sufficient" space would leave the rule open for multiple interpretations.

RULE II [37.106.2891] ADMINISTRATOR QUALIFICATIONS: CATEGORY C

COMMENT #3: Given the wide variety of assisted living services offered and the wide range of sizes of these facilities, requiring 50% of all mandated continuing education to focus on the needs of a possibly small population of category C beds in a facility does not seem appropriate in RULE II(2) [37.106.2891]. It is recommended that section (2) be removed in its entirety or be changed to require that a portion of the continuing education each year be devoted to the care of persons with severe cognitive impairments.

RESPONSE: The Department disagrees. This rule applies to the licensure of category C facilities, and not to all assisted living facilities. Category C facilities specialize in providing assisted living services to individuals who are severely cognitively impaired. The special needs and treatment requirements of severely cognitively impaired residents necessitate that administrators keep current on new medical developments and therapeutic interventions.

RULE III [37.106.2892] DIRECT CARE STAFF: CATEGORY C

COMMENT #4: If there are only a small percentage of category C residents in a facility, then RULE III(1) [37.106.2892] should be changed to require that direct care staff who care for category C residents receive documented training in the skills required to care for category C residents that are currently in the facility "such as", and then list the items contained in RULE III(1)(a) through (h) [37.106.2892]. Training should focus on what is needed in the facility.

RESPONSE: The Department disagrees. If a facility is licensed for category C, the facility must be able to ensure the safety and welfare of potential or current residents. The staff must have the necessary skills to interact appropriately with category C residents.

COMMENT #5: RULE III [37.106.2892] should be clarified to require specialized dementia care training only for those staff who actually care for category C residents.

RESPONSE: The Department disagrees. This rule only applies to the staff that actually provide direct care for category C residents.

RULE V [37.106.2896] DISCLOSURES TO RESIDENTS: CATEGORY C

COMMENT #6: The disclosures that assisted living facilities must make to residents are specifically outlined in 50-5-226(7)(a), MCA. RULE V [37.106.2896] goes beyond these requirements. Rule V(1)(c), (d), (e), (f) and (i) [37.106.2896] should be removed because they are not proper subject matter for Department regulations.

RESPONSE: The Department strongly disagrees. The disclosure requirement provides the facility the opportunity to describe the services it provides and how those services target the special needs of residents with severe cognitive impairment. The listed areas in RULE V(1)(c), (d), (e), (f) and (i) [37.106.2896] are minimum licensure requirements to meet the special needs of this population.

COMMENT #7: Section (2) refers to the resident's "legal representative". What if no one has been appointed to serve in that capacity? It may be appropriate to simply refer back to section (1) language.

RESPONSE: The Department agrees that clarification is necessary. Instead of amending section (2), the Department added a definition for "resident's legal representative" in ARM 37.106.2805. The representative includes the resident's guardian, or if no guardian has been appointed, a family member or other appropriate person acting on the resident's behalf. The phrase "resident's legal representative" and similar language appears in other rules. The Department made the necessary changes in RULE V(1) [37.106.2896], ARM 37.106.2821(1)



and (2), ARM 37.106.2824(1) and ARM 37.106.2843(3)(b).

COMMENT #8: There is no definition of physical and chemical restraints, both of which are prohibited by the statute. It is important that the issue of chemical restraints be dealt with in these rules since category C residents are likely to be prescribed medications that may be considered "chemical restraints".

RESPONSE: The Department disagrees. ARM 37.106.2872(2) requires category B and C residents have an assessment and health care plan developed by a licensed health care provider to address the resident's medical needs. Medications must be prescribed by a practitioner to treat the resident's medical condition and may not be prescribed to restrain any resident. Prescriptive authority is within the scope of practice of the practitioner.

ARM 37.106.2802 PURPOSE

COMMENT #9: The following sentence should be reworded to match singular/plural statements: "Assisted living facilities are settings for frail, elderly...to maintain ~~resident's~~ residents' independence."

RESPONSE: The Department agrees and has made the suggested change.

ARM 37.106.2814 ADMINISTRATOR

COMMENT #10: Subsection (2)(b) requires all administrators to maintain current ALU certification and to obtain 16 hours of continuing education each year. This entails taking an additional course to obtain "lifetime" certification. The requirement in (2)(b) goes beyond insuring basic competency and is costly. Lifetime certification should be optional and should be allowed to count toward continuing education requirements.

RESPONSE: The Department agrees and will strike "and maintain current ALFA certification" in subsection (2)(b).

COMMENT #11: The language in (3)(a) is unclear when it specifies that obtaining an initial nursing home administrator's license can be used toward the 16 hours of required annual continuing education.

RESPONSE: The Department feels that the original language was clear. Nonetheless, the Department made changes to subsection (3)(a) to further clarify the intent.

COMMENT #12: "Mechanical assistance" is referenced in ARM 37.106.2814(10) and is not defined.

RESPONSE: The Department agrees. The Department will add to

ARM 37.106.2805 (the definitions rule) the following language: "Mechanical assistance" means the use of any assistive device that aids in the mobility and transfer of the resident. Assistive devices include but are not limited to braces, walkers, canes, crutches, wheelchairs and similar devices."

COMMENT #13: Section (13) should be rewritten as follows: "The ~~owner~~ owners of an assisted living facility may serve as administrators, or in any staff capacity, if they meet the qualifications specified in these rules." The change is needed so the language is consistent with singular/plural nouns and pronouns.

RESPONSE: Based on the comment, the Department changed ARM 37.106.2816(6), 37.106.2823(1) and (2) and 37.106.2824. The Department found other language inconsistencies with singular and plural nouns and pronouns. The Department agrees but has revised ARM 37.106.2814(13) as follows: "The owner of an assisted living facility may serve as administrator, if ~~they~~ the owner meets the qualifications specified in these rules."

ARM 37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT PROCEDURE

COMMENT #14: Section (5) should be renumbered (4), with subsequent renumbering.

RESPONSE: The version of the notice the Department sent out did not match the official notice that was published in the Montana Administrative Register. Some corrections were inadvertently missed. In the official version of the notice, section (4) was renumbered to (5) and section (5) was renumbered to (4). The Department apologizes for the confusion.

ARM 37.106.2823 RESIDENT AGREEMENT

COMMENT #15: Section (1) states that the facility "shall provide the prospective resident or their legal representative" the resident agreement. The phrase "and practitioner if applicable" should be added. Section 50-5-226(7)(a), MCA, requires the Department to "provide by rule an application or placement procedure informing a prospective resident and, if applicable, the resident's practitioner of:.....". The statutory requirement for including the resident's practitioner is provided for category B and C residents in 37.106.2875(3)(a), but it is not specifically stated for category A residents.

RESPONSE: The Department agrees and will add: "and practitioner, if applicable," to section (1) of the rule.

COMMENT #16: In subsection (1)(a), there needs to be a description or reference to what the criteria are for requiring transfer or discharge to another level of care.

RESPONSE: The Department disagrees. Levels of care are based on a resident's inability to perform activities of daily living. The facility must determine by evaluation or assessment when a change in condition requires a resident to be transferred to another level of care. The facility must specify in the resident agreement its criteria for voluntary discharge, which may differ for each facility. ARM 37.106.2824 provides involuntary discharge criteria. The Department has created a sample involuntary discharge worksheet and involuntary discharge letter to assist providers with this process. These forms are located on the Department's web page and are available upon request.

COMMENT #17: Does subsection (1)(a), regarding "the criteria for requiring transfer or discharge" apply to involuntary transfers or discharges? If so, the term "involuntary" should be inserted, otherwise there is no reference to any other kind of transfer or discharge in the rules. The provider would not know what these criteria are if they were not those listed in ARM 37.106.2824. If not involuntary, there needs to be a description or reference to what the criteria are.

RESPONSE: Subsection (1)(a) does not apply to involuntary transfers or discharges. ARM 37.106.2824 spells out the criteria for involuntary discharge. No cross-reference to ARM 37.106.2824 is needed in subsection (1)(a).

ARM 37.106.2835 RESIDENT UNITS

COMMENT #18: Section (1) assumes that all category B and C residents are unable to safely evacuate a facility from a room below or above ground level. This is simply not correct.

RESPONSE: The Department disagrees. Category B residents are consistently and totally dependent in four or more activities of daily living. Their ability to self-evacuate is compromised by physical impairment. Category C residents are defined as having severe cognitive impairments that renders them incapable of recognizing danger, of self-evacuating, of summoning assistance or of making basic care decisions. These two resident types are inappropriate for above or below ground occupancies.

COMMENT #19: Does the term "required" in section (1) mean that a resident can "choose" to be in a below or above ground room, or is it intended that a resident who uses a wheelchair or walker for mobility, or who is a category B or category C resident, must reside on the main floor?

RESPONSE: Section (1) states in part: a resident of an assisted living facility who uses a wheelchair or walker for mobility, or who is a category B or category C resident must not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the

resident can move between floors or to an adjacent area with approved occupancy/fire barrier without assistance. The resident may not "choose" to reside below or above grade if the requirements of section (1) are not met.

COMMENT #20: Section (1) seems to provide for below grade occupancy approved by the local fire marshal, but not above grade occupancy.

RESPONSE: The Department disagrees. The intent of the rule is to have the fire authority evaluate whether egress windows for fire Department rescue efforts from below grade occupancies is acceptable. The Department refers commentor to ARM 37.106.2866(7) (a section which has not been changed) which requires a fire inspection to be performed annually. The annual inspection evaluates above and below grade level occupancies.

#### ARM 37.106.2838 RESIDENT TOILETS AND BATHING

COMMENT #21: Section (4) provides that bathroom doors must open outward or slide into the wall and be unlockable from the outside. There is no provision for folding doors. Section (4) should list what other options might work.

RESPONSE: The Department agrees and has modified the language in (4) to include the use of Dutch doors, bi-folding doors, sliding pocket doors and other bi-swing door options, as approved by the Department. The type of modification must not impede the bathroom access width. The Department also added language that permits one shared bathroom as long as there are two means of access.

COMMENT #22: Section (4) should include resident choice for those residents who have been informed about the risk associated with doors not meeting the rule's requirements, but who wish to have the rooms remain unaltered.

RESPONSE: The Department disagrees. Bathrooms are one of the most common areas for falls by the elderly. Gaining immediate access to a fallen resident decreases the risks for permanent or fatal injury.

COMMENT #23: The term "special needs residents" is used in section (5) but is not defined.

RESPONSE: Special needs is referenced in ARM 37.106.2838(5). Special needs are determined by the resident needs assessment and the resident service plan, and section (5) refers to accommodations by facilities to meet resident needs. The Department does not believe a separate definition for "special needs residents" is needed.

#### ARM 37.106.2843 PERSONAL CARE SERVICES

COMMENT #24: The language in subsections (2)(a), (b), and (c) seems out of synch because (a) and (b) refer to physical and emotional well being outcomes, and (c) includes resident rights.

RESPONSE: The Department disagrees. The items listed in subsection (2)(c) demonstrate that the facility is meeting the resident's needs and are a measurement of outcomes of the services provided.

COMMENT #25: Subsections (2)(b)(i) through (iv) should have definite articles placed in front of them, e.g., "Behavioral and emotional well being of the resident includes an opportunity to . . . a sense of security", etc.

RESPONSE: The Department agrees and has made the recommended changes. Based on the comment, the Department also added articles "a" and "an" and made other grammatical changes in ARM 37.106.2836(1)(a) through (e).

COMMENT #26: Subsection (2)(c) would read better if it said "unless medically required by a physician or other practitioner's written order, the resident is ...."

RESPONSE: The Department agrees and has made the recommended change.

COMMENT #27: Subsection (2)(c)(ix) would read better if re-written as "fully informed of the services they can expect to receive from" the facility.

RESPONSE: The Department has revised (2)(c)(ix) to read "fully informed of the services that are provided by the facility".

COMMENT #28: It is recommended that subsection (4)(b) be rewritten to say "... treatment must be provided as ordered by the resident's practitioner".

RESPONSE: The Department agrees and has made the recommended change.

COMMENT #29: This comment pertains to section (5). Once a pressure ulcer is staged, it cannot be reverse staged. Does this disqualify an individual from an A facility, even if the pressure ulcer is almost healed? Should section (5) be removed from the rules because it is already reflected in the statute?

RESPONSE: Section (5) disqualifies an individual from a category A facility. Generally speaking, the care of a stage 3 or 4 pressure ulcer will exceed the 30 day skilled service limitation placed on category A residents as provided in 50-5-226(3)(a), MCA. Further, an "almost healed" stage 3 or 4 pressure ulcer is still vulnerable to breakdown, meaning that it requires continued wound care management and followup assessments under the supervision of licensed health care

professionals.

The Department disagrees that section (5) should be removed just because it is also reflected in statute. The rule establishes clarification for the provider by reaffirming the statute. Section 50-5-226(2)(b), MCA, provides that a resident with a stage 3 or 4 pressure ulcer may not be admitted or permitted to remain in a category A facility. The Agency for Health Care Policy and Research publications and other resources for skin care and the prevention of pressure ulcers will be added to the current web page information for health care professionals, facilities, families and residents.

COMMENT #30: Subsection (7)(e) provides that direct care staff receive training related to maintaining residents' skin integrity and prevention of pressure sores by "keeping the resident physically active and avoiding the overuse of wheelchairs, sitting for long periods of time, and other sources of skin breakdown in ADLs". It is recommended that after the word "sitting", the phrase "or remaining in one position for long periods of time" should be added. It is further recommended that the rule refer to or add the requirements specified in ARM 37.106.2880(5)(d) through (l), Prevention and Care of Pressure Sores: Category B. This rule was not originally proposed to be amended.

RESPONSE: The Department agrees and will modify the statement after the word "sitting" in subsection (7)(e) to read "for longer than one hour or remaining in one position for longer than two hours". However, the Department disagrees with adding or referencing ARM 37.106.2880(5)(d) through (l). It would be redundant. A category A facility may not admit or retain a resident with a stage 3 or 4 ulcer. ARM 37.106.2880(5)(d) through (l) is already a standard for category B facilities where someone with a stage 3 or 4 ulcer can be admitted and treated.

ARM 37.106.2847 MEDICATIONS: PRACTITIONER ORDERS

COMMENT #31: The new language in this rule requires medications to be "re-labeled by an appropriate licensed health care professional". No one is authorized to change medication labels prepared by the pharmacist. It is recommended that the language concerning re-labeling be removed.

RESPONSE: The Department agrees. It has struck the term "re-labeled" and added: "noted in the resident's medication administration record and the resident's service or health care plan by an appropriate licensed health care professional".

ARM 37.106.2855 INFECTION CONTROL

COMMENT #32: "Proper hand washing technique" should be defined to provide the current technique standard.

RESPONSE: The Department disagrees. Proper hand washing technique should be defined in each facility's policies and procedure manual. However, the Department will add information on proper hand washing techniques to the current web page for health care professionals, facilities, families and residents to reference.

Dawn Sliva  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 26, 2004.

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

**Interim Committees and the Environmental Quality Council**

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

**Economic Affairs Interim Committee:**

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

and

- ▶ Office of Economic Development.

**Education and Local Government Interim Committee:**

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

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

- ▶ Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

- ▶ Department of Corrections; and
- ▶ Department of Justice.



**Energy and Telecommunications Interim Committee:**

- ▶ Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

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

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

**Environmental Quality Council:**

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2003, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2003 and 2004 Montana Administrative Registers.

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