

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED ADOPTION
adoption of new rule I and	)	AND AMENDMENT
amendment of ARM 2.5.201,	)	
2.5.301, 2.5.302, 2.5.404,	)	NO PUBLIC HEARING
2.5.406, 2.5.407, 2.5.408,	)	CONTEMPLATED
2.5.503, 2.5.505, 2.5.601,	)	
2.5.602, 2.5.603, and	)	
2.5.702 concerning state	)	
procurement of supplies and	)	
services and disposition and	)	
disposal of surplus property	)	

TO: All Concerned Persons

1. On August 28, 2005, the Department of Administration proposes to adopt new rule I and amend ARM 2.5.201, 2.5.301, 2.5.302, 2.5.404, 2.5.406, 2.5.407, 2.5.408, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, and 2.5.702 concerning the state procurement of supplies and services and disposition and disposal of surplus property.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 5, 2005, to advise us of the nature of the accommodation that you need. Please contact Sheryl Olson, State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135; telephone (406) 444-3315; fax (406) 444-2529; e-mail sherylolson@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I COOPERATIVE PURCHASING (1) The department or using agency may use federal supply schedules as one source of a bid, provided the federal supply schedule supplier has agreed to extend the pricing to the department or using agency. The federal supply schedule item must meet or exceed the specifications, terms, and conditions of the invitation for bid and must be the lowest acceptable bid in order to be selected. The pertinent supply schedule must be recorded as a bid from the supplier for the inspection of all bidders.

AUTH: 18-4-221, MCA  
IMP: 18-4-402, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide guidance to using agencies regarding cooperative purchasing as authorized by section 18-4-402, MCA. That statute allows purchasing through federal supply

schedules of the U.S. General Services Administration. This rule sets guidelines for using agencies for the use of this procurement option. This rule previously existed as a subsection of ARM 2.5.601, Competitive Sealed Bids, but the Department has determined it is better placed within a rule dedicated solely to cooperative purchasing.

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

2.5.201 DEFINITIONS

(1) and (2) remain the same.

(3) "Alternate bid" means a bid submitted in knowing variance from the specifications, terms, conditions or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed immaterial.

(3) through (16) remain the same, but are renumbered (4) through (17).

(18) "Hardware maintenance" means repairs, upgrades, or installation of hardware required for the hardware to continue to operate as necessary or to perform enhanced functions.

(19) "Highest scoring offeror" means the responsive and responsible offeror having the highest score at the completion of the procurement process for a request for proposals.

(17) through (19) remain the same, but are renumbered (20) through (22).

~~(20) "Office supply" means an item in the Central Stores Product Catalog, with prefixes beginning with the following numbers: 7001 through 7704, 7802 through 7904, 7907 and 9513.~~

(21) through (25) remain the same, but are renumbered (23) through (27).

~~(26) "Request for quote" means any source selection method allowed for in Title 18, MCA.~~

(27) through (32) remain the same, but are renumbered (28) through (33).

(34) "Software maintenance" means enhancements, fixes, support, or upgrades that will allow the software to continue to function as originally specified, or to perform enhanced functions within the original scope of the system.

(33) through (38) remain the same, but are renumbered (35) through (40).

~~(39)~~ (41) "Total contract value" means the entire potential monetary worth of the project from beginning to completion, including the initial contract period and any options to renew.

(40) through (42) remain the same, but are renumbered (42) through (44).

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: The new definitions are reasonably necessary to define and clarify terms used in the procurement process and the rules governing state procurement.

"Alternate bid" is defined because the term is used in a proposed amendment to ARM 2.5.404. The use of alternate bids is a practice widely accepted in the procurement field, including here in the State of Montana. However, it is not currently defined or addressed in statute or rule. Therefore, this definition is reasonably necessary to define the term as used in the state's procurement process. The definition for "office supply" is being eliminated because it is no longer referred to in rule. The definition for "request for quote" is being eliminated because it was added to the definitions rule to comply with language used in a procurement database that is no longer in use by the State Procurement Bureau. The definition of "total contract value" as used in ARM 2.5.202, 2.5.301, 2.5.603, and 2.5.604, is amended to clarify that it means the monetary worth of a contract.

2.5.301 DELEGATION OF PURCHASING AUTHORITY

(1) remains the same.

~~(2) Unless specifically addressed in a delegation agreement, agencies must buy controlled items through the division except office supply items (as defined in ARM 2.5.201) supplied by central stores. These items may be purchased directly from vendors if the vendor's price is a publicly advertised price, established catalog price, or discount price offered to the purchasing agency and is less than the price available from the central stores program and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program.~~

~~(3)(2)~~ Delegation and competitive procedures are not necessary for the following purchases:

(a) salaries;

(b) fees for those professions exempted by 18-4-132, MCA;

(c) travel and per diem;

(d) retirement and social security payments;

(e) freight;

(f) landfill charges;

(g) supplies or services whose prices are regulated by the public service commission or other governmental authority;

(h) pastoral services;

(i) training;

(j) training and conference space rental and catering; and

(k) fresh fruits and vegetables; and

(l) educational instructors and guidance counselors for inmates under the supervision of the department of corrections.

AUTH: 18-4-221, MCA

IMP: 18-4-221, 18-4-222, and 18-4-302, MCA

STATEMENT OF REASONABLE NECESSITY: Current section (2) is being eliminated because it duplicates language contained in section 18-4-302(3), MCA. Formatting amendments to new

section (2) are made at the suggestion of the Secretary of State's Administrative Rules Bureau for the purpose of clarity. Subsection (2)(1) is added at the request of the Department of Corrections. The Department of Corrections is often in the position of needing educational instructors and guidance counselors for inmates at the facilities under its jurisdiction. These contracted services are very difficult to fulfill through competitive procurement methods because of the nature of the services and the clients served. The Department of Administration concurs that this is an area where the competitive procurement requirements can be waived to enable the Department of Corrections to fulfill the need for these services in a manner that best meets its needs, without requiring a competitive procedure.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION

(1) through (4) remain the same.

(5) Requisitions for supplies and services to be purchased with funds from a given fiscal year must be submitted to the ~~general services~~ division by:

(a) April 1 of that fiscal year for a request for proposals; and

(b) May 1 of that fiscal year for an invitation for bids.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to (5) is reasonably necessary to eliminate unnecessary language as "division" is already defined as the General Services Division. In addition, an amendment is proposed to require that requisitions for a request for proposals be submitted to the General Services Division by April 1 of each year, as opposed to May 1. This is reasonably necessary because a request for proposals procurement process is much lengthier than an invitation for bids process, requiring a minimum of at least six weeks from start to finish. Requiring the requisition to be submitted on April 1 will allow ample time for the completion of the procurement process for a request for proposals by fiscal year end.

2.5.404 BID AND PROPOSAL PREPARATION

(1) through (3) remain the same.

(4) Alternate bids may be accepted if the bidder submitting an alternate is the lowest responsive bidder on its primary bid and the bids are clearly marked "primary" or "alternate."

(4) and (5) remain the same, but are renumbered (5) and (6).

~~(6)~~(7) Vendors may quote a cash discount based on early payment; however, such discounts will not be considered in determination of low bid or contract award and payment terms



will remain as in ~~(5)~~ (6) above, unless the bid or proposal specified otherwise.

(7) and (8) remain the same, but are renumbered (8) and (9).

AUTH: 18-4-221, MCA

IMP: 18-4-221 and 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: Amendment of (4) is reasonably necessary to create guidelines regarding alternate bids and to allow a vendor to submit multiple bids when responding to a solicitation. The amendment to (7) is reasonably necessary to clarify that cash discounts and/or various payment schedules can be considered in bid or contract award if so specified in a bid or proposal document.

2.5.406 VENDOR PROTEST (1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA. The protest must be in writing and state in detail all of the protestor's objections and allegations of violations of the Montana Procurement Act. The complete protest must be submitted to the ~~department~~ General Services Division, P.O. Box 200135, Helena, MT 59620-0135, no later than the close of business 14 calendar days after the execution of the contract in question. The department may exercise its discretion when it decides what is in the best interest of the state.

(2) through (4) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-1-402 and 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is reasonably necessary to provide vendors with a specific mailing address where procurement protests may be sent. A procurement protest must be filed within 14 days after the execution of a contract. By including a specific address in the rule, the Department of Administration will be assisting to inform vendors where to mail any such procurement protest.

2.5.407 DETERMINATION OF RESPONSIVENESS/STANDARDS OF RESPONSIBILITY (1) The procurement officer will make the final determination of responsiveness for both bids and offers.

(2) A determination of responsiveness may be made at any time during the procurement process.

(3) If a determination of nonresponsiveness is made, nonresponsive bids and offers will be disqualified and eliminated from further consideration.

~~(1)(4)~~ ~~Among~~ Factors that may be considered in determining whether the standard of responsibility has been met are whether a prospective contractor bidder or offeror:

(a) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) has a satisfactory record of integrity;

(c) is qualified legally to contract with the agency;

(d) has not failed to supply any necessary information in connection with the inquiry concerning the responsibility; and

(e) has a satisfactory record of past performance. Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation, or from using past performance with the state of Montana as a reference.

~~(2)(5)~~ If requested, A prospective contractor bidder or offeror must supply information ~~requested by~~ to the procurement officer concerning the responsibility of the ~~contractor to the procurement officer~~ in a timely and convincing manner. If the contractor bidder or offeror fails to supply the requested information, the procurement officer may base a determination of responsibility upon any available information or may find the prospective contractor bidder or offeror nonresponsible.

~~(3)(6)~~ The prospective contractor bidder or offeror may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that the contractor bidder or offeror possesses the necessary items;

(b) acceptable plans to subcontract for the necessary items; or

(c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(7) For both bids and offers, a determination of nonresponsibility may be made at any time during the procurement process.

(4) remains the same, but is renumbered (8).

AUTH: 18-4-221, MCA

IMP: 18-4-303, 18-4-304, and 18-4-308, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments concerning who is authorized to make a determination of responsiveness are reasonably necessary to clarify and set out for vendors the timeframe in which a determination can be made and who makes the final determination. This issue has been the subject of dispute in a procurement protest and litigation. By including this information in the rule, the Department is providing notice to vendors of the procedures and authority

involved in making a determination of responsiveness. The amendments concerning standards of responsibility are reasonably necessary to remove the reference to "prospective contractor" and substitute the defined terms of bidder and offeror. Issues raised during procurement protests have made the amendments to (4), (5) and (6) reasonably necessary to clarify that until a purchase order has been issued or a contract has been fully executed, no expectation of a contractual relationship exists on the part of a bidder or offeror. The amendment to (7) is reasonably necessary to inform bidders and offerors that a determination of nonresponsibility can be made at any time during the procurement process.

2.5.408 RECIPROCAL PREFERENCE

(1) remains the same.

(2) A reciprocal preference is applied only to an invitation for bids for supplies and printing, or an invitation for bids for nonconstruction services for public works as defined in 18-2-401(9), MCA, but only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in 18-1-103, MCA.

(3) through (5) remain the same.

AUTH: 18-1-114 and 18-4-221, MCA  
IMP: 18-1-102 and 18-7-107, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is reasonably necessary to include a reference to state printing as being subject to the reciprocal preference requirements of section 18-1-102, MCA, as is evidenced by the statute, section 18-7-107, MCA.

2.5.503 PUBLIC NOTICE

(1) remains the same.

(2) In the interest of economy, notices of availability of invitations for bids and requests for proposals may be mailed, ~~as provided in (1) and/or advertised as provided in (4) instead of the complete invitation or request faxed, or e-mailed to a selection of vendors obtained from the purchasing vendors list and/or provided by the purchasing agency.~~

(3) and (4) remain the same.

AUTH: 18-4-221, MCA  
IMP: 18-4-303 and 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is reasonably necessary to allow a procurement authority the option of faxing and e-mailing notices to a selection of vendors. This is to conform with current practice and procedure of the State Procurement Bureau and other state government procurement units in keeping with the advancement

of technology as it relates to the state's procurement functions.

2.5.505 MISTAKES AND MINOR VARIATIONS IN BIDS AND OFFERS

(1) The procurement officer may allow a bidder or offeror to correct minor mistakes in a bid or offer if the mistake is clearly not attributed to an error in judgment, and the mistake and the intended correct bid or offer is clearly evident on the form of the document. Examples of correctable mistakes include, but are not limited to:

- (a) typographical errors;
- (b) errors in extending unit prices;
- (c) transposition errors;
- (d) arithmetical errors; and

(e) failure to sign and return an acknowledgment of addendum; or

~~(e)~~(f) signature omitted.

(2) and (3) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-303 and 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is reasonably necessary to add the "failure to sign and return an acknowledgment of addendum" as an example of a correctable mistake that should not disqualify a vendor from competition for an invitation for bids or a request for proposals process. It is determined to be in the State's best interest to have as much competition as possible when seeking a contractor for a service or supply. Eliminating competition by disqualifying vendors for minor mistakes would have a negative effect on this goal.

2.5.601 COMPETITIVE SEALED BIDS

(1) through (3) remain the same.

(4) Where a brand name specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired, and is not intended to limit or restrict competition. When bidding an "or equal" product, the burden of persuasion is on the bidder that has not been specified to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgment for making a final determination on whether a proposed substitution is equal to the brand name specified.

(4) through (14) remain the same, but are renumbered (5) through (15).

~~(15) The division or using agency may use federal supply schedules established by the general services administration as one source of a bid. The federal supply schedule item must meet or exceed the specifications, terms, and conditions of the invitation for bid and must be the lowest acceptable bid~~

~~in order to be selected. The pertinent supply schedule must be recorded as a bid from the supplier for the inspection of all bidders.~~

AUTH: 18-4-221, MCA  
IMP: 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: The addition of new section (4) is reasonably necessary to describe and address situations where a "brand name" may be specified in a bid. The addition of this section will provide information to vendors concerning what is meant by the inclusion of a "brand name" in an invitation for bids specification. Section (15) has been eliminated because the Department is proposing adding a new rule, which will be devoted solely to cooperative purchasing. See New Rule I, Cooperative Purchasing, in this rule notice.

2.5.602 COMPETITIVE SEALED PROPOSALS

(1) and (2) remain the same.

(3) The request for proposals must be prepared in accordance with ARM 2.5.601(2) through ~~(4)~~ (5) and must also include:

(a) a statement that discussions may be conducted with one or more offerors who submit proposals, but that proposals may be accepted and a contract issued without such discussions; and

(b) the criteria that will be used to evaluate the proposals.

(4) An evaluation committee may be utilized to evaluate the proposals.

(4) through (6) remain the same, but are renumbered (5) through (7).

~~(7)~~(8) For the purpose of conducting discussions, proposals shall be initially classified as:

(a) responsive; or

(b) non-responsive.

(i) Proposals may be found non-responsive any time during the ~~evaluation~~ procurement process if:

(A) any of the required information is not provided;

(B) the submitted price is found to be excessive or inadequate as measured by criteria stated in the request for proposals; or

(C) the proposal is not within the plans and specifications described and required in the request for proposal.

(ii) Non-responsive proposals will be eliminated from further consideration.

(8) and (9) remain the same, but are renumbered (9) and (10).

~~(10)~~(11) The evaluation shall be based on the evaluation criteria set forth in the request for proposals. The evaluators shall exercise discretion in assigning points or value to a proposal, which involves a judgmental assessment of

the evaluation criteria. The If an award is made, it must be made to the responsive and responsible offeror whose proposal best meets the evaluation criteria.

(11) through (13) remain the same, but are renumbered (12) through (14).

(15) The state may create a roster of contractors to provide supplies and/or services on an "as needed, if needed" basis. In this situation, contractors have no guarantee that any supplies or services will be purchased by the state. The solicitation document will establish the method to be used to select contractors for the roster.

AUTH: 18-4-221, MCA

IMP: 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The addition of section (4) is reasonably necessary to advise vendors that an evaluation committee may be used to evaluate and score a request for proposals. In addition, the issue of "responsiveness" has been a subject of dispute in a procurement protest. Therefore, the Department believes it is reasonably necessary to amend subsection (8)(i) to clearly indicate that a determination of responsiveness can be made at any time during the "procurement" process. The proposed amendment to (11) is to clarify that the State is not obligated to award a contract as the result of a request for proposals process. Section (15) is proposed to clarify the State's ability and manner of establishing a roster of contractors.

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) The division or state agency may procure supplies or services when the total contract value will be \$5,000 or less using a purchase technique that best meets the agency's needs, including the use of electronic online auctions.

(2) The payment method used for small purchases should be the state's purchasing card, except for interagency purchases.

(2) through (4) remain the same, but are renumbered (3) through (5).

(6) If approved by the agency procurement officer, and except for new or used vehicles, a state agency may participate in electronic online auctions for limited solicitations under the following conditions:

(a) the procurement officer must review and approve the terms of the participation in the auction for compliance with state law;

(b) two quotes must first be obtained from viable sources and the lowest of the two quotes must be the amount that the auction price may not exceed;

(c) the auction price must include all fees associated with participating in the auction, including shipping and handling; and

(d) the terms of the purchase must include a right to return.

AUTH: 18-4-221, MCA  
IMP: 18-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: These amendments are reasonably necessary to permit and give guidance to state agencies on the use of electronic online auctions for small purchases or limited solicitations. This technique is one that has only become available over the course of the last few years and it has proved highly effective in other states. The Department is proposing these amendments to ensure that this procurement method is clarified and made available for use by state agencies.

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) The division's property and supply bureau ~~shall~~ may transfer surplus supplies to other state agencies and other units of government.

(2) Surplus supplies ~~must~~ may be offered to the public by the division's property and supply bureau through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state. On sales greater than \$300, only United States postal money orders, certified checks, cashier's checks, credit cards or business checks may be accepted.

(3) ~~Competitive sealed bidding:~~

~~(a)~~ If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least 10 days before the date set for opening bids ~~by~~ posting the bid on the state's bids and proposals website at <http://mt.gov/doa/gsd/osbs/default.asp>.

~~(i)(a) mailing a request for sale bids~~ Notice of the sale may also be given to prospective bidders, by mail or by newspaper advertisement, including those bidders on lists maintained at the property and supply bureau for this purpose; and

~~(ii) newspaper advertisement may also be used.~~

(b) The ~~request for sale bids~~ bid must list the supplies offered for sale, designate their location and how they may be inspected, and state the terms and conditions for bid opening. Bids shall be opened publicly.

(c) Award must be made in accordance with the provisions of the ~~request for sale bids~~ bid to the highest responsive and responsible bidder, if the price offered by such bidder is

acceptable to the division. If the price is not acceptable, the division may:

(i) reject the bids in whole or in part and negotiate the sale, but the negotiated sale price must be higher than the highest responsive and responsible bidder's price; or

(ii) resolicit bids.

(4) ~~Auctions~~: Supplies may be sold at auction, including electronic online auctions. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate all the terms and conditions of any sale.

(5) ~~Established markets~~: Established markets are places where supplies such as livestock and produce are regularly sold in wholesale lots, and prices are set by open competition. Surplus supplies may be sold in established markets for such supplies.

(6) ~~Posted prices~~: Surplus supplies may be sold at posted prices, including by posting on online websites, as determined by the division when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the division.

(7) ~~Trade-ins~~: Surplus supplies may be traded-in only if the division determines the trade-in value is sufficient and in the state's best interest. Generally, trade-ins will not be approved for vehicles.

(8) remains the same.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

STATEMENT OF REASONABLE NECESSITY: It is reasonably necessary to amend (1) to substitute the word "may" for "shall" because the Property and Supply Bureau is not mandated to transfer surplus supplies to other units of government. The amendment to (2) is to clarify that the Property and Supply Bureau is the only entity of state government that can dispose of surplus property by the means listed. Sections (3) through (7) are amended to eliminate internal catchphrases at the suggestion of the Secretary of State's Administrative Rules Bureau. Section (3) is also amended to clarify and update the competitive sealed bidding process. Section (4) is amended to include the use of electronic online auctions as a method of disposing of surplus supplies. Section (6) is amended to indicate that surplus supplies may also be sold at posted prices online.

5. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to Sheryl Olson, State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, telephone: (406) 444-3315; fax (406) 444-2529; e-mail sherylolson@mt.gov. Any comments must be received no later than 5:00 p.m. on August 26, 2005.



6. If persons who are directly affected by the proposed actions wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request, along with any written comments they have, to Sheryl Olson, State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, telephone: (406) 444-3315; fax (406) 444-2529; e-mail sherylolson@mt.gov. A written request for hearing must be received no later than 5:00 p.m. on August 26, 2005.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 250 based on 2,500 possible vendors.

8. The State Procurement Bureau of the Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this bureau. Persons who wish to have their name added to this 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 notice regarding state procurement. Such written request may be mailed or delivered to Sheryl Olson, P.O. Box 200135, Helena, MT 59620-0135, faxed to the office at (406) 444-2529, e-mailed to sherylolson@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Administration.

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

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

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

Certified to the Secretary of State July 18, 2005.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of New Rules I through	)	ADOPTION
III pertaining to implementation	)	
of detention officer transfer to	)	NO PUBLIC HEARING
sheriffs' retirement system	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 9, 2005, the Montana Public Employees' Retirement Board proposes to adopt New Rules I through III for members of the Public Employees' and Sheriffs' Retirement Systems pertaining to implementation of detention officer transfer to sheriffs' retirement system.

Pursuant to MAR Notice No. 2-2-354, the Board previously proposed adoption of similar rules at page 725 of the 2005 Montana Administrative Register, issue no. 9. Those proposed rules were withdrawn by Notice of Decision at page 1021 of the 2005 Montana Administrative Register, issue no. 12. Thereafter, proposed New Rules I through III were developed and negotiated with the Sheriffs and Peace Officers Association ("SPOA").

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on August 15, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

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

Rule I DETENTION OFFICER MEMBERSHIP IN SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member on July 1, 2005 is eligible to become a member of the SRS, and an employee hired by a sheriff after July 1, 2005 must become a member of the SRS, pursuant to Title 19, chapter 7, part 3, MCA, if the member or employee meets the definition of "detention officer" in 19-7-101(2), MCA, which includes:

(a) being employed in a detention center, a juvenile detention center, a temporary detention center, or a detention facility;

(b) having authority and responsibility for maintaining custody of an inmate for any period of time and performing tasks related to the operation of a detention center; and

(c) completing, within the time allowed by ARM 23.14.526, a detention officers' basic course as provided by the Montana

law enforcement academy or equivalent training in a training school meeting the minimum standards of the board of crime control, as required by ARM 23.14.526, pursuant to 44-4-301, MCA.

(2) An employee hired by a sheriff after July 1, 2005 who meets all the criteria to be a "detention officer", except completion of training, must be an SRS member from the first day of employment or, if later, the first day all criteria except completion of training are met.

(3) An SRS member who does not complete timely the training specified in (1)(c) will be considered to be a member of PERS after the time allowed by ARM 23.14.526 until training is completed. All contributions and the member's membership service and service credit will be adjusted as necessary. Otherwise, an employee who becomes a member of the SRS remains a member of the SRS until the member is no longer employed by the sheriff in a detention center.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary to properly define the term "detention officer" recognizing Title 44, MCA, SB 370, and the Board of Crime Control's rules concerning detention officer training and certification.

Proposed rule I(1) incorporates the statutory language defining a "detention officer" in Section 19-7-101, MCA, and the requirements that must be satisfied to be eligible for membership in the Sheriffs' Retirement System.

Proposed rule I(2) is required to clarify how and when detention officers hired after the effective date of SB 370 (July 1, 2005) will be eligible for enrollment in the Sheriffs' Retirement System.

Proposed rule I(3) assists the Board in determining which employees of sheriff's offices are in fact detention officers by requiring that detention officers eligible for Sheriffs' Retirement System membership meet the mandatory training requirements established by the Montana Department of Justice under ARM 23.14.526. The proposed rule then assists in clarifying the disposition of those detention officers for whom training is expected, but who do not receive the mandatory training requirements within the amount of time established by the Montana Department of Justice under ARM 23.14.526.

Rule II DETENTION OFFICER ELECTION TO TRANSFER TO SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member who, on July 1, 2005, meets all the criteria to be a "detention officer" may make an election to become a member of SRS.

(2) To be an effective election, the written election form prescribed by the board, containing all the required information

and including all necessary documentation, must be properly signed and must be filed with the board between July 1, 2005 and April 30, 2006, inclusive.

(3) A written election received by the board by the 15th day of a calendar month will be effective the first pay period of the following calendar month. A written election received by the board after the 15th day of a calendar month will be effective the first pay period of the second following calendar month.

(4) A detention officer who becomes a member of the SRS has not terminated from service and is not eligible to receive any benefit from PERS until termination of employment.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary to clarify the election procedure, particularly the time administratively necessary between notification of the Montana Public Employee Retirement Administration and the effective date, for purposes of reporting by the local sheriff's office. The rule also clarifies the effect of the election, in conformance with federal law requirements known informally as "the same desk rule" (as applied here, an employee who continues in employment but changes retirement systems has not terminated service for purposes of eligibility).

Rule III DETENTION CENTER REPORTS FROM SHERIFFS (1) On the 15th day of July each year, the sheriff of each county with a detention center must file an employer report with the board.

(2) The employer report will include information necessary for the board to determine the appropriate retirement system for detention officers, as of June 30 of each year, including:

(a) each detention officer's name, social security number, retirement system and date of initial employment in current position;

(b) whether the employee is employed in a detention center, is acting as a detention officer, and has completed a detention officers' basic course or equivalent training at a training school meeting the minimum standards of the board of crime control or is expected to receive such training within the time allowed by ARM 23.14.526.

(3) After the initial sheriffs' employer report, on or before the first working day of the fiscal year, the board will provide each sheriff a form containing the information from the immediately preceding report, on which the sheriff only need provide new information or corrections for filing with the board.

(4) Payment of the detention center payroll contributions will be considered delinquent pursuant to 19-2-506, MCA, until both the required contributions and valid employer reports are received by the board.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary in order for the Board to obtain needed information from each sheriff's department with a detention center. The required report will provide the information on each detention officer necessary for the Board in classifying the detention officers who are eligible for membership in the Sheriffs' Retirement System.

4. Concerned persons may present their data, views, or arguments concerning the proposed rules in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., August 25, 2005.

5. If persons who are directly affected by the proposed amendment and adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., August 25, 2005.

6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; 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 45 persons based on approximately 450 detention officers.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmiller@mt.gov, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Carole Carey  
Carole Carey, President  
Public Employees' Retirement Board

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

Certified to the Secretary of State on July 18, 2005.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of new	)	AMENDED NOTICE OF
Rules I through X regarding	)	PUBLIC HEARING ON
definitions, licensing and	)	PROPOSED ADOPTION
application requirements, ownership	)	
change, examination of title lenders,	)	
duration of loans, extensions,	)	
reports, schedule of charges,	)	
employees' character and fitness, and	)	
procedural rules for hearing and	)	
discovery proposed for adoption under	)	
the Montana Title Loan Act	)	

TO: All Concerned Persons

1. On July 14, 2005 the Division of Banking and Financial Institutions published MAR Notice No. 2-2-357 at page 1125 of the 2005 Montana Administrative Register, issue number 13 for the proposed adoption of the above-stated rules. The public hearing will remain scheduled on August 17, 2005, at 10:00 a.m. in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana.

The reasonable necessity for the notice of proposed adoption is amended as follows: The 2001 Montana Legislature enacted House Bill 539, which was an Act creating the Montana Title Loan Act. This Act has been codified in Title 32, Chapter 1, part 8, MCA. Section 31-1-802, MCA allows the Department to adopt rules to implement the provisions of the Act. The Department does not anticipate any financial impact from the proposed rules. There are currently 43 title loan licensees. New Rule I is needed to provide definitions for specific terms used throughout the proposed rules. New Rules II and III are needed to provide procedures and standards for licensing of lenders. New Rules IV, VII and VIII are being proposed to outline specific reporting and disclosure requirements that licensees must meet under the Montana Title Loan Act. New Rules V and VI are needed to clarify the procedures for extending title loans and reducing principal. New Rule IX is needed to provide a process to implement recent legislative enactment. New Rule X is needed to provide standards and procedures for administrative actions.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 12, 2005, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and

Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. 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 Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than August 12, 2005.

4. Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

5. An electronic copy of this Notice of Public Hearing on Proposed Adoption is available through the Department's website on the World Wide Web at <http://www.discoveringmontana.com/doa>, under "public meetings/notices;" and "administrative rule notices." The department strives to make the electronic copy of this Notice conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its 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 or comments.

6. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Suite 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; emailed to cromano@mt.gov, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

By: /s/ Janet R. Kelly



Janet R. Kelly, Director  
Department of Administration

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

Certified to the Secretary of State July 18, 2005.

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC  
of new rules I through VII ) HEARING ON PROPOSED  
pertaining to the establishment ) ADOPTION  
of a residential )  
methamphetamine treatment )  
center )

TO: All Concerned Persons

1. On August 18, 2005, at 10:00 a.m., a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on August 11, 2005, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, P.O. Box 201301, Helena, MT 59620-1301; phone: (406) 444-3930; fax: (406) 444-4920; e-mail: momholt-mason@mt.gov.

3. The new rules are necessary to implement the provisions of Ch. 575, L. 2005 which allows a sentence reduction for offenders sentenced for a second offense of methamphetamine possession and who complete a residential methamphetamine treatment program operated or approved by the department of corrections.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "ACA standards" means American correctional association standards for adult community residential services.

(2) "Center" means the methamphetamine treatment center established pursuant to house bill 326 of the 2005 legislative session.

(3) "Contractor" means the private, nonprofit Montana corporation with which the department enters a contract to operate the center.

(4) "Department" means the department of corrections established in 2-15-2301, MCA.

(5) "Eligible offender" means an offender who has been convicted of a second offense of possession of methamphetamine and has been sentenced under 45-9-102, MCA, or an offender deemed appropriate by the department.

(6) "Participant" or "program participant" means an offender whom the department of corrections places in the methamphetamine treatment center.

(7) "Private nonprofit Montana corporation" means a corporation organized and incorporated in this state under the Montana Nonprofit Corporation Act, Title 35, chapter 2, section 113, et seq., MCA, as a nonprofit corporation.

(8) "Residential" has the common meaning and refers to the fact the program participants must live at the treatment facility during treatment, not including after-care.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE II SITING A METHAMPHETAMINE TREATMENT CENTER

(1) The department may site a residential methamphetamine treatment center in a community if the governing body of the community passes a resolution authorizing the center.

(a) If the center will be located inside the city limits, the governing city body must pass the resolution.

(b) If the center will be located outside any city limits, the governing county body must pass the resolution.

(2) The center must be sited near a civilian population center with at least the following services:

(a) within 30 minutes emergency response time of a hospital; and

(b) within 30 minutes emergency response time of a fulltime or volunteer fire department.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE III METHAMPHETAMINE TREATMENT CENTER (1) The department shall establish a residential methamphetamine treatment center for the custody, supervision, counseling, and treatment of eligible male and female offenders in a facility or facilities in a community or communities of Montana.

(2) The department shall publish a request for proposals, and after an evaluation of the proposals submitted in response to the request, choose a contractor to operate the center.

(a) The contractor must be a private nonprofit Montana corporation.

(b) The proposal shall call for the establishment of an intensive therapeutic community-model program of at least six months duration and also have an after-care component in a prerelease center.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE IV PHYSICAL REQUIREMENTS OF METHAMPHETAMINE TREATMENT CENTER (1) The methamphetamine treatment center

will house offenders in the custody of the department.

(2) The center shall have controlled access to and egress from the facility and other appropriate security measures so as to prevent unauthorized access to or exit from the facility.

(3) The center must comply with all applicable federal, state and/or local building codes and fire safety codes.

(4) The physical plant shall constitute a pleasant, safe, and healthful environment. Participant housing areas must conform to applicable ACA standards, provide access for handicapped inmates, and must provide for participant safety and security.

(5) If the center houses both male and female participants, the center must assure adequate separation of the sexes to provide for the safety of both.

(6) The center must comply with the Federal Prison Rape Elimination Act.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE V POLICIES AND PROCEDURES (1) The methamphetamine treatment center must maintain appropriate written policies and procedures.

(2) The department must initially approve the center's policies and procedures for operating the center. The center must update its policies yearly and submit them annually for approval by the department thereafter.

(3) The policy and procedures must address the following areas and meet the following guidelines:

(a) for participant funds, the center must account for funds it holds for participants in accordance with accepted accounting procedures;

(b) for health and safety, the center shall provide participants with reasonable protection against the danger of fire and smoke, injury attributable to the environment, electrical hazards, and the spread of disease and infection. The center must maintain records of inspections by local, state and federal authorities having jurisdiction;

(c) for confidentiality of participant records and information, the center must maintain participant records in a manner to assure confidential criminal justice information and treatment information will remain confidential. The center will release confidential information only to the department and appropriate persons;

(d) for a disciplinary process, the center will maintain an appropriate disciplinary process consistent with the department's disciplinary hearings policies and approved by the department;

(e) for incarceration of participants, the center will maintain appropriate policies for the incarceration of participants who violate program rules or who await transportation to a higher level of custody;

(f) for disaster and emergency preparedness, the center

will maintain written plans to provide for the continued operation of the program in the event of an employee work stoppage, and written plans that identify the procedures for meeting disasters. The emergency plans and procedures shall be posted at highly visible locations and explained to each new participant at orientation. Drills shall be held at least quarterly to evaluate the effectiveness of disaster plans and procedures;

(g) for procedures in the event of an escape, the center shall follow department policy concerning escapes and must notify the proper authorities in a timely fashion so the department can secure an escape warrant;

(h) for center employees, the contractor must check the background of each center employee and the center cannot employ anyone with a felony conviction without express written authorization of the department. The contractor must staff the center to conform to applicable ACA standards to protect staff and participants from harm;

(i) for inmate workers, upon approval of the department, the center may employ inmate workers and will have policies and procedures for selection, pay, and supervision of inmate workers; and

(j) for food service, the center must meet applicable ACA standards for participant food service and provide participants with at least the minimum daily adult level of caloric intake and nutritional levels as recommended by the U.S. department of agriculture. A nutritionist, dietician, or physician must annually approve the nutritional value of the food the center serves.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE VI ADMISSION TO THE CENTER (1) A local screening committee shall determine which eligible offenders it will admit to the center.

(2) The following individuals shall comprise the screening committee:

(a) one department employee appointed by the department;

(b) one person appointed by the center;

(c) a law enforcement officer appointed by both the sheriff of the county in which the center resides and the police department of the city if the center resides inside city limits; and

(d) a member of the public who resides in the city or county and appointed by the city council or county governing body depending on whether the center is located inside the city limits of a city.

(3) The department shall make applications available to eligible offenders. Generally, all eligible offenders will be accepted into the program, but the screening committee may reject offenders based on the criteria in (6).

(4) The screening committee shall have the final determination regarding the admission of any candidate to the

center.

(5) Each committee member shall have one vote. In the case of a tie vote, the center administrator will cast a vote to break the tie.

(6) If the committee rejects an offender, the committee must in writing state its reasons for the rejection. The committee may reject offenders only for the following reasons:

(a) the offender presents an unacceptable level of risk to the safety of other offenders or center staff;

(b) the offender presents an unacceptable level of risk to himself or herself;

(c) the offender presents an unacceptable escape risk; and

(d) the offender has needs beyond services the center can provide.

(7) The committee may rescreen an offender if additional relevant information is presented or after the offender has had a period of stabilization.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE VII SENTENCE SUSPENSION (1) If a program participant sentenced under 45-9-102, MCA, satisfactorily completes the residential methamphetamine treatment program including the prerelease component during the first three years of the participant's sentence, the remainder of the offender's sentence under 45-9-102, MCA, is suspended.

(2) A center established pursuant to these rules is approved by the department for purposes of 45-9-102, MCA.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

NEW RULE VIII EXPANSION (1) If the center and the department desire to increase the number of program participants over the number for which the department initially contracts, the department shall conduct a public hearing in the city or county in which the center is situated. The department shall conduct the hearing in conformity with Title 2, chapter 3, MCA.

(2) The governing body of the city or county in which the center is located must also approve of any proposed expansion by passing a resolution to that effect.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

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 Myrna Omholt-Mason at the contact information listed in paragraph 2, and must be received no later than 5:00 p.m. on August 26, 2005.

6. Colleen A. White, Hearings Examiner, will preside over and conduct the hearing.

7. The Department of Corrections 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 community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Myrna Omholt-Mason, at the contact information listed in paragraph 2, or may be made by completing a request form at any rules hearing held by the Department of Corrections.

8. An electronic copy of this Notice of Public Hearing is available through the department's website at [www.cor.state.mt.us](http://www.cor.state.mt.us). The department tries to make the electronic version conform to the official version of this notice, as printed in the Montana Administrative Register. However, the department advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, the department advises that the website might be inaccessible at times, due to system maintenance or technical problems.

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

/s/ BILL SLAUGHTER  
BILL SLAUGHTER, Director  
Department of Corrections

/s/ COLLEEN A. WHITE  
Colleen A. White, Rule Reviewer  
Department of Corrections

Certified to the Secretary of State July 18, 2005.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed )  
adoption of New Rules I )  
through VII pertaining to the )  
regulation of retail )  
establishment selling )  
ephedrine or pseudoephedrine )

NOTICE OF PUBLIC  
HEARING ON PROPOSED  
ADOPTION

TO: All Concerned Persons

1. On August 18, 2005, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of New Rules I through VII pertaining to the regulation of retail establishment selling ephedrine or pseudoephedrine.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on August 11, 2005, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Fax (406) 444-3549; e-mail abovingdon@mt.gov.

3. The proposed new rules provide as follows:

New Rule I DEFINITIONS (1) "Licensed community pharmacy" means a pharmacy situated within 10 miles of any place at which a licensed medical practitioner maintains an office for professional practice.

(2) "Retail establishment" means the registered owner of a business that sells products containing ephedrine or pseudoephedrine to the public.

AUTH: 2005 Laws of Montana, Ch. 572  
IMP: 2005 Laws of Montana, Ch. 572

New Rule II RETAIL ESTABLISHMENTS ELIGIBLE TO APPLY FOR CERTIFICATION (1) A retail establishment is eligible to apply for certification with the department if:

- (a) it is at least 5000 square feet in size;
- (b) it sells 1000 separate items of product;
- (c) it has a secure display location not accessible to customers, either behind a store counter or in a locked case, available for selling products that contain ephedrine or pseudoephedrine;



(d) it limits sales of products containing ephedrine or pseudoephedrine to packages containing no more than a total of nine grams; and

(e) it agrees to track customer sales and to prevent a customer from purchasing more than nine grams of products containing ephedrine or pseudoephedrine in any 30-day period.

AUTH: 2005 Laws of Montana, Ch. 572

IMP: 2005 Laws of Montana, Ch. 572

New Rule III REQUIREMENTS FOR CERTIFICATION (1) An eligible retail establishment will be certified by the department after it completes the certification requirements set forth in this subchapter.

(2) To be eligible for certification, a retail establishment must:

(a) submit a record keeping plan for approval by the department;

(b) submit to a site visit conducted by the department or local law enforcement; and

(c) complete training provided by the department or local law enforcement that covers the record keeping requirements for retail establishments and issues related to the production of methamphetamine.

(3) Upon completion of these requirements, a retail business may apply, on the form provided by the department, for certification.

(4) If a retail establishment meets the eligibility standards and has successfully completed the certification requirements, the department shall certify the retail establishment.

AUTH: 2005 Laws of Montana, Ch. 572

IMP: 2005 Laws of Montana, Ch. 572

New Rule IV RECORD KEEPING REQUIREMENTS (1) Certified retail establishments selling products containing ephedrine or pseudoephedrine must keep records of the following:

(a) an inventory of products containing ephedrine or pseudoephedrine purchased by the retailer. The inventory must include:

(i) date of purchase; and

(ii) quantity of purchase;

(b) a record of all sales of products containing ephedrine or pseudoephedrine sold by the retailer. The record must include:

(i) date of sale;

(ii) quantity of product sold;

(iii) a record of the name and signature of the purchaser;

(iv) a record that the purchaser provided proper identification in either the form of a driver's license or other form of photo identification and a record of the identification number; and

(v) a record of the name and signature of the employee who made the sale; and

(c) the cumulative grams of product sold to an individual consumer during any 30-day period.

AUTH: 2005 Laws of Montana, Ch. 572

IMP: 2005 Laws of Montana, Ch. 572

New Rule V TRAINING REQUIREMENTS (1) Certified retail establishments shall have received training by the department or local law enforcement that covers the record keeping requirements for retail establishments, including but not limited to a record keeping system that tracks customer sales in order to prevent an individual customer from purchasing more than nine grams of products containing ephedrine or pseudoephedrine in any 30-day period, and issues related to the production of methamphetamine.

(2) Retail establishments shall be responsible for ensuring that any employees responsible for the intake or sale of products containing ephedrine or pseudoephedrine be trained in the requirements of the law, specifically but not limited to, that employees are trained in the record keeping requirements of this subchapter.

AUTH: 2005 Laws of Montana, Ch. 572

IMP: 2005 Laws of Montana, Ch. 572

New Rule VI AUDIT COMPLIANCE (1) The department has the authority to audit the premises and records of a certified retail establishment for compliance with the Montana Code Annotated and administrative rules governing the sale of products containing ephedrine and pseudoephedrine.

AUTH: 2005 Laws of Montana, Ch. 572

IMP: 2005 Laws of Montana, Ch. 572

New Rule VII FAILURE TO COMPLY (1) A retail establishment's failure to comply with the Montana Code Annotated or administrative rules governing the sale of products containing ephedrine and pseudoephedrine may result in a warning or in decertification.

(2) A notice of warning or decertification will be provided in writing by the department to the retail establishment.

(3) If a retail establishment fails to correct the noted area of noncompliance after receiving a warning from the department, the department may issue a notice of decertification.

(4) Challenges to decertification will be considered in accordance with the provisions of the Montana Administrative Procedure Act.

(5) The penalties of this provision are in addition to the criminal penalties set forth in the Montana Code Annotated.

AUTH: 2005 Laws of Montana, Ch. 572  
IMP: 2005 Laws of Montana, Ch. 572

4. The new rules are necessary to implement the provisions of Senate Bill 287 requiring the department to adopt rules governing the certification of retail establishments that sell products containing ephedrine or pseudoephedrine.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption 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; e-mail [abovington@mt.gov](mailto:abovington@mt.gov) to be received no later than August 26, 2005.

6. Ali Bovington, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, has been designated to preside over and conduct the hearing.

7. 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@mt.gov](mailto:abovington@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ Mike McGrath  
MIKE MCGRATH  
Attorney General

/s/ Ali Bovington  
ALI BOVINGTON, Rule Reviewer

Certified to the Secretary of State July 18, 2005.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.17.127 ) ON PROPOSED AMENDMENT  
pertaining to prevailing )  
wage rates for public works )  
projects - building )  
construction services and )  
heavy and highway )  
construction services )

TO: All Concerned Persons

1. On August 19, 2005, at 10:00 a.m., a public hearing will be held in the first floor conference room (Room 104) of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.17.127, establishing the prevailing wage rates for public works projects.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department by no later than 5:00 p.m., August 15, 2005, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Attn: Eric Johnson, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4503; TTY (406) 444-0532; fax (406) 444-2638; or via e-mail at erjohnson@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2004~~ 2005 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) remains the same.

(g) The current heavy and highway construction services rates are contained in the ~~2004~~ 2005 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431 and 39-3-202, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-422 and 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the building construction services rates. Pursuant to

Chapter 517, Laws of 2001 (House Bill 500), the Department is to conduct an annual survey of contractors in order to set the standard prevailing rate of wages for construction services. Prior to the enactment of Chap. 517, L. of 2001, the Department conducted biennial surveys to establish the wage rates. There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 2004. In addition, there is reasonable necessity to update the prevailing wage rates for heavy and highway construction services to track with recently adopted federal Davis-Bacon Act heavy and highway construction services rates. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

4. Interested parties 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:

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

and must be received by no later than 5:00 p.m., August 26, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the internet at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., August 26, 2005. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. A copy of the proposed 2005 publications, identified as "preliminary building construction rates" and "preliminary heavy and highway construction rates", is available and can be accessed on-line via the internet at: <http://rad.dli.state.mt.us/pw>.

A printed version of the proposed 2005 publications is also

available by contacting Eric Johnson, at the address or telephone numbers listed in paragraph 2.

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

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

9. The Department intends to make the proposed amendments effective by not later than October 1, 2005. The Department reserves the right to adopt the amendments at a later date, or only a portion of the proposed amendments.

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

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

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

Certified to the Secretary of State: July 18, 2005

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.29.1409, ) ON PROPOSED AMENDMENT  
relating to travel expense )  
reimbursement for workers' )  
compensation medical services )

TO: All Concerned Persons

1. On August 18, 2005, at 1:00 p.m. the Department of Labor and Industry will hold a public hearing in the Lewis Room, Room 4, of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.29.1409 regarding travel expense reimbursement for workers' compensation purposes.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., August 15, 2005, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulation Bureau, Attn: Jeanne Johns, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or via email jjohns@mt.gov.

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

24.29.1409 TRAVEL EXPENSE REIMBURSEMENT (1) and (2) remain the same.

(3) For claims arising ~~on or after~~ from July 1, 1993, through June 30, 2001, travel expenses are not reimbursed unless the travel is at the request of the insurer. Travel is "at the request of the insurer" when the insurer directs the claimant to: change treating physician; attend an independent medical examination; use a preferred provider; or be treated by a managed care organization. If travel expenses are to be reimbursed, then reimbursement shall be determined as follows:

(a) through (e) remain the same.

(4) For claims arising on or after July 1, 2001, payment of travel expense is subject to the following:

(a) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for travel expense reimbursement that are not submitted within 90 days may be denied by the insurer. The insurer must notify the injured worker in writing that the request for travel expense reimbursement must be submitted within 90 days from the date the expense was incurred in order to be reimbursed. If the insurer

fails to notify the claimant of the claimant's entitlement to travel expenses and 90 days have passed since the expense was incurred, the insurer must pay the travel.

(b) The type of travel selected must be the least costly form of travel unless the travel is not suitable for the claimant's medical condition.

(c) Reimbursement of travel is excluded under the following conditions:

(i) The first 100 miles of automobile travel are excluded each month unless the insurer requested the travel.

(ii) Travel to a medical provider within the claimant's community is excluded.

(iii) Travel outside the claimant's community is excluded if comparable treatment is available within the community, unless the insurer requests the claimant to travel to another community.

(iv) Travel is excluded when it is incurred while traveling to unauthorized or disallowed treatment or procedures.

(d) For purposes of this rule, "community" means the area within a 15 mile radius of the claimant's residence as determined by the most direct automobile route between the claimant's residence and the provider.

(e) The insurer is not liable for injuries that result from an accident that occurs during travel for treatment of the claim as provided in 39-71-704, MCA.

(f) Reimbursement for travel expenses shall be determined as follows:

(i) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the claimant's residence and the provider.

(ii) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(iii) Actual out-of-pocket receipted lodging expenses incurred by the claimant shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the claimant stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.

(iv) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(4)(a)(5) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the ~~injured worker~~ claimant, or when less costly forms of travel are not suitable to the ~~injured worker's~~



claimant's medical condition.

~~(b)(a)~~ If an ~~injured worker~~ a claimant chooses to use commercial transportation when a less costly form of travel suitable to ~~his~~ the claimant's medical condition is available, reimbursement shall be made according to the rates associated with the least costly form of travel.

(6) For occupational disease claims arising prior to July 1, 2005, and therefore governed by the Occupational Disease Act, if liability has not been accepted on the claim and the department schedules a medical examination as provided in 39-72-602, MCA, the insurer shall reimburse the claimant for the travel expenses incurred for the examination pursuant to this rule.

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

AUTH: 39-71-203, 39-72-203 and 39-72-402, MCA

IMP: 39-71-704, 39-72-602 and 39-72-608, MCA

REASON: There is reasonable necessity to amend this rule to set out changes in travel expense reimbursement requirements pursuant to amendments made to section 39-71-704, MCA, in 2001. Most of the above amendments to this rule were previously proposed by MAR Notice No. 24-29-192, published on April 14, 2005, at page 520 of the 2005 Montana Administrative Register, Issue No. 7. However, after receiving public comments on the original proposed amendments, the Department decided to change its proposal. The modifications to the original proposal are discussed where applicable in the following statement.

Currently, the rule outlines reimbursement requirements depending on the date of loss. The additions to the rule are necessary to clarify the requirements for claims arising on or after July 1, 2001. Some elements of section 39-71-704, MCA, are restated for ease of reference of the claimants and adjusters who look to this rule for all claims, no matter what the time period in which the underlying claim was incurred.

Specifically, it is necessary to state that insurers must give notice to claimants that travel expense reimbursement requests must be received within 90 days of travel. The rule clarifies that if an insurer fails to give notice of the 90 day requirement, the insurer must pay for the expense. Conversely, the rule clarifies that if after receiving notice, the claimant fails to submit an expense within 90 days, the insurer may deny reimbursement for the expense. The proposed rule is changed from the original proposal to clarify that the insurers' notice of the reimbursement requirements must be in written form.

There is reasonable necessity to list the types of travel that are excluded from reimbursement as directed by section 39-71-704, MCA. Because of the different types of communities in Montana, it is also reasonably necessary to add to the definition of community in (3)(a) by further defining a community in (4)(d) as the area within a 15 mile radius of the

claimant's residence for purposes of the rule. The proposed rule is changed from the original proposal by reducing the definition of community from 30 miles to 15 miles. The Department is proposing to change the mileage requirement based on comments that claimants receiving physical therapy could be traveling almost 700 miles a month without reimbursement if community was defined using the 30 mile radius.

The Occupational Disease Act of Montana (Act) was repealed effective July 1, 2005, by Chap. 416, L. of 2005 (Senate Bill 481). However, because claims are governed by the law in place at the time the claim arises, the Department still handles claims under the Act arising before July 1, 2005. The Department has determined there is a significant amount of confusion among insurers regarding travel reimbursement when the department orders an examination of a claimant on a disputed occupational disease claim pursuant to section 39-72-602, MCA (2003). In order to address that confusion, it is reasonably necessary to clarify that the insurer must pay for travel associated with the evaluation, as directed by section 39-72-608, MCA (2003). The Department believes there is no need for a rule governing occupational disease claims arising on or after July 1, 2005, because disputes regarding those claims will be mediated like injury claims under section 39-71-2401, MCA.

Finally, there is reasonable necessity to amend the AUTH and IMP citations to clarify that the rule also applies to occupational disease claims and claimants.

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

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

and must be received by no later than 5:00 p.m., August 26, 2005. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://dli.state.mt.us/forum.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., August 26, 2005. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official

printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

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

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

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

Certified to the Secretary of State: July 18, 2005

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.30.102, ) ON PROPOSED AMENDMENT  
relating to occupational )  
safety matters in public )  
sector employment )

TO: All Concerned Persons

1. On August 19, 2005, at 1:30 p.m., the Department of Labor and Industry will hold a public hearing in the first floor conference room (Room 104) of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., August 15, 2005, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Sandra Mihalik, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; fax (406) 444-9396; TDD (406) 444-0532; or email smihalik@mt.gov.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) and (2) remain the same.

(3) The department of labor and industry ~~hereby~~ adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~July 1, 2004~~ July 1, 2005:

- (a) Title 29, Part 1910; and
- (b) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted ~~above~~ in (3) and printed in the Code of Federal Regulations, Title 29, as of ~~July 1, 2004~~ July 1, 2005, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Safety Act apply to the administration of the provisions of the safety code adopted by this rule.

(5) remains the same.

AUTH: 50-71-311, MCA  
IMP: 50-71-311 and 50-71-312, MCA

REASON: There is reasonable necessity to amend this rule in order to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). These rules are periodically updated to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The July 1, 2005, version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most current version.

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

John Maloney, Bureau Chief  
Safety Bureau  
Employment Relations Division  
Department of Labor and Industry  
P.O. Box 1728  
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., August 26, 2005. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's website on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., August 26, 2005. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the

mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the Department.

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

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

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

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

Certified to the Secretary of State July 18, 2005

BEFORE THE OFFICE OF THE LIEUTENANT GOVERNOR  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED
of ARM 30.2.201 through	)	REPEAL
30.2.209 and 30.3.101	)	
through 30.3.109 pertaining	)	NO PUBLIC HEARING
to Centennial Grants and	)	CONTEMPLATED
Centennial Sanctioning	)	

TO: All Concerned Persons

1. On September 9, 2005, the Office of the Lieutenant Governor proposes to repeal ARM 30.2.201 through 30.2.209 and 30.3.101 through 30.3.109 pertaining to Centennial Grants and Centennial Sanctioning.

2. The Office of the Lieutenant Governor will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office no later than 5:00 p.m. on August 22, 2005, to advise us of the nature of the accommodation that you need. Please contact Will Hammerquist, Lieutenant Governor's Office, P.O. Box 200901, Helena, MT 59620-0901; telephone (406) 444-5665; Montana Relay Service 711; FAX (406) 444-4648; or e-mail whammerquist@mt.gov.

3. The rules proposed for repeal are as follows:

30.2.201 GENERAL POLICY FOR CENTENNIAL GRANTS found at ARM page 30-5.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.202 DEFINITIONS found at ARM page 30-5.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.203 ELIGIBILITY CRITERIA found at ARM page 30-6.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.204 APPLICATION PROCEDURES found at ARM page 30-6.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.205 APPLICATION REVIEW PROCEDURE found at ARM page 30-7.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, 2-89-107, MCA

30.2.206 APPLICATION REVIEW CRITERIA found at ARM page 30-8.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.207 GRANT PROVISIONS found at ARM page 30-8.1.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.208 PUBLIC RECORDS found at ARM page 30-8.2.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.2.209 GRANTS TO THE COUNTIES OR ORGANIZATIONS OF COUNTIES found at ARM page 30-8.2.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, 2-89-107, MCA

30.3.101 PURPOSE found at ARM page 30-11.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-107, MCA

30.3.102 USES OF THE LOGO found at ARM page 30-11.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-105, MCA

30.3.103 OFFICIAL COMMEMORATIVE PRODUCTS found at ARM page 30-13.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-107, MCA

30.3.104 OFFICIAL COMMEMORATIVE PROJECTS found at ARM page 30-15.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-107, MCA

30.3.105 SCHEDULE found at ARM page 30-16.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-107, MCA

30.3.106 PERSONAL ENDORSEMENTS found at ARM page 30-16.



AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.3.107 INFORMATION ACCESS found at ARM page 30-16.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-105, MCA

30.3.108 DURATION AND ENFORCEMENT found at ARM page 30-16.

AUTH: Sec. 2-89-105, 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-105, 2-89-107, MCA

30.3.109 WAIVERS found at ARM page 30-16.

AUTH: Sec. 2-89-106, MCA  
IMP: Sec. 2-89-101, 2-89-105, 2-89-107, MCA

REASONS: The Office of the Lieutenant Governor intends to repeal these rules because: a) they explicitly concern the State of Montana's Centennial Celebration, which occurred in 1989; and b) the authorizing statute has expired. See Title 2, Chapter 89, Part 1, MCA: The Statehood Centennial Office and Commission (Terminated. Sec. 8, Ch. 664, L. 1985).

4. Concerned persons may submit their data, views or arguments in writing to Will Hammerquist, Office of the Lieutenant Governor, P.O. Box 200901, Helena, MT 59620-0901; telephone (406) 444-5665; Montana Relay Service 711; FAX (406) 444-4648; or e-mail whammerquist@mt.gov. Comments must be received no later than 5:00 p.m. August 26, 2005.

5. If persons who are directly affected by the proposed repeal wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Will Hammerquist, Office of the Lieutenant Governor, P.O. Box 200901, Helena, MT 59620-0901; telephone (406) 444-5665; Montana Relay Service 711; FAX (406) 444-4648; or e-mail whammerquist@mt.gov to be received no later than 5:00 p.m. August 26, 2005.

6. If the Office of the Lieutenant Governor receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons that may be directly affected is

greater than 25 based on the number of state of Montana citizens.

7. The Office of the Lieutenant Governor maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the office. 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 rules of the Office of the Lieutenant Governor. Such written request may be mailed or delivered to Will Hammerquist, Lieutenant Governor's Office, P.O. Box 200901, Helena, MT 59620-0901; telephone (406) 444-5665; Montana Relay Service 711; FAX (406) 444-4648; or e-mail whammerquist@mt.gov by completing a request form at any rules hearing held by the Office of the Lieutenant Governor.

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

By: /s/ John Bohlinger  
John Bohlinger,  
Lieutenant Governor

By: /s/ Will Hammerquist  
Will Hammerquist, Rule Reviewer

Certified to the Secretary of State July 18, 2005.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
adoption of New Rules I )	ADOPTION
through VI relating to )	
reimbursement for life )	NO PUBLIC HEARING
insurance premiums paid by )	CONTEMPLATED
Montana reserve component )	
service members serving )	
outside Montana in a )	
contingency operation )	

TO: All Concerned Persons

1. On August 27, 2005, the Montana Department of Military Affairs proposes to adopt new rules I through VI relating to reimbursement for life insurance premiums paid by Montana reserve component service members serving outside Montana in a contingency operation.

2. The Department of Military Affairs 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, please contact the Department of Military Affairs no later than 5:00 p.m. on August 11, 2005, to advise us of the nature of the accommodation you need. The point of contact is Karen Revious, Administrator, Centralized Services Division, Department of Military Affairs. The mailing address is Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, Ft. Harrison, MT 59636-4789; Phone: (406) 324-3330; Fax: (406) 324-3335; or email kprevious@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 USC 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Contingency operation" means an assignment within the provisions of 10 USC 101(a)(13).

(3) "National guard" has the meaning provided in 10-1-101, MCA.

(4) "Reserve" means a Montana resident who is a member of a reserve component, as defined in 38 USC 101, of the United States armed forces.

(5) "Service member" means a member of the national guard or reserve.

(6) "Servicemembers' group life insurance (SGLI)" means the group life insurance program established by 38 USC 1965 through 1980.

AUTH: Ch. 604, L. 2005  
IMP: Ch. 604, L. 2005

NEW RULE II ELIGIBILITY (1) A service member who served on active duty in a contingency operation after May 6, 2005, is eligible for reimbursement of SGLI premiums paid under the servicemembers' group life insurance program described at 38 USC 1965 through 1980.

AUTH: Ch. 604, L. 2005  
IMP: Ch. 604, L. 2005

NEW RULE III LIMITATIONS ON REIMBURSEMENT (1) The amount of paid premiums to be reimbursed may not exceed \$16.25 per month for each month the service member was on active duty in a contingency operation after May 6, 2005.

(2) If a service member is on active duty in a contingency operation for any part of a month, and pays SGLI premiums that month, the entire premium paid for that month will count for purposes of reimbursement. There will be no proration for any part of any month.

AUTH: Ch. 604, L. 2005  
IMP: Ch. 604, L. 2005

NEW RULE IV APPLICATION FOR REIMBURSEMENT (1) A service member may request reimbursement by completing DMAMT form DMA 10-1 (Application for Service Member Reimbursement of Servicemembers' Group Life Insurance Premiums), and submitting it to the Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, Ft. Harrison, MT 59636-4789.

(2) A service member must submit DMAMT form DMA 10-1 within six months of demobilization from active duty service in a contingency operation to receive reimbursement.

AUTH: Ch. 604, L. 2005  
IMP: Ch. 604, L. 2005

NEW RULE V EXPIRATION DATE; FURTHER APPROPRIATION REQUIRED

(1) The rules implemented under this chapter expire June 30, 2008, unless further appropriation is made by the Montana legislature for continuance of the reimbursement program.

AUTH: Ch. 604, L. 2005  
IMP: Ch. 604, L. 2005

NEW RULE VI TERMINATION DATE; UNITED STATES ASSUMES PAYMENT OF PREMIUMS OR INCREASES DEATH GRATUITY

(1) The rules implemented under this chapter terminate on the last day of the first month in which the United States government provides \$250,000 in death benefit to the designated beneficiary of a service member killed on active duty in a contingency operation through:

(a) increase in death gratuity;

- (b) direct payment of insurance premiums; or
- (c) a combination of both (1)(a) and (b).

AUTH: Ch. 604, L. 2005  
IMP: Ch. 604, L. 2005

4. House Bill 761, passed during the 49th legislative session, created a program to reimburse Montana service members returning from service in a contingency operation for life insurance premiums paid during deployment. The purpose of the program is to bestow a financial benefit upon Montana service members in recognition of the sacrifices they make while serving extended periods of active duty in contingency operations.

These rules are necessary to establish a mechanism by which service members returning to Montana from contingency operations may receive the reimbursement they are entitled to.

It is estimated that this program will impact 4236 service members and will cost the State of Montana no more than: \$60,000 in fiscal year 2005; \$300,000 in fiscal year 2006; and \$300,000 in fiscal year 2007.

5. Concerned persons may submit their data, views or arguments concerning the proposed adoption in writing to Karen Revious, Administrator, Centralized Services Division, Department of Military Affairs. The mailing address is Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, Ft. Harrison, MT 59636-4789; Phone: (406) 324-3330; Fax: (406) 324-3335; or email kprevious@mt.gov. Any comments must be received no later than August 25, 2005.

6. Any person directly affected by the proposed adoption who wishes to express data, views or arguments orally or in writing at a public hearing, must make written request for a hearing and submit this request along with any written comments to Karen Revious, Administrator, Centralized Services Division, Department of Military Affairs. The mailing address is Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, Ft. Harrison, MT 59636-4789; Phone: (406) 324-3330; Fax: (406) 324-3335; or email kprevious@mt.gov. A written request for hearing must be received no later than August 25, 2005.

7. If the Department of Military Affairs receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held. Notice of the hearing will be published in the Montana Administrative Register. As of July 18, 2005, 10% of those persons directly affected has been determined to be 424 based on 4236 service

members currently serving in the national guard and reserves in Montana.

8. The Department of Military Affairs 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. The written request may be mailed to Karen Revious, Administrator, Centralized Services Division, Department of Military Affairs. The mailing address is Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, Ft. Harrison, MT 59636-4789.

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

DEPARTMENT OF MILITARY AFFAIRS

/s/ Karen Revious  
Karen Revious, Administrator

/s/ James P. Moran  
James P. Moran, Attorney  
Rule Reviewer

Certified to the Secretary of State, July 18, 2005.

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

In the matter of the )  
amendment of ARM 37.70.311, )  
37.70.601, 37.70.607 and )  
37.70.608 pertaining to Low )  
Income Energy Assistance )  
Program (LIEAP) )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On August 17, 2005, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on August 8, 2005, 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@mt.gov.

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

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

(1) Procedures followed in determining eligibility for low income energy assistance are:

- (a) remains the same.
- (b) Eligibility requirements that must be verified include but are not limited to:
  - (i) through (iv) remain the same.

(v) receipts to support paid eligible energy costs when a household seeks direct reimbursement for paid eligible energy costs as provided in ARM 37.70.607. Failure to provide receipts to the local contractor ~~by June 15 of the calendar year in which the heating season for which benefits are sought ends~~ within 45 days of the heating season's end will result in forfeiture of any remaining benefits for that heating season.

(c) remains the same.

AUTH: Sec. 53-2-201, MCA  
IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) through (1)(d) remain the

same.

(2) For households that applied for benefits for the 2004-2005 heating season prior to April 30, 2005 and were determined eligible, the heating season shall be extended until June 30, and they shall receive a supplemental benefit in addition to the benefit described in (1)(a). The supplemental benefit shall be equal to 27.95472% of the benefit provided in (1)(a) rounded to the nearest whole dollar or a minimum of \$20, whichever is greater. This supplemental benefit will be paid for the 2004-2005 heating season only.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor shall be paid a benefit in the amount provided by ARM 37.70.601 and shall be paid as follows:

(a) remains the same.

(b) The amount of the benefit or adjusted award remaining after the application of (1)(a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance in excess of \$50 attributable to the benefit or adjusted award after ~~April 30~~ the end of the heating season must be returned to the department.

(c) and (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household shall be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season shall not exceed the benefit amount provided by ARM 37.70.601. Reimbursement shall be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor ~~by June 15 of the calendar year in which~~ within 45 days of the end of the heating season for which benefits are sought ~~ended~~.

(3) For eligible households that have their energy costs included in their rental payments:

(a) The household shall be paid a benefit computed on a monthly basis. For each ~~of the seven months~~ month of the current heating season ~~from October through April~~ for which the household provides a paid rent receipt, the household shall be reimbursed ~~1/7~~ a pro rata portion (determined by dividing one by the number of months in the heating season) of the benefit amount provided in ARM 37.70.601; provided, however, that the benefit paid to the household for any month shall not exceed 50% of the rent paid for that month as evidenced by the rent receipt. Failure to provide rent receipts to the local



~~contractor by June 15 of the calendar year in which the heating season for which benefits are sought ends within 45 days of the end of the heating season~~ shall result in the forfeiture of any benefits to which the household would otherwise be entitled.

(b) remains the same.

(4) Benefits for eligible households using wood to heat their dwelling shall be paid as follows:

(a) and (b) remain the same.

(c) when the household provides receipts to verify that the household has purchased wood between July 1 and ~~April 30~~ the end of the heating season of the current state fiscal year, by a payment directly to the household reimbursing the household for wood already purchased. Households which are reimbursed by a direct payment do not lose their right to additional benefits for the current heating season as provided in (4)(b). Failure to provide receipts verifying wood purchases to the local contractor ~~by June 15 within 45 days of the end of the heating season~~ of the calendar year in which the heating season for which benefits are sought ~~ended~~ shall result in the forfeiture of any benefits to which the household would otherwise be entitled.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.608 ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS

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

(2) If additional funds become available to serve eligible households, the department may, at its option, take any or all of the following steps as needed:

(a) increase the maximum benefit amounts of the benefit award matrices;

(b) extend the duration of the current heating season beyond April 30; or

(c) increase the maximum income standards for eligibility, if permitted by federal law.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. Unlike many public assistance programs which pay benefits on a monthly basis, LIEAP generally pays eligible households one benefit per heating season. The heating season runs from October 1 of one calendar year through April 30 of the next calendar year. The amount of the benefit each household receives is specified in ARM 37.70.601.

The size of the household's benefit depends on a number of factors including the household's income level, type of primary heating fuel and the type of dwelling. The benefit amount also depends on the amount of federal funds appropriated for the Montana LIEAP program each year as well as fuel cost projections

for the heating season. Congress customarily appropriates funds for the upcoming heating season sometime between August and March. The Department calculates benefits for the upcoming heating season in late summer or early fall based on the amount of that appropriation (or the anticipated appropriation if Congress has not yet appropriated funds for LIEAP) and on an estimate of the number of households which will apply for and be found eligible for LIEAP in the current season.

This year, in addition to its regular federal appropriation of \$11,584,267, the Montana LIEAP program also subsequently received three supplemental payments from the U.S. Department of Health and Human Services (HHS), the federal agency which funds LIEAP. These additional payments totaled \$1,197,571. Additionally, the 59th Montana Legislature in House Bill 332 (2005 Laws of Montana Chapter 439) appropriated state general fund dollars in the amount of \$695,361 for the Montana LIEAP program. As a result of the additional state and federal funding as well as the fact that a smaller number of households qualified for LIEAP than originally projected, the Department is able to pay additional benefits to all households found eligible for LIEAP for the 2004-2005 heating season. Each household is entitled to an additional benefit equal to 27.95472% of the regular benefit computed in accordance with ARM 37.70.601(1)(a) or a minimum of \$20, whichever is greater.

Thus, it is necessary to amend ARM 37.70.601 by adding section (2) to authorize the payment of the supplemental benefit and to specify the amount each household will receive. Section (2) also specifies that this supplemental benefit is to be paid for the 2004-2005 heating season only. This is necessary because this supplemental benefit is based on additional funding which may not be received for the next heating season.

Additionally, section (2) provides that the end of the 2004-2005 heating season shall be extended from April 30 to June 30. This is necessary because the supplemental benefit in most cases will be paid to the fuel vendor rather than to the LIEAP household, and the benefit is applied against unpaid energy costs, as provided in ARM 37.70.607. Some LIEAP households had paid their fuel vendor in full as of April 30 and thus had no unpaid energy costs as of April 30. ARM 37.70.607 provides that fuel vendors must return a credit balance of more than \$50 remaining after April 30 to the Department. By extending the end of the heating season to June 30, the supplemental benefit can be applied against energy costs incurred in May and June, so that the payment of the supplemental benefit will not result in a credit of more than \$50 which would have to be returned to the Department rather than benefiting the LIEAP household.

The extension of the heating season will also benefit households that are directly reimbursed for energy costs they have paid rather than having their benefit paid to a fuel vendor, as provided in ARM 37.70.607(1)(a). Under the current rules,

households seeking direct reimbursement must provide receipts for energy costs incurred during the heating season, that is, between October 1 and April 30. The extension of the heating season through June 30 will allow them to receive a supplemental benefit based on energy costs incurred after April 30 in case they do not have enough receipts for the period prior to April 30 to qualify for a supplemental benefit.

ARM 37.70.311 specifies procedures for processing LIEAP applications. Subsection (1)(b)(v) currently provides that applicants that are requesting direct reimbursement for paid energy costs must provide receipts for those costs by June 15. This gives the applicant 45 days after the end of the heating season to provide receipts for heating costs incurred through April 30. However, since the end of the 2004-2005 heating season has been extended from April 30 to June 30, applicants would not be able to bring in their receipts for the last month of the heating season by June 15. Thus, it is necessary to amend this provision to state that applicants have 45 days after the end of the heating season, rather than until June 15, to provide receipts to verify paid energy costs.

ARM 37.70.607 specifies the methods by which LIEAP benefits are paid to different types of households. The LIEAP benefit for most households is not paid directly to the household but is paid to the household's fuel vendor, as provided in subsection (1)(b) of 37.70.607. Subsection (1)(b) currently provides that fuel vendors must return a credit balance of more than \$50 remaining after April 30 to the Department. Since the end of the heating season has been extended from April 30 to June 30, it is necessary to amend subsection (1)(b) to state that vendors must return such credit balances remaining after the end of the heating season rather than after April 30. Thus, for the 2004-2005 heating season, credit balances over \$50 remaining after June 30 must be returned to the Department, because June 30 is the end of the 2004-2005 heating season.

Some households pay energy costs for heating their homes but are not billed directly by a fuel vendor because the fuel account is in the name of someone other than a household member. ARM 37.70.607(2) provides that households which pay energy costs for heating their homes but are not billed directly by a fuel vendor can be reimbursed if the household provides receipts to document their paid energy costs. Section (2) currently states that all such receipts must be provided by June 15. As explained above, it is necessary to amend this provision to state that applicants have 45 days after the end of the heating season, rather than until June 15, to provide receipts to verify paid energy costs.

ARM 37.70.607(3)(a) specifies that households whose energy costs are included in their rent payments will be paid a benefit computed on a monthly basis. The rule currently provides that the monthly benefit will be 1/7th of the benefit amount provided in ARM 37.70.601, because the heating season is seven months

long, i.e., from October through April. However, the 2004-2005 heating season will be nine months long, since it has been extended through June 30. Therefore, it is necessary to amend subsection (3)(a) to provide that the benefit for such households will be a pro rata share of the benefit provided in ARM 37.70.601 and to specify that the pro rata share will be determined by dividing one by the number of months in the heating season. Thus, for the 2004-2005 heating season, the monthly benefit would be 1/9th of the benefit provided in ARM 37.70.601.

ARM 37.70.607(4)(c) currently provides that households that heat their homes with wood can be directly reimbursed for wood purchased between July 1 and April 30 if the household provides receipts to document the purchase by June 15. Since the end of the heating season has been extended from April 30 to June 30, it is necessary to amend this provision to state that households can be reimbursed for wood purchased between July 1 and the end of the heating season rather than April 30. It is also necessary to amend it to provide that households have 45 days after the end of the heating season, rather than until June 15, to provide receipts to verify wood purchases.

ARM 37.70.608 addresses the adjustment of LIEAP payments based on available funds. It currently authorizes the Department to take steps such as reducing benefit amounts or limiting eligibility to households with elderly or disabled members if there are not sufficient funds to serve all eligible households. The rule does not, however, provide for adjusting payments when the Department receives additional funds for LIEAP after its initial appropriation of federal funds from HHS. In recent years the Department has sometimes received supplemental LIEAP payments from HHS, known as contingency payments, and several years ago part of Montana's federal Temporary Assistance for Needy Families (TANF) block grant was allocated to provide LIEAP assistance for TANF families. This year for the first time the Montana Legislature also appropriated state general fund dollars for LIEAP.

The Department proposes to amend ARM 37.70.608 by adding a provision which will authorize the Department to take measures to distribute funds received late in the heating season to eligible households, such as increasing maximum benefit amounts, extending the length of the heating season, or raising the upper income limit for eligibility if permitted by federal law. Provisions for distributing LIEAP funds during the current heating season are necessary because Section 2607 of the Federal Low Income Energy Assistance Act, 42 USC 8326, permits a state to carry over no more than 10% of the state's LIEAP annual block grant to a subsequent year. Thus, if the Department cannot distribute additional funds received late in the heating season, some or all of the funds may revert to the federal government rather than benefiting eligible Montana families.

The Department has determined that increasing maximum benefit amounts and extending the heating season are both useful options to allow the Department to distribute additional funds during the current fiscal year. At the present time federal law permits states only to provide LIEAP benefits to households whose annual income is either at or below 150% of the federal poverty level or at or below 60% of the state's median income, except in the case of households that are automatically financially eligible for LIEAP benefits because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance. Presently the Department limits eligibility to households whose income is at or below 150% of poverty, which is a lower income standard than 60% of Montana's median income. However, the Department would like to have the option to provide benefits to households at or below 60% of Montana's median income or even with higher incomes, if federal law is ever changed to provide benefits to households with income above both 150% of poverty and 60% of the state's median income, in years when sufficient funds are available to assist households with slightly higher income as well as lower income households.

The total additional funds available for supplemental LIEAP benefits for the 2004-2005 heating season is \$1,892,932. The Department estimates that 20,500 households will receive supplemental benefits in addition to their regular benefit for the 2004-2005 heating season.

4. The Department intends to apply these rule amendments retroactive to April 30, 2005, since they provide additional benefits and thus have no negative impact on eligible households.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on August 25, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

Robert E. Wynia, MD  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 18, 2005.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rules I through VII and	)	ON PROPOSED ADOPTION AND
the amendment of ARM	)	AMENDMENT
37.86.2207, 37.86.2224,	)	
37.88.101, 37.106.1902,	)	
37.106.1906 and 37.106.1919	)	
pertaining to comprehensive	)	
school and community	)	
treatment program (CSCT)	)	

TO: All Interested Persons

1. On August 17, 2005, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and 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 August 8, 2005, 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@mt.gov.

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

RULE I MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT) (1) In addition to the requirements established in this subchapter, a licensed mental health center providing a comprehensive school and community treatment program (CSCT) must have a CSCT endorsement issued by the department. To receive a CSCT program endorsement, the licensed mental health center must establish to the department's satisfaction that it meets the requirements stated in these program rules.

(2) The licensed mental health center's CSCT program must have written admission and discharge criteria.

(3) The program must assess the needs of a child or adolescent with a serious emotional disturbance and the appropriateness of the CSCT program to meet those needs.

(4) Individuals enrolled in public school remain eligible for the CSCT program through the age of 20.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE II MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, SERVICES (1) The CSCT program must be able to provide the following services, as clinically indicated, to children or adolescents with serious emotional disturbance, as that term is defined at ARM 37.86.3702:

- (a) individual, group and family therapy;
- (b) behavioral intervention;
- (c) other evidence and research based practices effective in the treatment of children or adolescents with a serious emotional disturbance;
- (d) direct crisis intervention services during the time the child or adolescent is present in a school-owned or operated facility;
- (e) crisis intervention services by telephone during the time the child or adolescent is not present in a school-owned or operated facility;
- (f) treatment plan coordination with addictive and mental health treatment services the child or adolescent receives outside the CSCT program;
- (g) access to emergency services;
- (h) referral and aftercare coordination with inpatient facilities, residential treatment programs, or other appropriate out-of-home placement programs; and
- (i) continuous treatment that includes services during nonschool days, integrated in a manner consistent with the child or adolescent's treatment plan.

(2) CSCT services must be provided according to an individualized treatment plan designed by a licensed mental health professional who is a staff member of a CSCT program team.

(3) The licensed mental health center CSCT program supervisor and an appropriate school district representative must meet at least quarterly to mutually assess program effectiveness utilizing, but not limited to, the following indicators:

- (a) child or adolescent progress on his or her individual treatment plan;
- (b) attendance;
- (c) discipline referrals;
- (d) contact with law enforcement; and/or
- (e) referral to a higher level of care.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE III MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, TIME-OUT AND ADVERSIVE TREATMENT PROCEDURES (1) If the licensed mental health center's CSCT program makes use of time-out or aversive treatment procedures, as those terms are defined at ARM 10.16.3346(2) through (5),



there must be written procedures regarding the use of these procedures.

(2) The duration of time-out and the intervals of intermittent to continuous staff observation must be determined and stated in writing for each child or adolescent.

(3) The program must obtain written permission from the parent or legal guardian for the use of aversive treatment procedures. The written permission must be maintained in the client's clinical record and updated on an annual basis.

(4) Aversive treatment procedures may be implemented only for the benefit of the child or adolescent and never be used merely as punishment or for the convenience of staff or as a substitute for a nonaversive program. This requirement is not intended to replace rules, regulations or policies that are part of the requirements for licensure of a provider to delivery of their service.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE IV MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, STAFFING AND TRAINING

(1) The licensed mental health center's CSCT program must be provided through a program of services delivered by a team or teams.

(2) Each team must consist of a full-time equivalent licensed mental health professional, as that term is defined in 37.106.1902, and an aide. An in-training mental health practitioner pursuant to ARM 37.88.901 may be a team member. Full-time equivalent means 2,080 hours per year worked exclusively in the CSCT program.

(3) A full-time equivalent team is limited to the billing amounts as set forth in [Rule VII].

(4) A CSCT program must employ or contract with a program supervisor who is knowledgeable about the service and support needs of children and adolescents with serious emotional disturbances. The program supervisor may be a member of a team providing direct services.

(5) This rule is not intended to prevent the use of part-time staff to provide CSCT services throughout the year, including school vacation periods. If a child or adolescent receives CSCT services during time periods when school is not regularly in session, then part-time staff may be used and billed as set forth in [Rule VII].

(6) The licensed mental health center's CSCT program must be delivered by adequately trained staff. Training must be documented and maintained in the personnel files.

(7) If a nonlicensed team member is employed, that individual must have a high school diploma or a general education degree (GED) and one year of relevant experience.

(a) The nonlicensed team member must receive 10 hours of training during the first three months of employment that includes de-escalation training, child development, and how and when to implement behavior management. The 10 hours of initial

training may be combined with the required 18 hours of annual training mandated for all team members.

(8) All team members are required to receive a minimum of 18 hours training per year in behavior management strategies that focus on the prevention of behavior problems for children or adolescents with serious emotional disturbance (SED). Training must include:

- (a) positive behavioral intervention planning and support;
- (b) classroom and child or adolescent management techniques that include nationally certified de-escalation training;
- (c) evidence and research based behavior interventions and practices;
- (d) therapeutic de-escalation of crisis situations for the protection and safety of the clients and staff; and
- (e) physical and nonphysical methods of managing children and adolescents.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE V MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, CLIENT RECORD REQUIREMENTS

(1) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, the licensed mental health center's CSCT program must maintain the following client records:

- (a) progress notes for each individual therapy and other direct services;
- (b) monthly overall progress notes; and
- (c) individual outcomes compared to baseline measures and established benchmarks.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VI MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, SPECIAL EDUCATION REQUIREMENTS

(1) The licensed mental health center's CSCT program must be coordinated with the child or adolescent's special education program, if any.

(2) If a client has a child study team (CST), as that term is used in Title 20, MCA, the CSCT team assigned to the child or adolescent must attend CST meetings and individualized education plan (IEP) meetings when clinically indicated and permitted under state and federal law.

(3) A copy of the IEP must be included in the child or adolescent's treatment plan.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VII EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), CSCT PROGRAM BILLING

(1) Comprehensive school and community treatment (CSCT) services must be provided as set forth in [Rules I through VI] in order to receive payment under this program.

(2) One full-time equivalent team may bill no more than 720 billing units per team per month. If a child or adolescent receives CSCT services during time periods when school is not regularly in session, then part-time staff may be used but the billing units must be reduced proportionately.

(a) A billing unit is 15 minutes.

(3) CSCT services provided by a licensed mental health center with an endorsement under [Rule I] must be billed under the school district's provider number. Mental health services that are provided outside, or concurrently, with the CSCT program are billed under the mental health center's provider number with the appropriate CPT-4 procedure codes describing the services provided.

(4) As a medicaid provider of CSCT services, the school district is subject to all medicaid state and federal billing rules and regulations. A school district must:

(a) use a sliding fee schedule for children or adolescents not eligible for medicaid;

(b) bill all available financial resources for support of services including third party insurance and parent payments if applicable; and

(c) adequately document services to support the medicaid reimbursement received.

(5) There must be an appropriate level of direct contributions by the school district. Appropriate level means no less than is necessary to meet the nonfederal match requirements.

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

IMP: Sec. 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT

(1) Reimbursement for an EPSDT service, except as otherwise provided in this rule, is the lowest of the following:

(a) and (b) remain the same.

(c) the department's medicaid mental health fee schedule, except for the by-report method; or

(d) for public agencies, cost based reimbursement as determined in accordance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments as established and approved by the department. The department adopts and incorporates by reference the OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, as further

amended August 29, 1997. A copy of OMB Circular A-87 may be obtained from the Department of Public Health and Human Services, ~~Child and Adult Health Resources Division~~ Health Resources Division, Medicaid Services Bureau Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT fee schedule. The department ~~herein~~ hereby adopts and incorporates by reference the department's EPSDT fee schedule dated July 2003. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, ~~Child and Adult Health Resources Division~~ Health Resources Division, Medicaid Services Bureau Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) Reimbursement for the therapeutic portion of therapeutic youth group home treatment services is the lesser of:

(a) the amount specified in the department's medicaid mental health fee schedule. The department ~~herein~~ hereby adopts and incorporates ~~herein~~ and mental health services plan, individuals under 18 years of age, fee schedule dated January 1, 2003 July 15, 2005. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, ~~Addictive and Mental Disorders Division, 555 Fuller, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202905 202951, Helena, MT 59620-29052951;~~ or

(b) through (8) remain the same.

(9) Reimbursements for school based health related services are specified in the school based health service fee schedule dated ~~January 1, 2004~~ September 1, 2005. Rates are 90% of the fees as specified in (1)(a) through ~~(1)(d)~~, adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

(10) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the matrix of services excluded from simultaneous reimbursement dated January 1, 2003. A copy of the MH (Mental Health) Simultaneous Reimbursement Exclusions matrix is posted on the internet at the department's home page at ~~www.dphhs.state.mt.us/about\_us/divisions/addictive\_mental\_disorders/services/mhap\_services\_excluded\_from\_simultaneous.pdf~~ www.dphhs.mt.gov/aboutus/divisions/addictivementaldisorders/services/index.shtml or may be obtained by writing the Department of Public Health and Human Services, ~~Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2905 2951.~~

(11) Information regarding current reimbursement or copies of fee schedules for EPSDT services may be obtained from the Department of Public Health and Human Services, Child and Adult

Health Resources Division, ~~Medicaid Services Bureau~~ Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.86.2224 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICE (EPSDT), COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (1) Comprehensive school and community treatment (CSCT) means a comprehensive, planned course of outpatient treatment provided ~~primarily~~ in the school and community to a child or adolescent with a serious emotional disturbance (SED), as defined in ARM 37.89.103(14), ~~through a 37.86.3702(2).~~ A CSCT program may be operated by a ~~public school district that is~~ a licensed mental health center with a CSCT endorsement. ~~The criteria for a mental health center's CSCT endorsement are found in [Rule I]. or a school district that has a contract with a licensed mental health center.~~ To be approved a program must provide the department with a satisfactory written description of the program prior to beginning the service. The department must approve or deny a program within 30 days of receiving a complete application. The program description, at a minimum, must document:

- ~~(a) how the program will meet each child's needs for treatment during and outside school hours, including:~~
  - ~~(i) individual, family, and group therapy;~~
  - ~~(ii) crisis intervention services;~~
  - ~~(iii) case management;~~
  - ~~(iv) continuing observation, support and behavioral intervention in the classroom and on the playground; and~~
  - ~~(v) other services effective in the treatment of the child's emotional disturbance;~~
- ~~(b) how the program will meet each child's needs for treatment during school vacations in a manner integrated in the individual's treatment plan;~~
- ~~(c) limited circumstances which would require a child in the program to access mental health services outside the program and how the program would minimize reliance on other service providers;~~
- ~~(d) admission and discharge criteria for the program; and~~
- ~~(e) how the program will accomplish and ensure:~~
  - ~~(i) treatment, crisis and discharge planning and regular updates of such plans;~~
  - ~~(ii) family involvement in treatment and discharge planning and in the course of treatment;~~
  - ~~(iii) continuing contact and information exchange with persons and agencies significantly involved in the child's treatment;~~
  - ~~(iv) coordination of all mental health services and treatments the child receives;~~
  - ~~(v) continuing quality improvement including the regular measurement and reporting of program performance and individual outcomes to include comparison with baseline measurements and~~

established benchmarks:

~~(vi) that a sliding fee schedule and all available financial resources for support of services including third party insurance and parent payment are utilized;~~

~~(vii) there is an appropriate level of direct contributions by the school district; and~~

~~(viii) that services delivered are adequately documented to support the reimbursement received.~~

~~(2) Comprehensive school and community treatment must be provided through a program of services staffed by at least two mental health workers who work exclusively in the school with a maximum case load of 12 school children. At least one of the two mental health workers must be a licensed psychologist, licensed clinical social worker, or licensed professional counselor.~~

~~(a) Comprehensive school and community treatment must be provided according to an individualized treatment plan designed by a licensed professional who is a staff member of the comprehensive school and community treatment program.~~

~~(b) In addition to any clinical records required by mental health center license rules and by ARM 37.85.414, the program must maintain:~~

~~(i) documentation of the client's attendance in school and in program services;~~

~~(ii) progress notes for each individual therapy session and other direct service; and~~

~~(iii) weekly overall progress notes.~~

~~(3) remains the same but is renumbered (2).~~

(3) Prior authorization pursuant to ARM 37.88.101 is required for outpatient therapy services that are provided to a child or adolescent concurrently with CSCT services.

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

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS

(1) Mental health services for a medicaid recipient under the Montana medicaid program will be reimbursed only if the following requirements are met:

(a) remains the same.

(b) the department has determined prior to treatment on a case-by-case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; ~~or~~

(c) prior authorization has been obtained for outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) program services described at [Rules I through VII]; or

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

(2) For all mental health services provided to a medicaid recipient under the age of 18, prior authorization is not required for the first 24 sessions of an individual or family outpatient service in the state fiscal year. Limitations for outpatient services are set forth in the fee schedule dated July

~~1, 2005. This rule does not apply to a session with a physician for the purpose of medication management visits in the 12 month period beginning July 1, 2002 and each 12 month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology, 4th edition (CPT4) codes 90804, 90806, 90810, 90812, 90846 and 90847 only.~~

~~(a) For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management.~~

~~(b) Practitioners who believe that more than 24 sessions are medically necessary for youth under the age of 18 years may request prior authorization for additional sessions.~~

~~(3) through (7) remain the same.~~

(8) Review of authorization requests by the department or its designee will be made with consideration of the clinical management guidelines ~~(2003)~~ (2004). A copy of the clinical management guidelines ~~(2003)~~ (2004) can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905, or to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 or can be viewed on the department's website at ~~www.dphhs.state.mt.us~~ www.dphhs.mt.gov/aboutus/divisions/addictivementaldisorders/index.shtml.

(9) and (10) remain the same.

AUTH: Sec. ~~53-6-113~~, MCA

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

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (8) remain the same.

(9) "Comprehensive school and community treatment program (CSCT)" means a comprehensive, planned course of community mental health outpatient treatment provided in cooperation with the school district where the child or adolescent with a serious emotional disturbance (SED) resides. The program must be provided by a licensed mental health center with an endorsement under [Rules I through VII].

(9) through (11) remain the same but are renumbered (10) through (13).

~~(12)~~ (14) "Individualized education program" (IEP) means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.341 through 300.350 as revised as of July 1, 1995. The department hereby adopts and incorporates by reference 34 CFR 300.341 through 300.350. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(13) through (29) remain the same but are renumbered (15) through (31).

AUTH: Sec. 50-5-103, MCA  
IMP: Sec. 50-5-103 and 50-5-204, MCA

37.106.1906 MENTAL HEALTH CENTER: SERVICES AND LICENSURE

- (1) through (3) remain the same.  
(4) A mental health center, with the appropriate license endorsement, may provide one or more of the following services:  
(a) through (e) remain the same.  
(f) mental health group home; ~~or~~  
(g) a crisis stabilization program; or  
(h) a comprehensive school and community treatment program.  
(5) through (8)(e) remain the same.

AUTH: Sec. 50-5-103, MCA  
IMP: Sec. 50-5-103 and 50-5-204, MCA

37.106.1919 MENTAL HEALTH CENTER: QUALITY ASSESSMENT

- (1) Each mental health center shall implement and maintain an active quality assessment program using information collected to make improvements in the mental health center's policies, procedures and services. At a minimum, the program must include procedures for:  
(a) remains the same.  
(b) maintaining records on the occurrence, duration and frequency of seclusion and physical restraints used; ~~and~~  
(c) reviewing, on an ongoing basis, incident reports, grievances, complaints, medication errors, and the use of seclusion and/or physical restraint with special attention given to identifying patterns and making necessary changes in how services are provided; ~~and~~  
(d) a quarterly review with the appropriate school district of the effectiveness, financial status, staffing patterns, and staff caseload of any CSCT program provided pursuant to an endorsement under [Rules I through VII].  
(2) remains the same.

AUTH: Sec. 50-5-103, MCA  
IMP: Sec. 50-5-103 and 50-5-204, MCA

4. Overview

Comprehensive school and community treatment (CSCT) is a planned course of outpatient treatment for children and adolescents with serious emotional disturbance (SED). The program is a medical service funded by medicaid and provided primarily in a school setting by mental health centers.

The school districts provide an appropriate level of direct contribution, which may be in-kind contribution of building and administrative costs. This contribution is calculated as the state's participation and is matched by federal dollars at the federal matching assistance percentage (FMAP) rate. The school



districts are providers of the CSCT services. Participating districts bill medicaid under their provider number.

The program has been in effect for approximately two and a half years. To date it has been administered by the Department of Public Health and Human Services (DPHHS) through Montana medicaid. Based on its experience with the program and extensive input from mental health centers that contract with school districts to provide the services, DPHHS is proposing to revise the method it uses to reimburse providers.

The Department has also determined that the CSCT program would be more effectively administered within the Department by separating the reimbursement function and the monitoring function. The reimbursement function is through medicaid reimbursement to school districts that contract with mental health centers, which will continue to be performed by Montana medicaid. The monitoring function, which will be through an endorsement on mental health center licenses, is proposed to be moved to the Department's licensing bureau which is establishing criteria for delivery of services by providers to SED children and adolescents.

Also included in these proposed rule amendments is a revision of ARM 37.86.2207(3) regarding the fee schedule for medicaid mental health services. The 2005 General Appropriations Act (HB 2 codified as 2005 Laws of Montana Chapter 607) provided for a 6% rate increase for the therapeutic portion of therapeutic youth group home treatment services, residential treatment center services and therapeutic foster care services.

The Department considered alternatives to proposing these rules, including making no changes. The Department met extensively with school district and special education cooperative personnel, mental health center employees and other state agencies. The general consensus was that the proposed rule changes should be implemented because they would improve the delivery of CSCT services, implement some of the proposals of the Medicaid Redesign project and maximize the federal funds available for CSCT services.

The medicaid primary care administrative rules include early and periodic screening, diagnostic and treatment services (EPSDT) rules found at ARM 37.86.2201, et seq. CSCT program for seriously emotionally disturbed children and adolescents is currently established and implemented in ARM 37.86.2224. The program provides CSCT services through a public school district that is a licensed mental health center or a school district that has a contract with a licensed mental health center.

The proposed new Rules I through IV create a CSCT endorsement to mental health center (MHC) licenses. To provide CSCT services, a licensed MHC will have to have a CSCT endorsement. The delivery of services will be monitored by DPHHS's licensing

bureau. As explained above, the provision of these services is currently occurring. Any change in current practices is explained in this rationale.

The specific rationale for each rule change follows.

Rule I

This new rule creates the endorsement criteria for MHC CSCT services under the MHC's license. It states the role of the Department's licensure bureau in licensing and monitoring the quality of CSCT services, which the bureau does for other services provided by a mental health center. The reimbursement function for Montana medicaid services will remain with Montana medicaid.

Rule II

This rule is consistent with standard practice currently used in Montana schools for CSCT programs, which the Department considers appropriate. It states the services that must be available through a CSCT program. Not every SED child or adolescent will need every service but, if the service is clinically indicated, the mental health center must be able to provide the service in a CSCT program.

Rule III

The issue of aversive treatment procedures was not addressed in the existing EPSDT rules. This new rule states the limits on time-out or other aversive treatment procedures that an endorsed mental health center may use in a CSCT program. DPHHS is proposing to adopt the Office of Public Instruction's (OPI) definition and standards for aversive procedures because CSCT is primarily provided in a school setting and the Department defers to OPI's expertise regarding the operations of Montana's public schools. This rule will provide a consistent state standard between programs.

Rule IV

Current ARM 37.86.2224(2) states:

Comprehensive school and community treatment must be provided through a program of services staffed by at least two mental health workers who work exclusively in the school with a maximum case load of 12 school children. At least one of the two mental health workers must be a licensed psychologist, licensed clinical social worker, or licensed professional counselor.

The proposed language in Rule IV changes the current limit from

12 children per program to a total of 720 units of service per team per calendar month. A unit of service is 15 minutes. A team consists of one licensed professional and one aide. This will allow providers more flexibility in providing services and being paid for those children in most need of the CSCT service without limiting the number of children served.

This rule also addresses staffing and training and adopts the current practice of school districts allowing a team of one licensed professional practitioner and one aide. The ability to use in-training practitioners was added to this rule to be consistent with other services provided by mental health centers. Allowing programs to use in-training practitioners would increase the likelihood that the service would be available in more rural locations where mental health services are limited. The Department also added a training requirement of 18 hours per year for licensed and nonlicensed staff because additional training will improve the delivery of services to SED children and adults. The initial 10 hours of training to nonlicensed staff must be provided within the first three months of employment to reduce the possibility of nontrained staff working in CSCT programs.

#### Rule V

This rule is consistent with current practice for client record requirements used for MHC licensing, which the department considers appropriate. It states the minimum acceptable client records requirements. These requirements are necessary to deliver effective services and for the Department to monitor service delivery and billing.

#### Rule VI

This rule states the requirements for a CSCT program to be coordinated with a student's special education program. While not all children and adolescents who qualify for the CSCT program will also qualify for special education, many do. One goal of the CSCT program is to coordinate services. Requiring communication between the special education program and the CSCT program will improve the delivery of services.

#### Rule VII

Rule VII is being added to the EPSDT CSCT rules to replace language being deleted from ARM 37.86.2224 regarding billing. The new language is intended to coordinate billing requirements with the new language in Rule IV allowing CSCT programs to bill up to 720 units per team per month.

#### ARM 37.86.2207

This rule is being amended to reference the fee schedule that will be effective September 1, 2005. The fees to CSCT providers

are based on the principles stated in Montana's Medicaid Redesign Report, pages 39 through 42, a copy of which can be viewed on the Department's website at [www.dphhs.mt.gov](http://www.dphhs.mt.gov). The rate per 15 minute unit is based on hourly wages, benefits, provider's self-reported direct program costs and indirect administrative costs, personnel costs, direct program costs for schools, facility costs, and indirect administrative costs for schools. The fee for CSCT services will be updated from \$24.49 per billable unit to \$25.09 per billable unit effective September 1, 2005.

ARM 37.86.2207(3) is also being amended to implement the 6% provider increase authorized in the 2005 General Appropriations Act (2005 Laws of Montana Chapter 607). This change will impact the therapeutic portion of therapeutic youth group home treatment service, residential treatment center services, and therapeutic foster care services. The rate increase will be made retroactive to July 1, 2005.

ARM 37.86.2224

This rule amendment is proposed to establish an endorsement requirement for mental health centers that chose to contract with school districts to provide CSCT. Most of the criteria for CSCT programs, which were previously stated in the medicaid early and periodic screening, diagnostic and treatment service (EPSDT) ARM 37.86.2224 have been transferred to Rules I through VI. The rationale for these criteria has previously been discussed in this rationale. The language is being moved to improve the rule readability and to move the function of monitoring program performance from the medicaid program to DPHHS's licensing bureau.

The cross reference in this rule to the definition of serious emotional disturbance is being changed from ARM 37.89.103(14) to 37.86.3702(2). The term "serious emotional disturbance" is defined twice in administrative rules. The CSCT program will use the definition at ARM 37.86.3702(2). This rule is also being amended to repeat and cross reference the prior authorization requirement that is currently stated in ARM 37.88.101. This reiteration is included in the rules to assist the user of this rule understand that Montana medicaid requires prior authorization for outpatient therapy services that are provided concurrently with CSCT services and in conjunction with a comprehensive treatment plan for the child.

ARM 37.88.101

Amendments to this rule are proposed to correctly state the authorization requirement for medicaid mental health services. CSCT program services do not require prior authorization but any outpatient services provided to a child or adolescent concurrently with his or her CSCT services must be prior authorized to assure duplication of services is not occurring.

Children and adolescents should have their mental health care needs met in the CSCT program. If additional services are needed, these must be prior authorized.

This rule is also being amended to reference the 2004, not the 2003, clinical management guidelines.

ARM 37.106.1902

ARM 37.106.1902 is being amended to include a definition of CSCT.

ARM 37.106.1906

ARM 37.106.1906 is being amended to add a CSCT endorsement to mental health centers. As explained above, this shifts the function of monitoring for public health and safety from the medicaid division of the Department to the licensing bureau, which has the statutory authority to regulate mental health centers. Management of the program to pay the providers will remain with the medicaid program.

ARM 37.106.1919

ARM 37.106.1919 is being amended to state that mental health centers with a CSCT endorsement must meet quarterly with the school district/medicaid provider to review the effectiveness of the CSCT program being provided to the district's students. This wording is intended to coordinate with Rule II.

Impact

The Department has met many times with a work group that is made up of individuals representing schools, mental health centers and staff from the office of public instruction to discuss how to improve the CSCT program. Based on these work group meetings and a public forum that allowed other stakeholders to review the proposed rule changes and make recommendations, the Department decided to propose adoption of the new rule language. The new rule language allows for more flexibility in providing CSCT services to children in need. It also adds language to the mental health rules to better define program criteria that licensure personnel can apply when they review mental health centers. The Department does not anticipate a monetary increase or decrease in reimbursement to providers nor does the Department anticipate a difference in the number of children receiving CSCT services. In state fiscal year 2004, 943 children received CSCT services.

The 6% increase implemented by the fee schedule change in ARM 37.86.2207(3)(a) will have a \$1,914,000 budget impact for State Fiscal Year 2006 - \$1,354,000 in federal funds and \$560,000 in state funds. The rate increase impacts three residential treatment center providers, 21 therapeutic group home providers

and 10 therapeutic foster care providers.

5. The Department intends to make the rule amendments effective as follows. Rules II through VII and the amendments to ARM 37.86.2224, 37.88.101, 37.106.1902, 37.106.1906 and 37.106.1919 will be effective on September 1, 2005. The endorsement requirement, Rule I, will be effective on December 1, 2005, in order to give providers time to conform to the new endorsement requirements under Rules II through VII. ARM 37.86.2207 will also be effective on September 1, 2005; however, section (3) will be applied retroactively to July 15, 2005, to provide the rate increase to providers as required by the 2005 legislature. There is no negative impact to providing the rate increase retroactive to that date.

6. 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 August 25, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). 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.

7. 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

Robert E. Wynia, MD  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 18, 2005.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the )  
adoption of new rule I (ARM )  
10.55.910) student discipline )  
records )

CORRECTED NOTICE OF  
ADOPTION

TO: All Concerned Persons

1. On April 14, 2005, the Board of Public Education published MAR Notice No. 10-55-235 regarding the proposed adoption of the above-stated rule concerning student discipline records at page 194 of the 2005 Montana Administrative Register, Issue Number 3. The notice of adoption was published at page 575 of the 2005 Montana Administrative Register, Issue Number 7.

2. While reviewing replacement pages for the second quarter, it was discovered that NEW RULE I (ARM 10.55.910) STUDENT DISCIPLINE RECORDS was adopted without authorization and implementation sections. These sections are as follows:

AUTH: 20-2-114, MCA  
IMP: 20-1-213, 20-2-121, MCA

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on June 30, 2005.

/s/ Kirk Miller  
Dr. Kirk Miller, Chair  
Board of Public Education

/s/ Steve Meloy  
Steve Meloy, Executive Secretary  
Rule Reviewer  
Board of Public Education

Certified to the Secretary of State July 18, 2005.

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

In the matter of the ) CORRECTED NOTICE  
adoption of new rules I ) OF AMENDMENT  
through IV, and the )  
amendment of ARM 12.11.202, )  
12.11.205, 12.11.210, )  
12.11.215, and 12.11.220, )  
pertaining to the Beaverhead )  
and Big Hole rivers )

TO: All Concerned Persons

1. On June 16, 2005, the Fish, Wildlife and Parks Commission (commission) published a notice of the adoption and amendment of the above-stated pertaining to the Beaverhead and Big Hole rivers at page 917 of the 2005 Montana Administrative Register, issue number 11.

2. The reason for the correction is that the last sentence of ARM 12.11.215(10) and the last sentence of ARM 12.11.220(10) were deleted from the notice of amendment and adoption by mistake. These sentences should have been included in the adoption notice but should have been depicted as stricken material in the notice. The corrected rule amendments read as follows, stricken matter interlined:

12.11.215 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER (1) through (9) remain as amended.

(10) In the event of the death of an outfitter who has an opportunity to outfit on the Beaverhead River as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not supersede the outfitter licensing requirements and authority of the board of outfitters. ~~The transfer of those outfitting businesses that these rules regulate on the Beaverhead River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.~~

(11) remains as amended.

AUTH: 87-1-301, 87-1-303, MCA  
IMP: 87-1-303, MCA

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER (1) through (9) remain as amended.

(10) In the event of the death of an outfitter who has an opportunity to outfit on the Big Hole River as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not supersede the outfitter licensing



requirements and authority of the board of outfitters. ~~The transfer of those outfitting businesses that these rules regulate on the Big Hole River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.~~

(11) remains as amended.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 2005.

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

By: /s/ John F. Lynch  
John F. Lynch  
Rule Reviewer

Certified to the Secretary of State July 18, 2005

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 20.27.101 and 20.27.102 )  
pertaining to siting and )  
construction standards )

TO: All Concerned Persons

1. On May 26, 2005, the Department of Corrections published MAR Notice No. 20-7-33 regarding the proposed amendment of the above-stated rules at page 778 of the 2005 Montana Administrative Register, Issue Number 10.

2. No comments or testimony were received.

3. The department has amended the rules exactly as proposed.

/s/ Bill Slaughter  
BILL SLAUGHTER, Director  
Department of Corrections

/s/ Colleen A. White  
Colleen A. White, Rule Reviewer  
Department of Corrections

Certified to the Secretary of State July 18, 2005.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rule I (ARM 23.3.524) )  
creating a separate endorsement )  
and qualification for commercial )  
drivers who operate school buses )

TO: All Concerned Persons

1. On May 26, 2005, the Department of Justice published MAR Notice No. 23-3-165 regarding the public hearing on the proposed adoption of New Rule I creating a separate endorsement and qualification for commercial drivers who operate school buses at page 780 of the 2005 Montana Administrative Register, issue number 10.

2. The department has adopted New Rule I (ARM 23.3.524) exactly as proposed.

3. A public hearing on the proposed rule was held on June 17, 2005, at 9:30 a.m., in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana. In addition to the hearings officer, two people attended the hearing, both of whom were employees of the Motor Vehicle Division. One person, Ms. Anita Oppedahl, Chief of the Field Operations Bureau of the Motor Vehicle Division of the Department of Justice, submitted oral testimony in support of the proposed adoption. Her testimony mirrored the rationale for the proposed adoption published in the notice.

4. No written comments concerning the proposed adoption were received.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ Mike McGrath  
MIKE McGRATH  
Attorney General

/s/ Ali Bovingdon  
ALI BOVINGDON  
Rule Reviewer

Certified to the Secretary of State July 18, 2005.

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

In the matter of the proposed ) NOTICE OF DECISION  
amendment of ARM 24.29.1409, ) ON PROPOSED RULE ACTION  
relating to travel expense )  
reimbursement for workers' )  
compensation medical services )

TO: All Concerned Persons

1. On April 14, 2005, the Department of Labor and Industry published MAR Notice No. 24-29-192 regarding the public hearing on the proposed amendment of the above-stated rule concerning travel expense reimbursement at page 520 of the 2005 Montana Administrative Register, Issue No. 7.

2. On May 11, 2005, the Department of Labor and Industry held a public hearing to consider the proposed amendment of ARM 24.29.1409 regarding travel expense reimbursement for workers' compensation purposes. In addition to the comments made at the public hearing, the Department also received written comments.

3. In light of the comments received, the Department has decided not to enact the amendments as originally proposed. Instead, the Department is proposing a modified set of amendments on the same subject, based upon those comments. MAR Notice No. 24-29-197, the Notice of Public Hearing on those modified proposed amendments, can be found in the Notice section of this issue of the Montana Administrative Register.

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

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

Certified to the Secretary of State: July 18, 2005

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 24.138.301 definitions,	)	
ARM 24.138.502 initial licensure	)	
of dentists by examination,	)	
ARM 24.138.503 initial licensure of)	)	
dental hygienists by examination,	)	
ARM 24.138.505 dentist licensure	)	
by credentials, ARM 24.138.506	)	
dental hygienist licensure by	)	
credentials, ARM 24.138.510	)	
denturist examination,	)	
ARM 24.138.511 denturist	)	
application requirements,	)	
ARM 24.138.2101 definition of	)	
continuing education,	)	
ARM 24.138.2104 requirements and	)	
restrictions, and ARM 24.138.3207	)	
requirements for continuing	)	
education in anesthesia	)	

1. On May 26, 2005, the Board of Dentistry published MAR Notice No. 24-138-61 regarding the public hearing on the proposed amendment of the above-stated rules, at page 796, 2005 Montana Administrative Register, issue no. 10.

2. A public hearing on the notice of proposed amendment on the above-stated rules was held on June 16, 2005. No comments or testimony were received.

3. The Board amends ARM 24.138.301, 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.510, 24.138.511, 24.138.2101, 24.138.2104 and 24.138.3207 exactly as proposed.

BOARD OF DENTISTRY  
PAUL SIMS, DDS, PRESIDENT

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

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

Certified to the Secretary of State July 18, 2005

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.141.403, licensee )  
responsibilities )

TO: All Concerned Persons

1. On February 24, 2005, the State Electrical Board published MAR Notice No. 24-141-29 regarding the public hearing on the proposed amendment of the above-stated rule relating to licensee responsibilities, at page 317 of the 2005 Montana Administrative Register, issue no. 4.

2. On March 18, 2005, at 9:00 a.m., a public hearing was conducted in Helena, Montana. No members of the public were present at the public hearing. In addition, three written comments were received prior to the closing of the comment period.

3. The Board received three comments regarding the proposed amendment of ARM 24.141.403. The Board has thoroughly considered all of the comments. A summary of the comments received and the Board's responses are as follows:

Comment 1: Duane Mellinger, Business Manager for IBEW Local 233 stated that "language should be submitted that would require a contractor to have the permit in hand before (he) commences work on the project and a large fine or even removal from the job if they are caught".

Response 1: The Board does not believe that the rule should require that an electrical permit always be obtained before the electrical contractor begins work. The Board believes that an inflexible requirement for obtaining a permit prior to starting any work is neither necessary nor appropriate to protect the public health, safety and welfare. As mentioned in Comment 3, there may be emergency situations where an electrician needs to start work immediately in order to protect the public health, safety or welfare. The Board notes that it has jurisdiction and authority over licensed electricians, but does not have any authority over the permits that are issued by building code authorities. The Board's rule only addresses the obligations of the licensee with respect to that individual's conduct as a licensed electrician or as a licensed electrical contractor.

The Board believes that it is enough that the electrical contractor makes a sincere, good faith effort to obtain the required permit early enough in the construction process to allow for the appropriate inspection of the electrician's work by a building inspector. The Board is in the process of

drafting a definition or explanation of when a permit application is "timely", such that it takes into account the differing needs and circumstances of licensees, permit issuers, and the public across the state. The definition or explanation of what is "timely" will be proposed as part of formal rulemaking in the future, and thus concerned persons will be able to comment upon that concept at a later date.

The Board believes that disciplinary action against licensees is not appropriate when there has been a timely, good faith effort to obtain the appropriate permits. However, the Board is prepared to discipline licensees (by imposing fines, placing a license on probation or suspension, or a combination of sanctions) for licensees who do not timely and in good faith apply for electrical permits. The Board concludes that it is not necessary for the protection of the public health, safety or welfare to impose disciplinary action in the event the proper permit has not been issued prior to the electrical contractor performing any work on a project. Accordingly, the Board declines the commenter's invitation to create an absolute requirement for having a permit before beginning any work.

Comment 2: Diane Murdoch, a licensed electrician, submitted a comment that stated "the proposed change seems to shift the responsibility for securing proper permits and inspections to the electrician doing the work. It would seem the prime responsibility would be with the trade contractor for the job. The electrician on the job should be sure the proper permits are at the site, the inspection would of necessity be the call of the electrician doing the work."

Response 2: There is only one individual who is designated as the "responsible electrician" for a contractor's license. That individual is responsible for obtaining the proper electrical permits. Licensees who are not designated as the "responsible electrician" for the electrical contractor are not authorized to obtain permits on behalf of the contractor. The proposed amendments to the rule do not change that responsibility.

The Board concludes that if the appropriate permits are obtained in a timely fashion, there will not be a problem with timely obtaining the needed inspection of work. While the commenter is correct that the on-site electrician is the person who is in the best position to know when a phase of a project is ready for inspection, the rule provides that the legal responsibility for obtaining timely inspection rests upon the person who is the contractor's "responsible electrician".

Comment 3: Will R. Hendrick of Boundary Electric Company submitted a comment wherein he stated that "The State of Montana needs to go further and provide an actual booklet of

pre-numbered permits to the electrical contractors. If emergency work needs to be accomplished that could prevent serious injury or death, a contractor has the fiduciary and ethical responsibility to provide for those repairs immediately, and do so without the benefit of the required permit. If the State of Montana issued pre-numbered permits to electrical contractors, the contractor could call for an inspection the day of, or within 48 hours of the accomplished work. This method could minimize potential problems with the delay of issuance of permits. The checks and balances in this system include the possibility of a random audit by the state inspector of the pre-issued permits, and of submission of the fees for same."

Response 3: As noted in Response 1, the Board's rule does not impose a requirement that the proper permits be obtained prior to the commencement of any work by a licensed electrician.

The Board again notes that it has jurisdiction and authority over licensed electricians, but does not have any authority over the permits that are issued by building code authorities. The Board lacks the power to change the permitting process with respect to electrical or building permits. However, the Board has been advised that the state Building Codes Bureau is intending to provide an "on-line" permitting process in the near future that should alleviate some of the commenter's concerns about the availability of electrical permits outside of normal business hours.

4. The Board has amended ARM 24.141.403 exactly as proposed.

MONTANA STATE ELECTRICAL BOARD  
TONY MARTEL, PRESIDENT

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

Certified to the Secretary of State July 18, 2005



BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 24.207.517 )  
and ARM 24.207.518 pertaining )  
to trainee and mentor )  
requirements )

TO: All Concerned Persons

1. On April 28, 2005, the Board of Real Estate Appraisers published MAR Notice No. 24-207-24 regarding the public hearing on the proposed amendment of the above-stated rules relating to trainee and mentor requirements, at page 622 of the 2005 Montana Administrative Register, issue no. 8.

2. On May 24, 2005, at 9:00 a.m. a public hearing was conducted in Helena, Montana. No members of the public were present at the public hearing. In addition, no written comments were received prior to the closing of the comment period.

3. The Board has amended ARM 24.207.517 and ARM 24.207.518 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS  
TIM MOORE, CHAIRPERSON

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

Certified to the Secretary of State July 18, 2005.

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

In the matter of the amendment ) CORRECTED NOTICE OF  
of ARM 37.40.311 pertaining to ) AMENDMENT  
medicaid payments to nursing )  
facilities )

TO: All Interested Persons

1. On March 31, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-343 pertaining to the proposed amendment of the above-stated rule at page 411 of the 2005 Montana Administrative Register, issue number 6, and on June 16, 2005 published notice of the amendment on page 969 the 2005 Montana Administrative Register, issue number 11.

2. This corrected notice is being filed to correct an error in the effective date of the rule amendment.

3. The rule ARM 37.40.311 remains as amended.

4. The proposed rule amendment is effective July 1, 2005.

5. In the notice of proposal, the Department indicated that it intended the proposed rule changes to be effective July 1, 2005. In the notice of adoption, the Department inadvertently neglected to repeat the statement that the rule amendments would be effective July 1, 2005. This corrected notice is to clarify that the rule amendments are effective July 1, 2005 as had been proposed.

6. All other rule changes adopted remain the same.

7. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 2005.

Dawn Sliva  
Rule Reviewer

Robert E. Wynia, MD  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 18, 2005.

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

In the matter of the adoption )  
of Rule I and the amendment of )  
ARM 37.86.4401, 37.86.4406, )  
37.86.4407, 37.86.4412 and )  
37.86.4413 pertaining to )  
reimbursement of rural health )  
clinics and federally )  
qualified health centers )

CORRECTED NOTICE OF  
AMENDMENT

TO: All Interested Persons

1. On January 13, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-341 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 60 of the 2005 Montana Administrative Register, issue number 1, and on June 16, 2005 published notice of the adoption and amendment on page 975 of the 2005 Montana Administrative Register, issue number 11.

2. This corrected notice is being filed to correct an error in ARM 37.86.4413.

3. The rule is corrected as follows:

37.86.4413 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, ESTABLISHMENT OF INITIAL PAYMENT FOR NEW CLINICS OR CENTERS (1) and (2) remain as amended.

(3) At the end of the RHC's or FQHC's first two fiscal years, a new per visit rate shall be established that is equal to 100% of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's first two fiscal years which are reasonable and related to the cost of furnishing such services. The provider must submit to the department or its agent the costs and visits for the RHC or FQHC for the reporting period in the form and detail required by the department and such other information as the department may require to establish a rate.

(a) The formula for calculating this new base per visit rate is the total cost of core and other ambulatory services for the first two fiscal years divided by the total core and other ambulatory visits for the first two fiscal years. This base cost per visit rate may be adjusted ~~for the third fiscal year to date~~ to take into account any increase or decrease in the scope of service as provided in ARM 37.86.4412.

(b) through (4) remain as amended.

AUTH: Sec. 53-6-113, MCA

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

4. In the proposed notice of amendment, ARM  
Montana Administrative Register

14-7/28/05

37.86.4413(3)(a) was shown with the existing text at the end of the last sentence struck out indicating it would be deleted, and new text would be added in its place. However, due to an inadvertent error, the last part of the existing text to be removed, "for the third fiscal year to date", was neither shown nor struck out as intended. Failure to remove the phrase would cause the sentence to read incorrectly. Therefore, the Department is correcting the error through this notice.

5. All other rule changes adopted remain the same.

6. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 2005.

Dawn Sliva  
Rule Reviewer

Robert E. Wynia, MD  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 18, 2005.

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through VII )  
pertaining to energy utility )  
service standards )

To: All Concerned Persons

1. On March 31, 2005, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR notice number 38-2-187 regarding a public hearing on the proposed adoption of new rules I through VII concerning energy utility service standards, at page 416 of the 2005 Montana Administrative Register, issue number 6.

2. The PSC has adopted New Rules I, II, and V with the following changes, stricken matter interlined, new matter underlined:

RULE I (38.5.8601) DEFINITIONS In this subchapter the following definitions shall apply unless the context otherwise clearly demands:

(1) and (2) remain as proposed.

(3) "Major event" means a catastrophic event that:

(a) for regulated electric utilities that have adopted the Institute of Electrical and Electronic Engineers Guide for Electric Power Distribution Reliability Indices, meets the definition of "major event day," standard 1366-2003; or

(b) for regulated electric utilities that have not adopted the Institute of Electrical and Electronic Engineers Guide for Electric Power Distribution Reliability Indices:

~~(a)~~ (i) exceeds the design limits of the electric power system;

~~(b)~~ (ii) causes extensive damage to the electric power system; and

~~(c)~~ (iii) results in a simultaneous sustained electric service interruption to more than 10% of the customers in an operating area.

(4) remains as proposed.

AUTH: 69-3-103, MCA

IMP: 69-3-201, MCA

RULE II (38.5.8604) ENERGY UTILITY SERVICE INTERRUPTION NOTIFICATION (1) Each energy utility shall report promptly to ~~a local radio station and other local~~ news media that are

capable of timely dissemination of information on any specific occurrence or development which interrupts or is likely to interrupt the utility's natural gas and/or electric service to ~~100~~ 500 or more of its customers for a time period longer than two hours.

AUTH: 69-3-103, MCA  
IMP: 69-3-201, MCA

RULE V (38.5.8613) ELECTRIC UTILITY SYSTEM RELIABILITY

(1) The following service reliability indices measure the frequency and duration of service interruptions. They are recognized as standard reliability indices for the electric utility industry and may be applied to entire distribution systems and operating areas. For purposes of this rule, "interruption" means the loss of service for more than five minutes ~~or more~~.

(a) through (c) remain as proposed.

AUTH: 69-3-103, MCA  
IMP: 69-3-201, MCA

3. The PSC has adopted New Rules III (38.5.8607), IV (38.5.8610), VI (38.5.8616), and VII (38.5.8619) exactly as proposed.

4. The following comments were received and appear with the PSC's responses:

GENERAL COMMENTS: Montana-Dakota Utilities (MDU) comments that the proposed rules will impose significant compliance costs on MDU without providing any substantive improvement in service quality. MDU comments that service standards for natural gas should be established in a separate rulemaking. Large Customer Group (LCG) supports the proposed rules, but urges the PSC also to adopt rules to recognize the specific reliability concerns of industry customers, to require utilities to take steps to identify which outages impose the largest costs and risks, and to further require prioritization to reinforcement and upgrading of facilities where service interruptions are most costly or dangerous. Montana Consumer Counsel (MCC) comments that it supported the rules. MCC urges the PSC to reject the LCG's suggestions regarding priority and cost allocation rules because to do otherwise would exceed the scope of the rulemaking notice and it would not be appropriate to establish policies regarding these controversial subjects without first having engaged in a discussion about them with interested parties.

RESPONSE: The rules will assist the PSC in meeting its responsibility to ensure energy utilities are providing adequate service. The rules should not impose significant compliance costs on energy utilities. It is an efficient use of the rulemaking process to include in these rules the provisions that apply to both electric and natural gas utilities. The PSC agrees with MCC's comments regarding the LCG comments.

COMMENTS ON RULE I: NWE recommends that the definition of "major event" at section (3) be amended to be consistent with the Institute of Electrical and Electronic Engineers (IEEE)

Standard 1366-2003, which sets the methodology for computing a "major event day."

RESPONSE: The PSC agrees with NWE's suggestion and has amended the definition to allow electric utilities that have adopted the IEEE standard for reliability reporting purposes to apply that standard while at the same time providing an alternative major event definition to be applied by electric utilities that have not adopted the IEEE standard.

COMMENTS ON RULE II: NWE recommends that notice to local media of outages should not be required until 500 customers are affected and the outage is more than two hours in duration. According to NWE, representatives in the NWE call center provide outage information to affected customers when they call to report service outages and NWE believes telephone contact is the best and most direct method of providing timely information to customers. NWE states it is able to update outage information with recorded messages that affected customers will hear when they reach the NWE call center. NWE also comments that it would be difficult to comply with the rule requirement to provide prompt notice of outages because of the wide variety of outage causes, the diverse ways NWE becomes aware of the scope and cause of outages, and the various sets of possible steps and time necessary to restore service. NWE notes that, even when NWE notifies local media of outages, there is no guarantee that the media will print or broadcast the information. NWE argues the rule would require a utility to provide two notifications to media - first to notify them of an outage and a second to notify them of service restoration. MDU suggests amending the rule to require local media notification only when 100 or more customers in an area are affected by a service interruption. MDU comments that the two-hour duration should be increased to four hours.

RESPONSE: The PSC agrees with NWE's suggestion that the threshold for number of customers affected by an outage that would trigger media notification should be increased from 100 to 500 customers. The rule has been amended accordingly. Regarding NWE's comment that it would be difficult to comply with the requirement that a utility report outages promptly to local media because it doesn't always know the scope and cause of an outage or how long it will last, the PSC responds that once a utility is aware of a service interruption that will last at least two hours and will affect 500 or more customers, then the utility may not sit on the information but instead must promptly notify media outlets that are capable of timely dissemination of the information to get the word out to customers. Utilities undoubtedly maintain their own lists of local and statewide media outlets that are able to disseminate information quickly, but examples would include the wire services and local radio and television stations. Contrary to NWE's comment that two media notifications are required by the rule, there is no expectation by the PSC or in the rule that utilities provide two notifications. Rather, the PSC expects that a utility's

notification to media will contain any useful information about a significant outage, including, if known, an estimate of when service might be restored. The PSC is puzzled by MDU's comment that local media notification should be required only when 100 or more customers in an area are affected by a service interruption because that is exactly what the proposed rule requires. The PSC declines to adopt MDU's suggestion to increase the two-hour duration to four hours. Given that customers experience significant inconvenience (and possibly more serious consequences) when they lose electric or natural gas service for any length of time, a two hour outage duration is certainly a more appropriate notification threshold than four hours.

COMMENTS ON RULE IV: MDU questions the efficacy of this proposed rule because sections (1), (3), (5), and (6) are statements of general policy and, according to MDU, lack any specifically enforceable criteria. NWE recommended that section (2) be deleted because it is already industry practice to ensure utility facilities comply with the National Electrical Safety Code.

RESPONSE: The PSC disagrees with MDU's assertion that this rule is ineffective because it contains general policy statements rather than specifically enforceable criteria. The PSC believes it is important to generally describe its expectations for energy utilities. The PSC declines to adopt NWE's recommendation that section (2) be deleted as unnecessary since utilities already comply with NESC requirements. The NESC applies only to electric facilities, while section (2) is a general statement of design and maintenance expectations that applies to all regulated energy facilities, not just electric ones.

COMMENTS ON RULE V: MDU states that it follows IEEE Standard 1366 and manually monitors and analyzes its distribution and transmission system to identify system problems and avoid service disruptions. MDU suggested the rule define "distribution system" with more specificity for purposes of calculating the required indices. MDU includes in its conclusory comments a concern about the high costs that MDU would incur if it were required to implement electronic monitoring of individual circuits.

RESPONSE: The three system reliability indices that are defined in this rule are common industry-standard indices. The PSC does not believe it is necessary to define "distribution system" in this rule. The reliability indices apply to the electric utility's distribution system as a whole as well as to each of the utility's operating areas on the distribution system. In response to MDU's comment about the cost of monitoring individual circuits, section (1) does not require such monitoring.

COMMENTS ON RULE VI: MDU comments that it currently



calculates manually the three indices required by this rule for its electric distribution system at the operating district level, but does not calculate these indices for its transmission system.

RESPONSE: The recordkeeping requirement in section (1) applies to service interruptions on the distribution system and to each operating area on the distribution system. There is no requirement to calculate the reliability indices for the transmission system.

COMMENTS ON RULE VII: MDU comments that this rule would require MDU to incur implementation costs because MDU does not have the equipment or measuring systems in place to measure and collect data as required by the rule. MDU specifically mentions that it does not include major storm events in its calculations and does not capture the indices down to the circuit level. MDU adds that it does not believe implementation of this rule would do anything to improve customers' service quality.

RESPONSE: MDU indicates in its comments that it does calculate CAIDI, SAIDI and SAIFI indices at the present time. The rule does not require calculation of the indices down to the circuit level. The requirement to calculate the indices with and without major events included ensures that the PSC is able to take into account the effect of major events on the indices when reviewing the reliability reports. The annual reliability report will assist the PSC's efforts to monitor the adequacy of service provided by regulated electric utilities.

/s/ Greg Jergeson  
Greg Jergeson, Chairman

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State on July 18, 2005.

CITIES AND TOWNS - Authority of self-governing municipalities to enter interlocal agreement for operation of electric and natural gas utility;

CITIES AND TOWNS - Limitations on powers of self-governing local governments;

CITIES AND TOWNS - Grants to nonprofit corporation for public purposes;

CITIES AND TOWNS - Application of municipal debt limits to debt incurred by public benefit nonprofit corporation where debt is subject to "nonappropriation clause" and is without recourse against municipalities;

CORPORATIONS - Operation of electric and natural gas utility by public benefit nonprofit corporation;

CORPORATIONS - Power to create public benefit nonprofit corporation with municipal power authority as sole member;

INTERLOCAL AGREEMENTS - Powers of authority created by interlocal agreement;

MUNICIPAL GOVERNMENT - Authority of self-governing municipalities to enter interlocal agreement for operation of electric and natural gas utility;

MUNICIPAL GOVERNMENT - Limitations on powers of self-governing local governments;

MUNICIPAL GOVERNMENT - Grants to nonprofit corporation for public purposes;

MUNICIPAL GOVERNMENT - Application of municipal debt limits to debt incurred by public benefit nonprofit corporation where debt is subject to "nonappropriation clause" and is without recourse against municipalities;

PUBLIC SERVICE COMMISSION - Regulation of public benefit nonprofit corporation as public utility;

MONTANA CODE ANNOTATED - Title 35, chapter 2, part 1; Title 69, chapter 3, part 5; sections 7-1-101, -102, -111, -4124(9), 7-3-1104, -2103, 7-11-101 to -108, -101, -102, -104, 35-2-114(14)(f), (17), (21)(a), (25), (32)(a), -117(2), -118(1), (d), (e), (f), (g), (p), -213(1)(e), -514(2), -520, 69-3-101.

- HELD:
1. Under the Montana Nonprofit Corporation Act, an authority created pursuant to an interlocal agreement among self-governing municipalities may incorporate a public benefit nonprofit corporation to operate an electric and natural gas utility.
  2. An authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise.
  3. Operation of an electric and natural gas utility is a public purpose for which a self-governing municipality may grant funds.

4. Debt incurred through corporate bonds issued by a public benefit nonprofit corporation incorporated by an authority created by interlocal agreement between self-governing municipalities is not subject to laws regulating municipal debts or obligations if the municipalities are not legally obligated to appropriate money to pay the debt and the debt is without recourse to the spending power of the municipalities.

July 13, 2005

Mr. Robert M. McCarthy  
Butte-Silver Bow County Attorney  
Courthouse Building Room 104  
155 West Granite Street  
Butte, MT 59701

Dear Mr. McCarthy:

Five years ago, Attorney General Mazurek issued an opinion to you holding that a local government with self-government powers has the authority to own and operate an electric and natural gas utility. 48 Op. Att'y Gen. No. 14 (2000). You have now requested my opinion on related questions that I have phrased as follows:

1. Does the Montana Nonprofit Corporation Act, Mont. Code Ann. tit. 35, ch. 2, pt. 1, permit the creation of a public benefit nonprofit corporation whose sole member is a public power authority created by interlocal agreement under Mont. Code Ann. §§ 7-11-101 to 7-11-108, and whose purpose is the acquisition and operation of an electric and natural gas utility?
2. Does Montana law allow a self-governing local government to provide financial support to the MPPA to facilitate the transaction, and if so under what conditions?

I.

The cities of Bozeman, Great Falls, Helena, and Missoula, and the consolidated city-county government of Butte-Silver Bow (hereafter "the Municipalities"), all self-governing local governments under Mont. Code Ann. § 7-1-101 et seq., have entered an interlocal agreement creating the Montana Public Power Authority ("MPPA") for the purpose of acquiring and operating certain electrical and natural gas transmission and distribution systems serving customers formerly served by the Montana Power Co. ("the T & D assets"). Your letter informs

me that MPPA has in turn incorporated Montana Public Power, Inc. ("MPPI"), to serve as the legal entity that holds and operates the T & D assets.

With your letter you have provided copies of the interlocal agreement creating the MPPA and the Bylaws and Restated Articles of Incorporation for MPPI. The interlocal agreement provides that the purposes of the MPPA are: (1) to investigate the feasibility of acquiring the T & D assets; (2) upon a determination by 2/3 of the Board of MPPA that it is in the MPPA's best interest to do so, to pursue acquisition of and to acquire the T & D assets; and (3) thereafter "to own, operate, manage, and administer the same." Interlocal Agreement, § 2.4. The agreement further authorizes the MPPA to incur bond or debt obligations for the financing of the acquisition. Id., § 2.5.f. This provision is expressly conditioned as follows:

[P]rovided, however, that each such bond or debt obligation issued by MPPA and represented by a certificate or instrument shall contain on its face a statement substantially to the effect that (i) neither Montana, any municipality or local governmental unit thereof, or any other municipal corporation, quasi-municipal corporation, subdivision, authority, or agency thereof is obligated to pay the principal or interest thereon; and (ii) no tax funds may be used to pay the principal or interest thereon; and (iii) neither any nor all of the faith and credit nor taxing power of Montana, any municipality or local governmental unit thereof, or any other municipal corporation, quasi-municipal corporation, subdivision, authority, or agency thereof, is pledged to the payment of the principal or interest thereon. . . .

Id. The agreement further empowers the MPPA "to negotiate and enter into contracts, to perform contracts, to make covenants and representations, to convey and receive legal rights, and to take such other actions as may be reasonably incident to the Acquisition or Development of the T & D Assets."

MPPA has in turn incorporated MPPI, a Montana public benefit nonprofit corporation. According to its Restated Articles of Incorporation, MPPI's initial member is MPPA. Additional members may join the corporation, but membership is limited to the State, its agencies or instrumentalities, political subdivisions of the State, or "authorities, associations, or other entities comprised [sic] solely of the State or its political subdivisions." MPPI is organized to pursue "any lawful activity for which a corporation may be formed under the Montana Nonprofit Corporation Act and not for pecuniary profit or financial gain."

MPPA and MPPI have entered into a written Agreement under which MPPA has agreed to provide seed money for MPPI's use in pursuing the acquisition of the T & D assets. The agreement states that the offer for acquisition must be structured to "permit [MPPI] to offer adequate, reliable low-cost electric and natural gas utility services to the inhabitants of the Authority's Members," and that the expenditures are therefore for a public purpose. Agreement, § 1. The Agreement provides further that MPPI will offer to purchase all of the stock of NorthWestern Corporation, which now controls the T & D assets, and, if successful in purchasing the assets, will sell to South Dakota Public Power Incorporated ("SDPPI") any T & D assets located in South Dakota or Nebraska. Under the Agreement, MPPI will operate the T & D assets not conveyed to SDDPI until such time as they might be conveyed to MPPA in the future.

MPPI has entered into an Agreement with SDPPI for the conveyance of the South Dakota and Nebraska assets to SDPPI in the event MPPI acquires the T & D assets. The Agreement also contemplates that there will be a transition period of up to three years during which "MPPI will be responsible for the integrated operations of the assets of MMPI and SDP during the Transition Period." The Agreement allows either party to terminate its involvement in advance of the stock purchase, with the non-terminating party free to proceed with the acquisition effort without the involvement of the other party.

Your letter informs me that MPPI intends to finance the acquisition of the T & D assets through an arrangement with an investment banking firm providing for the issuance and sale of bonds. The bonds will be corporate debt of MPPI and not municipal bonds issued by the Municipalities or MPPA. The debt incurred for the purchase of the assets will be secured only by the revenue produced by the operation of the T & D assets. The arrangement will include an agreement ensuring that the financing will not be a debt of MPPA or any of its member local governments and that the credit or taxing power of the local governments will not be pledged in support of the debt instruments. Although these agreements have not apparently been finalized at this time, I assume for purposes of this opinion that the arrangements will be as described.

Any opinions expressed herein are contingent on the facts you have provided as stated above.

## II.

Your first question requires consideration of the Montana Nonprofit Corporation Act, Mont. Code Ann. tit. 35, ch. 2 ("the Act"). The Act provides for the creation of a public benefit nonprofit corporation with members. See Mont. Code Ann. § 35-2-213(1)(e) (articles of incorporation may provide for members); cf., e.g., Mont. Code Ann. §§ 35-2-514(2), 35-2-

520 (explaining certain rights of members of public benefit corporations.)

Nothing in the Act bars MPPA from membership in a public benefit nonprofit corporation. The Act defines "member" generally as a "person" having the right to vote. Mont. Code Ann. § 35-2-114(21)(a). The Act in turn defines "person" to include "any . . . entity," id. (25), "entity" to include a "state," id. (14)(f), "state" to include a "governmental subdivision," id. (32)(a), and "governmental subdivision" to include "an authority," id. (17). I therefore conclude that MPPA may be a member of MPPI.

The powers of a nonprofit corporation include the power to acquire and dispose of property or any interest in property, including another corporation or its stock. Mont. Code Ann. § 35-2-118(1)(d), (e), (f). Nothing in the Act limits the authority of a Montana nonprofit corporation to owning and holding property in Montana, and accordingly the Act poses no barrier to the acquisition of the T & D assets located in other states. MPPI therefore has the power to acquire the T & D assets, whether through a purchase of them individually or through acquisition of the stock of their current owner, "[u]nless its articles of incorporation provide otherwise," id. (1). While a detailed interpretation of MPPI's articles is beyond the scope of this opinion, it would appear that the articles do not prohibit the acquisition or subsequent conveyance of the T & D assets. The plan for acquisition and disposition of the assets as described above is therefore within MPPI's corporate powers.

A nonprofit corporation also has the power, subject to its articles, to "carry on a business." Id. (1)(p). Again, nothing in MPPI's articles appears to prohibit the operation of an electric and natural gas utility business, and nothing in the statutes would appear to prevent the corporation from carrying on business activities in states other than Montana. I therefore conclude that MPPI has the corporate power to do so.

A nonprofit corporation finally has the power "to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to pledge any of its property, franchises, or income." Id. (1)(g). MPPI's articles do not appear to limit this power, and I therefore conclude that its corporate powers extend to the financing activities described in I. above.

I note that Mont. Code Ann. § 35-2-117(2) precludes incorporation of a nonprofit corporation if the incorporation would violate another provision of law. I perceive no other provisions of law that would preclude incorporation of MPPI for the purpose of operating an electric and natural gas utility. MPPI will be within the definition of a "public

utility" in Mont. Code Ann. § 69-3-101. That statute provides that "every corporation, public or private" that provides utility services is a "public utility," without distinguishing or exempting a public benefit nonprofit corporation. It therefore appears that if MPPI receives all required regulatory approvals, it may operate as a public utility in Montana.

Montana law vests in the Public Service Commission the authority to regulate rates and services of entities providing electric and natural gas service to consumers. It is accordingly beyond the proper scope of this opinion to determine what financing and regulatory requirements will apply to MPPI and whether MPPI will meet them. Specifically, I express no opinion as to whether the financing arrangements described in Part I. comply with the requirements of Mont. Code Ann. tit. 69, ch. 3, pt. 5, dealing with investment and financing of public utility assets.

Based on the foregoing, it is my opinion that the Montana Nonprofit Corporation Act allows the creation of MPPI as a public benefit nonprofit corporation with MPPA as its sole member, and that MPPI has the corporate power to acquire the T & D assets in the manner described in Part I. above, to operate an electric and natural gas utility business as described in Part I. above, and to finance its operations as described in Part I. above. This conclusion is predicated on the facts as stated in Part I., and I express no opinion as to the MPPI's corporate power to engage in any activity other than the ones there described.

### III.

Your second question requires analysis of the extent of the power of a self-governing local government.

Initially, it is necessary to clarify the role of MPPA. As an entity created by an interlocal agreement, MPPA has only those powers that could be exercised by any of the members that created MPPA. An interlocal agreement may only provide a service "that any of the public agencies entering into the contract is authorized by law to perform." Mont. Code Ann. § 7-11-104. Accordingly, the powers of the Municipalities also define the limits of MPPA's powers.

Generally, self-governing local governments "may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments." Mont. Code Ann. § 7-1-101. "A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter." Mont. Code Ann. § 7-1-102.

In 48 Op. Att'y Gen. No. 14 (2000), Attorney General Mazurek established that the self-governing local government of Butte-Silver Bow has the authority to acquire and operate an electric and natural gas utility. In doing so, he clarified several points pertinent to this inquiry. First, he held that the operation of a utility was a public purpose. Second, he held that the consolidated city-county government could perform any functions that a municipal government could perform. Third, he held that municipal operation of a utility was not prohibited by Mont. Code Ann. § 7-1-111, which precludes a self-governing local government from exercising "any power that establishes a rate or price otherwise determined by a state agency." All of these holdings are instructive with respect to the activities described in Part I.

Attorney General Mazurek's opinion is not dispositive of all of the issues surrounding your second question. Three principal issues remain. The first arises from the fact that the Municipalities intend to operate the utility under the structure of a member-governed public benefit nonprofit corporation of which MPPA is currently the sole member. This raises the issue of whether a self-governing municipality is limited to providing electric and natural gas utility services through T & D assets owned and operated directly by the municipality. In my opinion they are not.

A self-governing municipality may perform any function by any means unless the function or means is prohibited by a specific statute delimiting the powers of self-government local governments, by constitutional norms, or by a provision of its charter. The doctrine of implied preemption is inapplicable to self-governing local governments. D & F Sanitation Serv. v. City of Billings, 219 Mont. 437, 444-45, 713 P.2d 977, 981 (1986). The statutory provision setting forth one method of providing utility services by a municipality therefore cannot implicitly preclude a self-governing local government from choosing any other method that is not otherwise precluded by law. See 49 Op. Att'y Gen. No. 3 (2001) (principle of expressio unius est exclusio alterius inapplicable to analysis of powers of self-governing municipality).

The second remaining issue is whether the grant of public funds for the seed money to MPPI is lawful.

A similar question was answered in the affirmative in 48 Op. Att'y Gen. No. 12 (2000). In that opinion it was held that a general power municipality could grant funds to a public benefit nonprofit corporation for the operation of a local museum, relying on Mont. Code Ann. § 7-1-4124(9), which empowers a general government municipality to "make grants and



loans of money, property, and services for public purposes."<sup>1</sup> Since the Municipalities, as self-governing entities, may exercise any power available to a general power municipality, Mont. Code Ann. § 7-1-101, 7-1-102, and since, as held in 48 Op. Att'y Gen. No. 14 (2000), operation of an electric and natural gas utility is a valid public purpose for a municipality, it follows from the reasoning of 48 Op. Att'y Gen. No. 12 that the Municipalities, through MPPA, may provide funding to MPPI. In reaching this conclusion, I rely on the facts as you have provided them, and in particular on the provisions of the interlocal agreement and articles that appear to limit the application of the public funds to the accomplishment of the utility purposes described in Part I.

The third remaining question is whether the debt obligations incurred by MPPI must be considered a municipal debt or obligation of the Municipalities. I answered a similar question in the negative in 49 Op. Att'y Gen. No. 3 (2001). In that opinion I examined a proposal under which the City of Great Falls, a self-governing municipality, sought to enter into a contract for the operation of a water park. The proposal depended on a contractual arrangement under which the city would execute a long-term lease of certain property. The question was whether the lease created a debt or obligation of the city, such that statutes limiting municipal debt or the incurring of certain municipal obligations would apply. The lease agreement contained a "nonappropriation clause" under which the parties agreed that the city was under no obligation from year to year to fund the lease, and could terminate it by failing to appropriate funds in any year to make the lease payments.

The opinion held that the lease did not create a debt or obligation under those circumstances because under the "nonappropriation clause" the City would never be obligated to pay anything other than money that had been validly appropriated for the current year. Since the case law defined a "debt" to exclude any liability payable from currently appropriated revenues, see, e.g., Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974) (contract for construction of multipurpose arena funded from previously approved bonds, fire insurance proceeds, and federal funds did not create a government debt), I held that the lease arrangement was not a municipal debt.

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<sup>1</sup> I recognize that Mont. Code Ann. § 7-3-2103 prohibits a county from making a grant to a corporation. This matter presents no occasion to determine whether this provision would preclude a county from participating in MPPA, since Butte-Silver Bow is a consolidated city-county government and under Mont. Code Ann. § 7-3-1104 a consolidated government may exercise any municipal or county power.

On the facts as set forth in Part I., the same analysis controls here. The seed money the Municipalities advanced to MPPA, and MPPA advanced in turn to MPPI, came from current year municipal revenue. The agreements contained no obligation for any Municipality to advance further funds in the future. Moreover, the debt incurred by MPPI will, if the proposed arrangement is effective, be without recourse to the assets of MPPA or the taxing power of any of the Municipalities. Finally, MPPI's operating expenses will be paid solely from the revenues from the utility business. None of the documents would appear to create an obligation on the part of the Municipalities to contribute funds to cover future operating costs.

This holding is consistent with the great weight of authority from other states. Arrangements similar in most pertinent points to the one described in Part I. have been used by local governments across the country for the construction of various kinds of public projects. Where it has been alleged that the debts incurred for the projects are subject to constitutional or statutory debt limits, most cases have held that the limits are inapplicable where the debts are incurred by a separate legal entity, are without recourse to the funds of the local governments, and where the local government has undertaken no obligation to fund the debts. In re Oklahoma Capitol Improvement Auth., 1998 OK 25, ¶ 48 n.54, 958 P.2d 759, 773 n.54 (collecting cases).

#### IV.

As your letter notes, specific events and circumstances may raise issues as to whether MPPA, as a member of MPPI, may be responsible for MPPI's conduct or debts. See, e.g., Peschel Family Trust v. Collona, 317 Mont. 127, 133, 75 P.3d 793, 796 (2003). It is beyond the scope of an opinion from this office to anticipate and resolve such fact-driven and speculative questions, and accordingly I express no opinion as to whether the provisions discussed above to protect the funds of MPPA and the Municipalities from the obligations of MPPI will be effective in any particular circumstances.

THEREFORE, IT IS MY OPINION:

1. Under the Montana Nonprofit Corporation Act, an authority created pursuant to an interlocal agreement among self-governing municipalities may incorporate a public benefit nonprofit corporation to operate an electric and natural gas utility.
2. An authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise.

3. Operation of an electric and natural gas utility is a public purpose for which a self-governing municipality may grant funds.
4. Debt incurred through corporate bonds issued by a public benefit nonprofit corporation incorporated by an authority created by interlocal agreement between self-governing municipalities is not subject to laws regulating municipal debts or obligations if the municipalities are not legally obligated to appropriate money to pay the debt and the debt is without recourse to the spending power of the municipalities.

Sincerely,

/s/ Mike McGrath  
MIKE McGRATH  
Attorney General

mm/cdt/jym

VOLUME NO. 51

OPINION NO. 6

SCHOOL DISTRICTS - Procedures for transferring bus depreciation reserve funds;  
STATUTORY CONSTRUCTION - Construing specific legislative intent in relation to general intent;  
MONTANA CODE ANNOTATED - Sections 1-2-102, 20-9-142, -201(1)(a), (3)(a), -208, (2), (a)(i), 20-10-147, (2), (4).

HELD: Before school district trustees may transfer any portion or all of the district's bus depreciation reserve fund to any other fund maintained by the district, the trustees must have sold all of the district's buses and submitted the proposed transfer to the electors of the district.

July 15, 2005

Ms. Linda McCulloch  
Superintendent  
Office of Public Instruction  
P.O. Box 202501  
Helena, MT 59620-2501

Dear Superintendent McCulloch:

You have requested my opinion regarding the interpretation and resolution of any conflict with respect to the following statutes: Mont. Code Ann. §§ 20-9-201(3)(a), 20-9-208(2)(a) and 20-10-147(4). You have stated your question as follows:

May school district trustees transfer a portion or all of the cash balance from the district's bus depreciation reserve fund to another budgeted fund of the district under the provisions of Mont. Code Ann. § 20-9-208(2) or close the fund to any other fund of the district under Mont. Code Ann. § 20-9-201(3) regardless of whether the district has sold all its buses and submitted the proposition to voters under the conditions of Mont. Code Ann. § 20-10-147(4)?

The three laws in question all deal with the transfer of balances between funds by the trustees of a school district.

Mont. Code Ann. § 20-9-201(3)(a) states:

Except . . . as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund

considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

Mont. Code Ann. § 20-9-208(2)(a)(i) addresses the issue somewhat differently. It provides:

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds . . . under one of the following circumstances:

(a) (i) . . . transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless the transfer is within or directly related to the purposes for which the funds were raised. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

The bus depreciation reserve fund is defined by statute as a "budgeted fund" and is a nonvoted levy. Mont. Code Ann. §§ 20-9-201(1)(a), 20-10-147(2), 20-9-142.

In the third statute the legislature specifically addressed transfers from the bus depreciation reserve fund. Montana Code Annotated § 20-10-147(4) permits the transfer of some or all of the bus depreciation reserve fund to any other fund maintained by the district if the trustees first sell all of the district's buses and then submit the proposed transfer to the voters:

Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district.

An apparent conflict exists among the requirements and procedures set forth in these three statutes. Montana Code Annotated § 20-9-201(3)(a) suggests that the trustees may close any fund and transfer the balance to any other fund if the trustees determine that the fund is inactive and will no longer be used. Montana Code Annotated § 20-9-208(2) states

that the trustees may make transfers from one budgeted fund to another of non-levy funds only if the transfer is related to the purpose for which the funds were raised. And Mont. Code Ann. § 20-10-147 allows the transfer of bus depreciation reserve funds to any other fund of the district, but only after the trustees have first sold the buses and then submitted the proposed transfer to the voters for approval.

The conflict among these statutory sections is resolved through the application of a long-recognized principle of statutory construction that is codified in statute and explicated in our case law. This principle holds that "In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." Mont. Code Ann. § 1-2-102. Recently our Supreme Court commented on this precept as follows:

It is a well-settled rule of statutory construction that the specific prevails over the general. A particular statutory intent controls over a general one that is inconsistent with it. Mont. Code Ann. § 1-2-102. Further, when two statutes deal with a subject, one in general and comprehensive terms, and the other in minute and more definite terms, the more definite statute will prevail to the extent of any opposition between them.

State v. Smith, 2004 MT 191, ¶ 17, 322 Mont. 206, 95 P.3d 137.

All three statutes in question address transfers from one fund to another by the trustees. But Mont. Code Ann. §§ 20-9-201(3)(a) and -208(2)(a) set forth general requirements for transfers between funds. Neither specifically addresses transfers from the bus depreciation reserve fund. Also significant is the qualification set forth by both statutes. The procedures of § 20-9-201(3)(a) are to be followed "[e]xcept . . . as otherwise provided by law." Similarly, § 20-9-208 provides for procedures to be followed "[u]nless otherwise restricted by a specific provision in this title . . . ." These limitations clearly demonstrate an intent by the legislature to subject the general procedures defined by these two statutes to more specific requirements imposed elsewhere.

These more specific requirements are found in Mont. Code Ann. § 20-10-147. In this statute the legislature articulated the unique steps to be taken in fund transfers from a bus depreciation reserve fund. Accordingly, the provisions of Mont. Code Ann. § 20-10-147 must be applied when a transfer is made from a bus depreciation reserve fund and any conflict which arises between the language of Mont. Code Ann. §§ 20-9-201(3)(a) and -208(2)(a) on the one hand and Mont. Code Ann.

§ 20-10-147 on the other must be resolved in favor of the more specific requirements of the latter.

It has been suggested that this analysis fails to accurately interpret Mont. Code Ann. § 20-10-147. The following proposition is advanced: that § 20-10-147 controls transfers from the bus depreciation reserve fund only when two conditions are met--the sale of all the buses of the district and the conclusion by the trustees that a transfer of funds is in the best interests of the district. When these two conditions are met, then the trustees may submit the proposition to the electors for approval. Until the two conditions are met, transfers may be made from the fund pursuant to Mont. Code Ann. §§ 20-9-201(3)(a) and/or 20-9-208(2)(a). School districts can therefore transfer some or all of the reserve fund to another budgeted fund without voter approval as long as the district has not sold all of its buses. This interpretation is, in my opinion, unworkable under the existing statutory structure and unsubstantiated by the legislative history of the statute.

Mont. Code Ann. § 20-9-208(2)(a) does allow for transfers from one fund to another but prohibits the transfer of "funds raised by a nonvoted levy unless the transfer is within or directly related to the purposes for which the funds were raised." The bus depreciation fund is raised by a nonvoted levy. Mont. Code Ann. § 20-10-147. It is difficult to conceive of a fund to which bus reserve balances could be transferred that would be "within or directly related to the purpose for which the funds were raised," namely the purchase and maintenance of buses.

An additional difficulty with the suggested interpretation is found in the legislative history. Prior to 1997, § 147 allowed transfer from the fund after voter approval if the trustees felt that it was in the best interests of the district. There was no requirement that the buses be sold. In 1997 Senator Toews introduced Senate Bill 244, "An Act allowing the transfer of a bus depreciation reserve fund balance only when a school district sells all of its buses. . . ." (Emphasis added.) Senator Toews testified before the Senate Education and Cultural Resources Committee on February 5, 1997 and stated that "Senate Bill 244 ensured the honesty of the trustees in managing the bus depreciation reserve fund; in order to use the reserve fund money, all the buses must be sold." Committee member Senator Gage observed that "Senate Bill 244 said as long as the district had a bus, taking money from the reserve fund (even with a vote of the people) would not be an option." Minutes of Senate Education and Cultural Resources Committee, February 5, 1997, at 4-6. The title of an act and proceedings from its legislative history are strong evidence of legislative intent. Peretti v. State, 238 Mont. 239, 245, 777 P.2d 329, 333 (1989) (title is presumed to reflect legislature's intent in adopting statute).

The interpretation advanced above would make it easier for the trustees to make transfers from the fund if the two conditions set forth in Mont. Code Ann. § 20-10-147 were not met. Yet it is clear that the purpose of Senate Bill 244 was to make it more difficult for the trustees to make transfers from the fund, not less difficult. Senate Bill 244 achieved this objective by requiring the sale of all of the district's buses before proposing a transfer from the bus depreciation fund. A construction that advances the legislative purpose is preferred over one that impedes it. Willoughby v. Loomis, 264 Mont. 44, 52, 869 P.2d 271, 276 (1994).

THEREFORE, IT IS MY OPINION:

Before school district trustees may transfer any portion or all of the district's bus depreciation reserve fund to any other fund maintained by the district, the trustees must have sold all of the district's buses and submitted the proposed transfer to the electors of the district.

Very truly yours,

/s/ Mike McGrath  
MIKE McGRATH  
Attorney General

mm/cdt/jym



**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

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2005. This table includes those rules adopted during the period April 1, 2005 through June 30, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2005, 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 2004 and 2005 Montana Administrative Registers.

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in June 2005 appear. Vacancies scheduled to appear from August 1, 2005, through October 31, 2005, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 18, 2005.

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

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Horse Racing</b> (Livestock)			
Mr. Robert G. Brastrup Townsend	Governor	Graveley	6/15/2005 1/20/2008
Qualifications (if required): resident of District 4			
<b>Building Codes Council</b> (Labor and Industry)			
Mr. Scott Lemert Livingston	Governor	Nelson	6/22/2005 10/1/2005
Qualifications (if required): Board of Plumbers representative			
<b>District Court Council</b> (District Court)			
Ms. Linda Bouck Anaconda	Assoc. of Counties	Pratt	6/30/2005 6/30/2008
Qualifications (if required): none specified			
Mr. Mike Hutchin Polson	Assoc. of Counties	reappointed	6/30/2005 6/30/2008
Qualifications (if required): none specified			
<b>Economic Development Advisory Council</b> (Commerce)			
Ms. Kathie Bailey Lewistown	Governor	not listed	6/13/2005 7/23/2008
Qualifications (if required): public representative			
Ms. Betty Curry Joliet	Governor	Klessens	6/13/2005 7/23/2008
Qualifications (if required): public representative			
Ms. Elizabeth Harris Whitefish	Governor	Karas	6/13/2005 7/23/2006
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Economic Development Advisory Council</b> (Commerce) cont.			
Ms. Sheila Hogan Butte	Governor	Varone	6/13/2005 7/23/2008
Qualifications (if required): public representative			
Mr. Jim Smitham Butte	Governor	Barrett	6/13/2005 7/23/2007
Qualifications (if required): public representative			
Ms. Linda Twitchell Wolf Point	Governor	not listed	6/13/2005 7/23/2008
Qualifications (if required): public representative			
<b>Grant Review Committee</b> (Commerce)			
Ms. Linda Beck Billings	Governor	McClure	6/13/2005 6/30/2009
Qualifications (if required): representative of private sector			
Mr. John Cech Billings	Governor	not listed	6/13/2005 6/30/2009
Qualifications (if required): representative of a two-year postsecondary institution			
Ms. Ingrid Childress Helena	Governor	not listed	6/13/2005 6/30/2009
Qualifications (if required): representative of the Department of Labor and Industry			
Mr. Andy Poole Helena	Governor	not listed	6/13/2005 6/30/2009
Qualifications (if required): representative of the Department of Commerce			
Ms. Joni Stewart Cut Bank	Governor	Kramer	6/13/2005 6/30/2009
Qualifications (if required): representative of private sector			



**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Information Technology Board</b> (Administration)			
Director Dan R. Bucks Helena	Governor	Francis	6/1/2005 0/0/0
Qualifications (if required):	state agency		
Mr. Larry Fasbender Helena	Governor	McGrath	6/1/2005 0/0/0
Qualifications (if required):	state agency		
Mr. David F. Gibson Bozeman	Board of Regents	not listed	6/6/2005 0/0/0
Qualifications (if required):	representing Montana University System		
Ms. Amanda Kelly Stanford	Governor	Sexton	6/1/2005 0/0/0
Qualifications (if required):	local government		
Director Keith Kelly Helena	Governor	Keating	6/1/2005 0/0/0
Qualifications (if required):	state agency		
Director James A. Lynch Helena	Governor	Slaughter	6/1/2005 0/0/0
Qualifications (if required):	state agency		
Mr. George Parisot Helena	Governor	Gray	6/1/2005 0/0/0
Qualifications (if required):	state agency		
Mr. Jim Reno Billings	Governor	Kennedy	6/1/2005 0/0/0
Qualifications (if required):	local government		

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Information Technology Board</b> (Administration) cont.			
Mr. Skip Shloss Whitefish	Governor	Strand	6/1/2005 0/0/0
Qualifications (if required): private sector			
<b>Montana Film and Television Advisory Council</b> (Commerce)			
Mr. Jim Abel Billings	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Dennis Aig Bozeman	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Chris Arnold Hollywood, CA	Governor	not listed	6/28/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Dean Bear Claw Billings	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Troy Bertelsen Bozeman	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. William Campbell Livingston	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Ms. Mona Charles Kalispell	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Film and Television Advisory Council</b> (Commerce) cont.			
Ms. Betty Ann Conard Manhattan	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Christopher Cronyn Missoula	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Colin Davis Livingston	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Robert Ebinger, Jr. Livingston	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Paul Edwards Helena	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Mike Fantasia Los Angeles, CA	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Peter Fonda Livingston	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. J.P. Gabriel Bozeman	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Film and Television Advisory Council (Commerce) cont.</b>			
Mr. David Goodwin Bozeman	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Ms. Audrey Hall Livingston	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Ms. Cinda Holt Stevensville	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Ms. Diane Kamp Big Timber	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Ms. Margot Kidder Livingston	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Bert Manzari Whitefish	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Patrick Markey Bozeman	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Tom Mickel Bozeman	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Film and Television Advisory Council</b> (Commerce) cont.			
Mr. Ed Noonan Helena	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Rob Story Emigrant	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Ms. Allison Whitmer Wolf Point	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
Mr. Bruce Whittenberg Billings	Governor	not listed	6/7/2005 3/11/2007
Qualifications (if required): public representative			
<b>Montana Heritage Preservation and Development Commission</b> (Commerce)			
Ms. Anne Cossitt Park City	Governor	Mahlum	6/20/2005 5/23/2007
Qualifications (if required): having experience in community planning			
Ms. Vicki Hucke Helena	Governor	Averill	6/20/2005 5/23/2008
Qualifications (if required): Tourism Advisory Council representative			
Ms. Leslie Schmidt Bozeman	Governor	McKee	6/20/2005 5/23/2008
Qualifications (if required): having experience in historic preservation			
Ms. Maureen Wicks Ledger	Governor	Cockhill	6/20/2005 5/23/2008
Qualifications (if required): Montana historiann			

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Quarter Commission</b> (Governor)			
Ms. Sarah Elliott Helena	Governor	not listed	6/27/2005 6/27/2007
Qualifications (if required): commission staff			
Mr. Keith Gumm Terry	Governor	not listed	6/27/2005 6/27/2007
Qualifications (if required): numismatist			
Mr. Gary Marks Whitefish	Governor	not listed	6/27/2005 6/27/2007
Qualifications (if required): numismatist			
Mr. Arnie Olsen Helena	Governor	not listed	6/27/2005 6/27/2007
Qualifications (if required): historical expert			
Gov. Brian Schweitzer Whitefish	Governor	not listed	6/27/2005 6/27/2007
Qualifications (if required): none specified			
Ms. Nancy Warneke-Gaynor Whitefish	Governor	not listed	6/27/2005 6/27/2007
Qualifications (if required): public representative			
<b>Postsecondary Scholarship Advisory Council</b> (Higher Education)			
Ms. Clarena Brockie Harlem	Governor	not listed	6/20/2005 6/20/2008
Qualifications (if required): having experience in financial aid at a postsecondary institution			

**BOARD AND COUNCIL APPOINTEES FROM JUNE 2005**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Postsecondary Scholarship Advisory Council</b> (Higher Education) cont.			
Ms. Dolores Colburg Billings	Governor	not listed	6/20/2005 6/20/2007
Qualifications (if required): having experience in secondary education			
Mr. LeRoy Schramm Helena	Governor	not listed	6/20/2005 6/20/2006
Qualifications (if required): having experience in postsecondary education			
<b>Research and Commercialization Board</b> (Commerce)			
Mr. Jim Davison Anaconda	Governor	Youngberg	6/13/2005 7/1/2007
Qualifications (if required): public representative			
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice)			
Mr. Paul Babb Butte	Governor	Jacobson	6/1/2005 12/31/2005
Qualifications (if required): resident of Butte-Silver Bow			
Mr. Larry Curran Butte	Governor	Beaudry	6/1/2005 12/31/2005
Qualifications (if required): resident of Butte-Silver Bow			
Mr. Dennis Daneke Missoula	Governor	Clifford	6/1/2005 12/31/2005
Qualifications (if required): resident of Missoula County			
Director Richard Opper Helena	Governor	Sensibaugh	6/1/2005 12/31/2005
Qualifications (if required): Director of the Department of Environmental Quality			

BOARD AND COUNCIL APPOINTEES FROM JUNE 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice) cont.			
Director Mary Sexton	Governor	Clinch	6/1/2005
Helena			12/31/2005
Qualifications (if required):	Director of the Department of Natural Resources and Conservation		



VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry) Ms. Delores Lund, Plentywood Qualifications (if required): public member	Governor	10/1/2005
<b>Board of Medical Examiners</b> (Labor and Industry) Dr. Kay E. Dorr, Nashua Qualifications (if required): public member	Governor	9/1/2005
Dr. Van Kirke Nelson, Kalispell Qualifications (if required): doctor of medicine	Governor	9/1/2005
Ms. Linda Melick, Lewistown Qualifications (if required): nutritionist	Governor	9/1/2005
Ms. Susan McRae, Dillon Qualifications (if required): public member	Governor	9/1/2005
Ms. Jennifer Krueger, Missoula Qualifications (if required): certified physician assistant	Governor	9/1/2005
Mr. Dwight E. Thompson, Harlowton Qualifications (if required): physician assistant-certified	Governor	9/1/2005
Dr. James D. Upchurch, Crow Agency Qualifications (if required): doctor of medicine	Governor	9/1/2005
<b>Board of Outfitters</b> (Labor and Industry) Ms. Jennifer J. Cote, Missoula Qualifications (if required): sportsperson	Governor	10/1/2005
Mr. Wayne L. Underwood, Billings Qualifications (if required): sportsperson	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Outfitters</b> (Labor and Industry) cont. Mr. Mel Montgomery, Lima Qualifications (if required): big game outfitter	Governor	10/1/2005
Mr. Leslie K. Dolezal, Billings Qualifications (if required): public member	Governor	10/1/2005
<b>Board of Private Security Patrol and Investigation</b> (Labor and Industry) Dr. Raymond Murray, Missoula Qualifications (if required): representative of the Peace Officers Standards and Training Council	Governor	8/1/2005
Ms. Kathy Miller, Helena Qualifications (if required): public member	Governor	8/1/2005
<b>Board of Psychologists</b> (Commerce) Ms. Nancy McLees, Bozeman Qualifications (if required): public member	Governor	9/1/2005
<b>Board of Veterans' Affairs</b> (Military Affairs) Mr. Charles Van Gorden, Valier Qualifications (if required): veteran	Governor	8/1/2005
<b>Building Codes Council</b> (Labor and Industry) Mr. Robert J. Karhu, Helena Qualifications (if required): architect	Governor	10/1/2005
Mr. Mike Skinner, Helena Qualifications (if required): representative of the manufactured housing industry	Governor	10/1/2005
Mr. Joe Wolfe, Helena Qualifications (if required): member of the State Electrical Board	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Building Codes Council</b> (Labor and Industry) cont. Mr. Terry Phillips, Helena Qualifications (if required): state fire marshal	Governor	10/1/2005
Mr. Stephen R. Nelson, Great Falls Qualifications (if required): representative of the Board of Plumbers	Governor	10/1/2005
Mr. Jeffrey Jenkins, Great Falls Qualifications (if required): municipal building inspector	Governor	10/1/2005
Mr. Joe Hansen, Bozeman Qualifications (if required): representative of the building contractor industry	Governor	10/1/2005
Mr. Howard Reid, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	10/1/2005
Mr. Stephen Tartaglino, Kalispell Qualifications (if required): representative of the home building industry	Governor	10/1/2005
Mr. Mike McCourt, Missoula Qualifications (if required): representative of the public	Governor	10/1/2005
Mr. Dave Broquist, Great Falls Qualifications (if required): professional engineer	Governor	10/1/2005
Mr. Scott Lemert, Livingston Qualifications (if required): Board of Plumbers representative	Governor	10/1/2005
<b>Enterprise Solutions Advisory Council</b> (Administration) Mr. Tony Herbert, Helena Qualifications (if required): Tier 1/Administration	Director	9/30/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Enterprise Solutions Advisory Council</b> (Administration) cont.		
Mr. Rod Sundsted, Helena	Director	9/30/2005
Qualifications (if required):	Tier 2/Montana University System	
Mr. Terry Johnson, Helena	Director	9/30/2005
Qualifications (if required):	Tier 1/Legislative Branch	
Ms. Barb Charlton, Helena	Director	9/30/2005
Qualifications (if required):	Tier 4/Department of Commerce	
Ms. Cathy Muri, Helena	Director	9/30/2005
Qualifications (if required):	Tier 1/Administration	
Ms. Jane Hamman, Helena	Director	9/30/2005
Qualifications (if required):	Tier 1/Governor's Office	
Ms. Carleen Layne, Helena	Director	9/30/2005
Qualifications (if required):	Tier 5/Montana Arts Council	
Ms. Frieda Houser, Helena	Director	9/30/2005
Qualifications (if required):	Tier 5/Department of Agriculture	
Mr. Mick Robinson, Helena	Director	9/30/2005
Qualifications (if required):	Tier 2/Department of Public Health and Human Services	
Mr. John McEwen, Helena	Director	9/30/2005
Qualifications (if required):	Tier 1/Administration	
Mr. John Huth, Helena	Director	9/30/2005
Qualifications (if required):	Tier 4/State Auditor	
Ms. Lisa Smith, Helena	Director	9/30/2005
Qualifications (if required):	Tier 2/Judiciary	

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Enterprise Solutions Advisory Council</b> (Administration) cont.		
Mr. Darrell Zook, Helena Qualifications (if required): Tier 2/Department of Transportation	Director	9/30/2005
Ms. Gail Kramlick, Helena Qualifications (if required): Tier 2/Office of Public Instruction	Director	9/30/2005
Ms. Rhonda Schaffer, Helena Qualifications (if required): Tier 3/Department of Corrections	Director	9/30/2005
Mr. Steve Austin, Helena Qualifications (if required): Tier 3/Department of Revenue	Director	9/30/2005
Mr. Darrel Beaton, Helena Qualifications (if required): Tier 3/State Fund	Director	9/30/2005
Mr. Tom Livers, Helena Qualifications (if required): Tier 4/Department of Environmental Quality	Director	9/30/2005
<b>Flathead Basin Commission</b> (Governor)		
Mr. Everit A. Sliter, Kalispell Qualifications (if required): public member	Governor	10/1/2005
Mr. Remington Kohrt, Darby Qualifications (if required): public member	Governor	10/1/2005
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): public member	Governor	10/1/2005
Mr. Arthur Vail, Marion Qualifications (if required): public member	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Board</b> (Administration) Ms. Sheila Stearns, Helena Qualifications (if required): none specified	Board of Regents	9/1/2005
<b>Lewis and Clark Bicentennial Commission</b> (Historical Society) Mr. Darrell Kipp, Browning Qualifications (if required): representative of Indian tribes	Governor	10/1/2005
Ms. Betty Stone, Glasgow Qualifications (if required): public member	Governor	10/1/2005
Mr. Homer Staves, Billings Qualifications (if required): public member	Governor	10/1/2005
<b>Montana Fetal Alcohol Syndrome Advisory Council</b> (Public Health and Human Services) Mr. Richard Chiotti, Helena Qualifications (if required): public member	Governor	10/1/2005
Mr. Thomas Price, Eureka Qualifications (if required): public member	Governor	10/1/2005
Ms. Patti Jacques, Helena Qualifications (if required): public member	Governor	10/1/2005
Ms. Carole Lankford, Pablo Qualifications (if required): public member	Governor	10/1/2005
Ms. Crystal LaPlant, Browning Qualifications (if required): public member	Governor	10/1/2005
Ms. Mary Behrendt, Columbia Falls Qualifications (if required): public member	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Fetal Alcohol Syndrome Advisory Council</b> (Public Health and Human Services) cont. Ms. Leita Cook, Helena Qualifications (if required): public member	Governor	10/1/2005
Mr. Billford Curley, Sr., Lame Deer Qualifications (if required): public member	Governor	10/1/2005
Dr. Suzanne Dixon, Great Falls Qualifications (if required): public member	Governor	10/1/2005
Ms. Allison Failing, Poplar Qualifications (if required): public member	Governor	10/1/2005
Ms. Diane Jeanotte, Billings Qualifications (if required): public member	Governor	10/1/2005
Dr. John Johnson, Helena Qualifications (if required): public member	Governor	10/1/2005
Dr. Ted Laine, Missoula Qualifications (if required): public member	Governor	10/1/2005
Ms. Irene Lake, St. Ignatius Qualifications (if required): public member	Governor	10/1/2005
Mr. Mike Lande, Billings Qualifications (if required): public member	Governor	10/1/2005
Ms. Terry McAnally, Poplar Qualifications (if required): public member	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Fetal Alcohol Syndrome Advisory Council</b> (Public Health and Human Services) cont. Ms. Myrna Medicine Horse, Crow Agency Qualifications (if required): public member	Governor	10/1/2005
Ms. Linda Tarinelli, Bozeman Qualifications (if required): public member	Governor	10/1/2005
Mr. Richard Williams, Bozeman Qualifications (if required): public member	Governor	10/1/2005
Ms. Margaret Ann Yellow Kidney, Browning Qualifications (if required): public member	Governor	10/1/2005
Mr. Mike Hermanson, Billings Qualifications (if required): public member	Governor	10/1/2005
Mr. Roland Mena, Helena Qualifications (if required): public member	Governor	10/1/2005
Dr. Michael Spence, Helena Qualifications (if required): public member	Governor	10/1/2005
Ms. Mary Chaboya, Libby Qualifications (if required): public member	Governor	10/1/2005
Ms. Vickie Leigland, Great Falls Qualifications (if required): public member	Governor	10/1/2005
Ms. Cheryl Jill Plumage, Harlem Qualifications (if required): public member	Governor	10/1/2005



VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Organic Commodity Advisory Council</b> (Agriculture) Mr. David Oien, Conrad Qualifications (if required): handler	Director	9/4/2005
Ms. Judy Owsowitz, Whitefish Qualifications (if required): producer	Director	9/4/2005
Mr. Robert Boettcher, Big Sandy Qualifications (if required): producer	Director	9/4/2005
Mr. Randy Hinebauch, Conrad Qualifications (if required): at large representative	Director	9/4/2005
<b>Montana Statewide Independent Living Council</b> (Public Health and Human Services) Rep. Carol Lambert, Broadus Qualifications (if required): none specified	Director	10/27/2005
Sen. Gerald Pease, Lodge Grass Qualifications (if required): State Senator	Director	10/27/2005
<b>Montana Vocational Rehabilitation Council</b> (Public Health and Human Services) Ms. Denise Corrao, Miles City Qualifications (if required): vocational rehabilitation advocate position	Director	10/1/2005
Ms. Barbara Varnum, Kalispell Qualifications (if required): vocational rehabilitation counselor	Director	10/1/2005
<b>Montana Wheat and Barley Committee</b> (Agriculture) Mr. Leonard Schock, Vida Qualifications (if required): representative of District VII and a Republican	Governor	8/20/2005
Mr. Daniel Kidd, Big Sandy Qualifications (if required): representative of District IV and a Republican	Governor	8/20/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2005 through OCTOBER 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Small Business Compliance Assistance Advisory Council</b> (Environmental Quality) Ms. Lora Schultz, Billings Qualifications (if required): public member	Governor	10/1/2005
Mr. Ralph Hamler, Virginia City Qualifications (if required): public member	Governor	10/1/2005
<b>State Historic Preservation Review Board</b> (Historical Society) Ms. Marcella Knedler, Geraldine Qualifications (if required): public member	Governor	10/1/2005
<b>Water and Waste Water Operators' Advisory Council</b> (Environmental Quality) Dr. Carol Reifschneider, Havre Qualifications (if required): member of university faculty	Governor	10/16/2005
<b>Workers' Compensation Judge</b> (Governor) Mr. Michael McCarter, Helena Qualifications (if required): none specified	Governor	9/6/2005