

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 6.6.8301,)	AMENDMENT
concerning updating references)	
to the NCCI Basic Manual for new)	NO PUBLIC HEARING
classifications for various industries)	CONTEMPLATED

TO: All Concerned Persons

1. On May 25, 2007, the Montana Classification Review Committee proposes to amend the above-stated rule.

2. The Montana Classification Review Committee will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Classification Review Committee no later than 5:00 p.m., on May 2, 2007, to advise us of the nature of the accommodation that you need. Please contact the Montana Classification Review Committee, attn: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; e-mail tim_hughes@ncci.com.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 2001, ed., as supplemented through ~~June 18, 2004~~, October 26, 2006, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, 840 Helena Ave., Helena, MT 59601. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) remains the same.

AUTH: 33-16-1012, MCA
IMP: 2-4-103, 33-16-1012, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.8301 to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications that apply to various industries. The proposed classifications changes are grouped by industry as follows:

A. Ambulance and Emergency Medical Services

Establish a new state special treatment for Code 7382 BUS COMPANY, AMBULANCE SERVICE & EMERGENCY MEDICAL PROVIDERS—All Other Employees & Drivers.

Code 7382 is applied to insureds engaged in the operation of bus companies, scheduled limousine companies, railroad operation (street), ambulance service and emergency medical providers. The classification contemplates drivers and all employees other than their garage employees who are separately classified under Code 8385.

B. Athletic Team Sports and Parks

Revise and update the phraseologies for Codes 9178, 9179, 9182 & 9063. The word “Team” will be replaced with “Sports” in the titles of Codes 9178, 9179, and 9182.

Wording will be updated to the codes to clarify the classification of various employees, such as trainers, equipment managers, and stadium personnel.

Wording will be updated to clarify “contact” versus “noncontact” sports.

Wording will be updated to clarify the assignment of all amateur, youth, and recreational sport activities to Code 9063.

C. Cleaning Services and Pet Sitting

Revise and update the phraseology for Code 0917. A cross-reference will be added for PET SITTING SERVICES & DRIVERS.

Amend the phraseology and cross-references for Code 9014 so that it is applicable to operations performed from the ground and will include drivers.

Establish a new Code 9170 for operations above ground.

1. Code 9170—JANITORIAL SERVICES BY CONTRACTORS—INCLUDES WINDOW CLEANING ABOVE GROUND LEVEL & DRIVERS

2. Code 9170—CHIMNEY CLEANING—RESIDENTIAL—INCLUDES CHIMNEY CLEANING ABOVE GROUND LEVEL & DRIVERS

Create cross-references for pressure cleaning.

1. Code 9014—MOBILE POWER OR PRESSURE CLEANING SERVICE—NO POWER OR PRESSURE CLEANING ABOVE GROUND LEVEL & DRIVERS

2. Code 9170—MOBILE POWER OR PRESSURE CLEANING SERVICES—INCLUDES POWER OR PRESSURE CLEANING ABOVE GROUND LEVEL & DRIVERS

D. Domestics

Discontinue Codes 0909 and 0912.

Update phraseology for Code 0908 to DOMESTIC WORKERS—RESIDENCES—PART-TIME.

Update phraseology for Code 0913 to DOMESTIC WORKERS—RESIDENCES—FULL-TIME.

Wording will be added to clarify home healthcare workers and employees of commercial cleaning firms are separately rated.

E. Sheet Metal

Discontinue Code 3066 and reassign exposures to Code 3076.

Update phraseology for Code 3076 to SHEET METAL PRODUCTS MFG—SHOP ONLY.

Discontinue Code 5538 and reassign exposures to two new codes:

1. 3069—SHEET METAL PRODUCTS MFG. (This code is intended for shop operations that have installers)
2. 5535—SHEET METAL WORK—INSTALLATION & DRIVERS. (This code is intended to be used in conjunction with Code 3069)

Both codes will initially use the current rate for Code 5538. This method will allow for minimal impact on policy holders that currently use Code 5538.

5. This amendment is intended to be effective July 1, 2007.

6. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com and must be received no later than 5:00 p.m., May 10, 2007.

7. If persons who are directly affected by the proposed amendment 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 they have to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com no later than May 10, 2007.

8. If the committee receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 150 persons based on the 15 businesses who have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

9. The Montana Classification Review Committee maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this committee. 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 rulemaking actions of the Classification Review Committee. Such written requests may be mailed or delivered to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com, or by completing a request form at any rules hearing held by the Montana Classification Review Committee.

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

CLASSIFICATION
REVIEW COMMITTEE

By: /s/ Cliff Hanson
Cliff Hanson
Review Committee Chairperson

By: /s/ Christina L. Goe
Christina L. Goe
Rules Reviewer

Certified to the Secretary of State on April 2, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On May 8, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), 1327 Lockey Avenue, Walt Sullivan Building, Helena, MT to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 1, 2007, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, Attn: Eric Johnson, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4503; fax (406) 444-2638; TDD (406) 444-0532; or e-mail erjohnson@mt.gov.

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

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 ~~2006~~ 2007 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2005~~ 2007 version of "The State of Montana Prevailing Wage Rates - Nonconstruction Services" publication.

(g) The current heavy and highway construction services rates are contained in the ~~2005 revised~~ 2007 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, 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, 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update various prevailing wage rates. Payment of prevailing wage rates is required in most public works contracts by 18-2-422, MCA.

There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 2006. The department notes that prevailing wage rates for heavy construction and highway construction services were updated effective March 10, 2006. Pursuant to 18-2-401, MCA, the department conducts an annual survey of wages for building construction services.

There is reasonable necessity to amend the prevailing wages for nonconstruction services, which were last updated in 2005. Pursuant to 18-2-401, MCA, the department conducts a biennial wage survey for nonconstruction services.

Finally, there is reasonable necessity to update the prevailing wage rates for heavy and highway construction services to track with current federal Davis-Bacon Act heavy construction services rates and highway construction services rates. Those rates were last updated in September and October, 2005.

4. A copy of the proposed 2007 publications, identified as "preliminary building construction rates", "preliminary nonconstruction rates", and "preliminary revised heavy and highway construction rates", are available and can be accessed on-line via the internet at: <http://rad.dli.mt.gov/pw>.

5. A printed version of the proposed 2007 publications is also available by contacting Eric Johnson at the address or telephone numbers listed in paragraph 2.

6. 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: Eric Johnson, Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 57952-1728; by facsimile to (406) 444-2638; or by e-mail to erjohnson@mt.gov, and must be received no later than 5:00 p.m., May 15, 2007.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

10. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 2, 2007

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

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.101.413 renewal dates and) ON PROPOSED AMENDMENT,
requirements, 24.210.301 definitions,) ADOPTION, AND REPEAL
24.210.401, 24.210.410 through 24.210.412,)
24.210.416, 24.210.426, and 24.210.430)
general provisions, 24.210.601, 24.210.602,)
24.210.610, 24.210.611, 24.210.615,)
24.210.616, 24.210.624, 24.210.625,)
24.210.629, 24.210.635, 24.210.641,)
24.210.646, 24.210.651, 24.210.660,)
24.210.661, 24.210.667, 24.210.674, and)
24.210.677 brokers and salespersons,)
24.210.805, 24.210.807, 24.210.809,)
24.210.812, 24.210.818, 24.210.825,)
24.210.826, 24.210.828, 24.210.835,)
24.210.840, and 24.210.843 property)
management, the adoption of NEW RULE I)
inactive status, and NEW RULE II continuing)
education, the repeal of 24.210.405 application)
of rules, 24.210.435 investigations committee,)
24.210.603 application for examination,)
24.210.621 nonresident license, 24.210.815)
application for examination, and 24.210.836)
continuing education)

TO: All Concerned Persons

1. On May 3, 2007, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on April 27, 2007, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail realestate@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board has conducted a biennial review of its rules as required by 2-4-314, MCA. The review

included effort and input from a representative group of members of the public, licensees, industry associations, administrative staff, and board members. Pursuant to this review and in response to the 2001 legislation transferring the board from the Department of Commerce to the Department of Labor and Industry, the board is proposing a substantial number of revisions to its rules.

By making the proposed amendments, the board is clarifying rules that were confusing to licensees or ambiguous for the board to interpret. Some of the proposed amendments are technical in nature such as substituting modern language for archaic phrasing, updating grammar and language choices, and eliminating duplicative or superfluous language. Catchphrases are being amended where necessary to better reflect the actual content of the rules. Other changes reflect the board's attempt to streamline its rules by eliminating portions of rules that duplicate statutory language in order to avoid undue repetition. The board is also proposing to eliminate a number of subsections that no longer apply to the board and to amend rules throughout to make references gender neutral and correct punctuation in compliance with ARM formatting requirements. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes.

Accordingly, the board believes that there is reasonable necessity to generally amend and repeal certain existing rules, and adopt new rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

In addition, the board and the department are proposing to modify rules pertaining to renewal within one notice to reduce costs associated with rulemaking and to ensure the rule changes are more efficient and timely. Consolidating the board and department rule changes into one notice will avoid a conflict between department and board rules on renewal frequency.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(af) remain the same.

(ag)	Realty Regulation	Property Manager	Annually	October 31
		Real Estate Broker	Biennially, Odd Numbered Years <u>Annually</u>	October 31
		Real Estate Salesperson	Biennially, Odd Numbered Years <u>Annually</u>	October 31
		Timeshare Broker	Annually	October 31
		Timeshare Salesperson	Annually	October 31

		Timeshare Offering	Annually	Anniversary Date of License
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(ah) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: The department determined that reasonable necessity exists to amend this rule to change the renewal frequency for real estate brokers and salespersons from biennially in odd numbered years to annual renewal to coincide with the board's annual continuing education reporting requirements. Changing to annual renewals will make the renewal frequency consistent among all board licensees and the budgeting process more straightforward with revenue collected annually instead of biennially. Annual collection of license revenue complies with the Department of Administration's new fiscal guidelines regarding recording revenue. Entities that renew on a biennial schedule and receive their entire renewal revenue in one year must hold half of the revenue and record it in the second year of the renewal cycle in order to avoid budget shortfalls. Annual renewal will eliminate the need to defer half the revenue until the following year, thereby simplifying the accounting process.

5. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context otherwise requires, the following meanings shall also apply:

(1) "Act" shall include a failure to act~~;~~

(2) "Advertising" means information in whatever form used to promote real property for sale, lease, rent, exchange~~,~~ or purchase~~,~~ or to promote the brokerage or sales services of a licensee, except that the dissemination of property data to an individual prospective buyer at the individual's request shall not be deemed advertising for the purpose of ~~this~~ these rules~~.~~ ;

(3) "Agency" or "agency relationship" shall include those relationships which are expressed in 37-51-102 and 37-51-313, MCA, and specifically do not include the common law of agency~~;~~

(4) "Agent" shall include sub-agent~~;~~

(5) "Agricultural," "farm~~,~~" and "ranch" shall include real estate parcels over 30 acres in size principally used for, or capable and intended for use in, the production of plant or animal crops~~;~~

(6) "Buy" or "buyer" shall include purchase, purchaser, lease, lessee~~,~~ and like terms~~;~~

(7) "Commercial property" shall include real estate that is principally used for, or capable and intended for use in, the production, distribution~~,~~ or sale of goods or services, and any real estate which has over four residential units when transferred as a group of units~~;~~

~~(8)~~ (9) "Distance education" is a course or courses in which the instruction does not take place in a traditional classroom setting but rather through other media where the teacher and student are separated by distance and sometimes by time;_

(10) "Hour" of education is equal to 50 minutes of instructional time.

~~(9)~~ (11) "Internet" means the Internet, the World Wide Web or Internet-based electronic information distribution networks and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless or other analogous linkages to a computer, computer network or networks, including but not limited to Web pages, e-mail, news groups, discussion lists, bulletin boards, instant messaging, chat rooms, voice over net, multi-media advertising, links and/or banner advertisements;_

~~(40)~~ (12) "Internet advertising" means advertising conducted via the Internet;_

~~(44)~~ (13) "Licensee" shall include ~~broker and salesperson;~~ anyone who has been issued a license by the board or who has made application for a license from the board. A former licensee is subject to disciplinary action for conduct engaged in during the period in which they were licensed.

~~(42)~~ (14) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name or brokerage company and that the advertisement is made by a real estate licensee;_

~~(43)~~ (8) "~~Managing Designated~~ broker" is a broker who has been designated by other brokers of a real estate brokerage company to be the broker with the authority for the maintenance of a trust account, if any;_

~~(44)~~ (15) "Principal" shall include the seller or buyer with whom the agent has a contract;_

~~(45)~~ (16) "Residential property" shall include real estate having four or less units that are principally used for, or capable and intended for use as, residences, and any single unit in a group of units when transferred as a single unit;_

~~(46)~~ (17) "Seller" shall include vendor, lessor, and like terms;_

~~(47)~~ (18) "Supervising broker" is a broker who is responsible for supervision and training of one or more licensed salespersons, pursuant to 37-51-302, MCA.

~~(48)~~ (19) "Supervision" shall include substantially day-to-day, active overseeing;_

~~(49)~~ (20) "Third-party" shall include any person ~~in a transaction~~ who is not the principal or agent ~~in any agency relationship~~.

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

IMP: 37-1-131, 37-1-136, 37-51-202, MCA

REASON: It is reasonably necessary to amend this rule and add the definition of an "hour" as it pertains to continuing education requirements of brokers, salespersons, and property management licensees. Adding this definition will clarify the board's intent and lessen confusion among licensees and license applicants.

It is reasonably necessary to amend the definition of "licensee" in order to include the circumstances where a licensee would come under the jurisdiction of the board for disciplinary purposes. The Uniform Professional Licensing and Regulation

Procedures (Title 37, chapter 1, part 3, MCA) allow boards to discipline license applicants, licensees, and former licensees for unprofessional conduct in which the licensee or former licensee engaged during the period of time the license was held. This amendment clarifies that the board has the ability to discipline former licensees and does not affect the board's ability to discipline applicants as provided by law.

It is reasonably necessary to change the term "managing broker" to "designated broker" to clarify the actual function the broker performs. The old term is misleading and has been confusing to licensees and the public. The person holding this position has traditionally been designated to manage or maintain the trust accounts. However, the term "managing broker" is too easily confused with "supervising broker" who actually supervises and trains one or more licensed salespersons. The term "designated broker" more clearly identifies how this person is designated and by whom, and the particular function performed by this broker.

24.210.401 FEE SCHEDULE (1) through (3) remain the same.

(4) For each original resident <u>Original</u> broker's license prorated to next full renewal cycle	\$100
(5) For each <u>r</u> Renewal of a resident broker's license	200 <u>100</u>
(6) For each original nonresident broker's license prorated to next full renewal cycle	100
(7) For each renewal of a nonresident broker's license	200
(8) (6) For each <u>o</u> Original salesman's license prorated to next full renewal cycle	87.50
(9) (7) For each <u>r</u> Renewal of <u>a</u> salesman's license prorated to assigned renewal cycle	175 <u>87.50</u>
(10) (8) For each <u>Broker</u> change of place of business or <u>change of employer or contractual associate</u> <u>each salesperson change of broker</u>	45
(11) remains the same but is renumbered (9).	
(12) (10) For <u>p</u> Placing active license on inactive status	10
(13) (11) For <u>a</u> Activating a license on inactive status	45
(14) (12) For each <u>o</u> Original recovery fund assessment	35
(15) (13) Continuing education course application for approval and <u>or</u> renewal	75
(16) (14) Education course instructor application for approval and <u>or</u> renewal	50
(17) Late filing of annual continuing education	200
(18) (15) Rookie <u>CE</u> <u>continuing education</u> course preregistration	100
(19) (16) Prelicensing course application for approval and renewal	150
(17) <u>Predetermination application fee</u>	<u>50</u>
(20) remains the same but is renumbered (18).	

AUTH: 37-1-131, 37-1-134, 37-51-203, ~~37-51-204~~, MCA

IMP: 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-311, MCA

REASON: It is reasonably necessary to amend this rule and standardize the format throughout the fee schedule, which includes combining license fees for the various

types of licensing methods within a single license type as those fees are the same regardless whether for a reciprocity or examination applicant. It is reasonable to add a fee for applications for predetermination of qualifications to cover costs associated with the review of these applications such as copying and mailing. Processing predetermination of qualifications applications is time consuming for board staff and the board is required to maintain fees commensurate with board costs. It is estimated that approximately 60 people will be affected by this new fee, which will generate an estimated \$3,000 in annual revenue. Renewal fees for brokers and salespersons are being adjusted to coincide with the department's change to annual renewals elsewhere in this notice and results in no fiscal impact.

24.210.410 PURPOSE OF BOARD (1) It is the purpose of this board, ~~acting under the provisions of the act creating it,~~ to regulate the licensing of applicants and the ~~conduct and practice of licensees in order to~~ safeguard the public interest in transactions in which licensees act and to require the ~~existence and continued maintenance of high levels of~~ knowledge, competency, accountability, ~~ethics,~~ and ~~professionalism~~ professional conduct by all licensees doing business in the state of Montana.

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

IMP: 37-1-131, 37-1-316, 37-51-202, ~~37-51-203~~, MCA

REASON: It is reasonably necessary to amend this rule to bring it into accord with board statutes. The terms "ethics" and "professionalism" are not found in statute, but "professional conduct" is used in board statutes.

24.210.411 BOARD MEETINGS (1) remains the same.

AUTH: ~~37-1-131~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-307, 37-51-201, MCA

~~24.210.412 PUBLIC RECORDS OF MINUTES AND HEARINGS (1) A copy of the minutes of the meetings of the board shall be forwarded to each member of the board.~~

~~(2)~~(1) The minutes public record of the meetings of the board are is available for public inspection at the office of the board during usual business hours.

AUTH: 37-51-203, MCA

IMP: 37-51-201, MCA

REASON: It is reasonably necessary to delete the requirement that the minutes of board meetings be forwarded to board members as the minutes are already included in the board books provided to the members in advance of subsequent meetings. It is reasonably necessary to amend this rule as the "public record" includes the minutes of open meetings as well as other public documents that constitute the public record of a meeting. The amendments clarify that the entire public record of a meeting is available to the public and states where the record can be inspected.

24.210.416 APPLICATIONS FOR EXAMINATION AND LICENSE IN GENERAL -- BROKER AND SALESPERSON (1) ~~Requests for information on the procedures for application for examination and license may be made to the board office. The board may establish procedures for review of applications for licensing or equivalency.~~

~~(2) For the purpose of evaluating the qualifications of an examination, license, or equivalency applicant, the chairman of the board may appoint a person or committee to review the application and make recommendations to the board.~~

~~(3)(2) The board may appoint a national, regional, or local testing entity to process and conduct any a preliminary review of applications for examination and make recommendations to required by the board.~~

~~(4) In any case that the board appoints a person, committee, or entity, to review an application, the board reserves the right to intervene in the review process at any stage and conduct the final review.~~

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

IMP: 37-51-202, 37-51-302, 37-51-303, MCA

REASON: It is reasonably necessary to amend this rule to clarify that the board may establish procedures for review of licensing or equivalency applications and that exam applicants may receive such information from testing entities. Current technology and exam provider services do not require potential exam applicants to contact the board office to receive examination information. It is reasonably necessary to delete the requirement of an application review person or committee because there are no minimum requirements to take the exam other than making application and paying the appropriate fees to a testing service. The rule is also being amended to clarify that a testing agency will conduct all examinations required by the board and that a testing agency is not required to review applications and make recommendations to the board. These amendments accurately reflect currently established practices for application review and examinations.

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) ~~Each broker shall maintain a separate bank account which shall be designated a trust account wherein all downpayments, earnest money deposits, rent payments, security deposits or other trust funds received by the broker or his salesperson on behalf of a principal, third party or any other person shall be deposited. However, a broker does not need to maintain a trust account if:~~

~~(a) The broker does not receive down payments, earnest money deposits, rent payments, security deposits or other trust funds on behalf of a principal, third party or any other person;~~

~~(b) The broker elects to use a title company to hold all down payments, earnest money deposits, rent payments, security deposits or other trust funds received from principals, third parties or other persons; or~~

~~(c) The broker has delegated the authority for maintenance of a trust account to a managing broker with whom the broker is employed or associated as an independent contractor. However, such delegation shall not relieve the delegating~~

~~broker from responsibility for failure to comply with these trust account requirements.~~

(1) The designated broker shall maintain a trust account and maintain the records required by this rule. Offices or firms having more than one broker may utilize a single trust account. A broker may delegate authority for maintenance of a trust account to a designated broker with whom the broker is employed or associated. Delegation shall not relieve either broker from responsibility for any failure to comply with these trust account requirements whether by the delegating broker or the designated broker.

~~(2) Broker trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed. Offices or firms having more than one broker may utilize a single trust account.~~

(3) Broker If a broker elects to use a trust accounts to hold trust fund deposits, the broker must comply with the following:

~~(a) All monies, belonging to others and accepted by the broker while acting in his the capacity as a broker, shall be deposited in a generally an insured financial account at an institution located in Montana in an account separate from money belonging to the broker;~~

~~(b) The name of such separate account shall be identified by the words "trust account";~~

~~(c) Client's Trust funds shall be retained in this bank trust account until the transaction involved is consummated closed or terminated, at which time the broker shall account for the full amounts received;~~

~~(d) However, trust monies (with the exception of the broker's commissions) funds may be disbursed to the closing agent in anticipation of closing in advance of the termination or consummation of the transaction upon written agreement of the buyers and sellers; The broker must account for trust account funds at all times;~~

~~(e) At the client's instructions, trust monies funds may be retained in the trust account although there is no purchase, lease, or rental agreement in existence, or when the transaction has been consummated or terminated;~~

~~(f) No payments of personal indebtedness of the broker shall be made from such a trust account other than a withdrawal of earned commissions payable to such broker or withdrawals made on behalf of the beneficiaries of such trust account;~~

~~(g) Money held in the trust account which is due and payable to the broker must be withdrawn within five ten business days after such money becomes due and payable to the broker;~~

~~(h) A broker shall not be entitled to any part of the earnest money or other monies paid to him the broker in connection with any real estate transaction as part or all of his the commission or fee until the transaction has been consummated closed or terminated. The listing agreement shall include a provision for division of monies taken in earnest, when the transaction is not consummated and such monies are retained as forfeiture payment If there is a division of forfeited earnest money between the broker and seller, it shall be pursuant to a written agreement between them;~~

~~(i) A broker shall maintain in his office a Maintenance of a trust account shall include the broker or designated broker keeping at the broker or designated broker's~~

~~office complete record of all monies funds received or escrowed on real estate transactions, in the following manner:~~

(i) a bank deposit slip showing the date of deposit, amount, source of the money, and where deposited;

(ii) remains the same.

(iii) trust account checks shall be numbered and all voided checks retained. The checks shall denote the broker's business name, address, and should be designated as "trust account";

(iv) a record book which shows the chronological sequence in which funds are received and disbursed;

(v) for funds received, the ~~journal~~ record must include the date, the name of the party who is giving the money, the name of the principal, and the amount;

(vi) ~~for deposit, the checkbook journal~~ the record of deposit must include the date, the name of the party who is giving the money, and the name of the principal ~~and the date~~;

(vii) for disbursements, the ~~checkbook journal~~ record must include the date, the payee, and the amount;

(viii) a running balance must be shown after each ~~transaction~~ entry;

(j) A ~~ledger~~ record shall be kept to show the receipts and the disbursements as they affect a single, particular transaction ~~as between the buyer and seller, etc.~~ The ledger record must include the names of ~~both~~ the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown. A running balance must be shown after each ~~transaction~~ entry;

(k) The trust account must be reconciled monthly ~~except in the case where there has been no activity during that month~~;

(l) ~~Every broker shall keep permanent records of all funds and property of others received by him for not less than five years~~ Trust account records shall be maintained for five years from the date of receipt of any such funds or property;

(m) ~~Each broker shall authorize the~~ The board is authorized to examine such each broker's trust account by a duly authorized representative of the board. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative shall be made at such time as the board may direct;

(n) ~~Existing checks, documents and forms bearing the name "depository account" may be used until current supplies are depleted~~;

(~~e~~)(n) A salesperson, or a broker who has delegated the broker's obligation to maintain a trust account to a managing designated broker pursuant to (1)~~(e)~~, shall place all funds for deposits in the custody of the supervising or managing designated broker in adequate time for the supervising or managing designated broker to comply with all trust account requirements.

(4) ~~If a broker elects to use a title company to hold earnest money deposits, the broker shall:~~

(a) ~~obtain from the title company a dated, signed receipt showing the date upon which the earnest money was delivered to the title company;~~

~~(b) maintain a detailed ledger showing the amounts deposited with the title company;~~

~~(c) instruct the title company that the earnest money is to be immediately deposited in the title company's trust account.~~

~~(5)(4) Trust funds received for or Funds deposited in a trust account in connection with a real estate transaction ~~shall be deposited into a broker's trust account and the broker shall not be commingled with the broker's personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed \$1000 of broker's personal funds in the trust account, which sum includes any interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest accrues to the broker. Personal funds may be distributed to the broker or the financial institution for payment of trust account bank charges.~~~~

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

~~(7)(6) Each broker All licensees shall ensure that all real estate money funds which they receive received by the broker, the broker's salesperson, or another broker who has delegated the broker's obligation to maintain a trust account to the broker pursuant to ~~(1)(c)~~ is are deposited in the broker's or title company's trust account or are delivered to the designated holder of the funds within three business days of the broker's or salesperson's (whichever is earlier) receipt of the money, unless otherwise provided agreed to by in the buy/sell agreement, lease agreement or rental agreement parties.~~

~~(8)(7) The broker is responsible at all times for the proper handling of earnest money, security deposits, or other funds received by the broker, the broker's salesperson, or funds received by the broker as a managing designated broker pursuant to ~~(1)(c)~~ on behalf of customers or clients.~~

~~(8) All required trust account records may be maintained electronically but must be maintained in a manner that permits auditing.~~

AUTH: 37-1-131, ~~37-1-316~~, 37-1-319, 37-51-203, MCA

IMP: 37-1-316, 37-1-319, 37-51-202, ~~37-51-203~~, 37-51-313, 37-51-321, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align board trust account requirements with current industry practices and modern available technology, such as electronic recordkeeping. The board is reorganizing the rule to better reflect the sequence required to meet trust account requirements and for clarity in reading. The board is proposing to increase the number of days a broker has to remove personal funds to account for more long-distance trust account transactions, which take longer to complete. The amendments also clarify the ability of a broker to maintain trust account records electronically while specifying the information necessary to meet audit needs. The board intends for the amendments to allow brokers more flexibility in maintaining trust accounts while requiring sufficient processes to conduct audits that will ensure the trust funds are accounted for properly. The board is also deleting the specific requirements for earnest money held by title companies because all third parties are statutorily required to account for all money held and there is no need to single out title companies.

24.210.430 INTERNET ADVERTISING RULES (1) Licensees who engage in any form of Internet advertising, either directly or indirectly, shall comply with the Internet advertising rules set out in this rule. This rule does not apply to traditional forms of advertising or promotion, such as newspaper, television, radio advertisements, yard signs, or direct mailings.

(2) All Internet advertising shall truthfully and accurately describe the real property or service advertised. Real property advertisements shall identify the city, town, or county in which the real property is located.

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

(c) News groups, discussion lists, and bulletin boards shall include a licensee identification at the beginning or end of each message.

(d) through (g) remain the same.

(h) Licensee identification should be visible as part of the advertising message when using multimedia advertising (e.g., Web based, executable e-mail, attachments, etc.).

(i) remains the same.

(4) ~~A licensee's~~ Licensees' Internet advertising may include real properties on which neither the licensee nor ~~his~~ the brokerage company is the listing agent so long as the listing agent has offered cooperation and has consented to Internet advertising by the licensee engaging in the Internet advertising and the owners of the property have consented to the same. The offer of cooperation and consent to Internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee, engaging in the Internet advertising, are both participating (provided the multiple listing system gives the listing ~~agent~~ agents the option of prohibiting Internet advertising of some or all of ~~his~~ their listings by some or all of the participants on that multiple listing system) or by specific written agreement between them. The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to Internet advertising is given. ~~A licensee's~~ Licensees' Internet advertising of real properties, on which ~~he~~ the licensee nor ~~his~~ the brokerage company is the listing agent, must set forth as part of the property information, a statement that the subject property is listed with another licensee or brokerage company and shall identify the listing agent or brokerage company, including the ~~listing agent's~~ office mailing address or e-mail address. The content of any property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. However, such property data may be formatted differently and be condensed and further advertised if the advertisement contains the following statement or similar language: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property." No licensee shall be responsible for errors or misrepresentations of others, who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation.

(5) All Internet advertising must be current as of the date of the advertisement and must be updated promptly in the event of material changes to the listing, such as its expiration, termination, or amendment, and/or in the event of

material changes to the information otherwise found in the Internet advertising. Internet advertising shall indicate the date on which it was created and last updated.

(6) All information, disclosures, statements, and the like required by this rule to be included in a licensee's Internet advertising shall be displayed in a size, color, typestyle, and location that a reasonable person will notice and be able to read.

(7) remains the same.

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

IMP: 37-1-131, 37-51-102, 37-51-203, 37-51-321, MCA

REASON: It is reasonably necessary to amend this rule and allow licensees to use language in a licensee's abstract data disclosure that is similar but not necessarily identical to that provided in the rule. This will allow licensees more leeway in offering Internet advertising while maintaining adequate minimum requirements for disclosures to consumers.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) ~~At any~~ Any time that a salesperson's association with the supervising broker is terminated, the ~~license of the salesperson~~ supervising broker shall be immediately mailed, ~~by the broker,~~ mail the salesperson's license to the board office with a letter noting the termination.

(2) ~~No~~ A dispute between a salesperson and the supervising broker shall not be cause for failing to immediately mail the salesperson's license ~~of the salesperson~~ to the board office.

(3) When required in writing to do so by a salesperson formerly associated with a supervising broker, the supervising broker shall promptly provide the former salesperson with a certified statement on the form prescribed by the board identifying all real estate transactions in which the salesperson was involved in connection with the salesperson's association with the supervising broker within the preceding three years preceding the request.

(4) Upon termination of a salesperson's association with ~~his or her~~ the salesperson's supervising broker, the supervising broker shall immediately notify all principals as to the listings or pending transactions in which the salesperson was involved, that the salesperson is no longer affiliated or associated with the supervising broker and that the listings and pending transactions are the responsibility of the supervising broker.

(5) Listings and pending transactions of a salesperson are the responsibility of the supervising broker upon termination of ~~an~~ the association between the salesperson and supervising broker.

(6) ~~The supervising broker is~~ Supervising brokers are responsible for the performance of salespeople salespersons under ~~his or her~~ the supervising brokers' supervision ~~for the salespersons' performance as real estate licensees~~. For any ~~complaints~~ if a complaint is submitted to the Board of Realty Regulation alleging improper conduct on the part of a salesperson, ~~a screening panel shall notify the salesperson's supervising broker that a complaint has been filed by providing a copy of the complaint shall be provided to the supervising broker who shall also provide a response to the complaint~~.

(7) ~~The supervising broker~~ Supervising brokers must provide ongoing real estate training in the area of real estate activity to all salespersons salespeople under his/her their supervision in order to assure competent practice of the profession. ~~Managing brokers are not responsible to provide training or ongoing supervision of brokers whom they employ or are associated as independent contractors.~~

(8) ~~All listings~~ A listing obtained by a salesperson ~~must be~~ is not effective until it is reviewed, signed, and dated by the supervising broker ~~before the listing is effective.~~

(9) ~~The supervising broker has~~ Supervising brokers have the responsibility to exercise adequate supervision to assure that all documents for a real estate transaction prepared by a salesperson salespeople under his/her their supervision are appropriately prepared and executed.

(10) remains the same .

~~(11) A broker shall notify the board office upon any changes of the broker's business address.~~

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

IMP: 37-1-131, 37-51-202, ~~37-51-203~~, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: It is reasonably necessary to amend this rule to clarify a broker's required actions upon termination of a supervised salesperson and the responsibilities of the licensees to the real estate consumers in a pending transaction in the event of such termination. The amendments more clearly outline the supervising broker's responsibilities to their supervised sales staff and will ensure the consumer continues to receive quality service in the midst of licensee transfers. It is reasonably necessary to delete the requirement that a broker notify the board of a change in the broker's business address as this is already required of licensees under 37-51-308, MCA.

24.210.602 EXAMINATION (1) License examinations ~~shall~~ may be held at such times and places ~~as may be~~ determined by the board.

~~(2) Examination schedule information shall be available through the board office.~~

~~(3)~~(2) The following rules established by the examination provider shall be obeyed by all persons taking an examination, ~~and a disqualification from taking the examination, a finding of lack of good repute, a determination of unsuccessful completion, or a license denial may result from any breach thereof:~~ A violation of the examination provider's rules may result in imposition of any sanction found in 37-1-312, MCA.

~~(a) examinees may not refer to any notes, books, or memoranda during the course of the examination;~~

~~(b) all rough work and calculations must be done on the examination booklet;~~

~~(c) the examinees shall not copy questions, make notes of test content, or reveal the contents of examination to others;~~

~~(d) examinees shall not leave the examination without permission from the examination proctor for any reason until they have handed in the completed answer sheet and test booklet to the administrator of the examination; and~~

~~(e) examinees shall not attempt to obtain or compare answers by viewing or discussing any matter with another examinee during the course of the examination.~~

~~(4) If an applicant for examination fails to take the examination on the date scheduled, he must make application in writing to the board or the designated testing entity for rescheduling within 12 months of the date of original application.~~

~~(a) A rescheduling fee must accompany the written request.~~

~~(5)(3) The board may from time-to-time review and amend the examination type, format, and the score upon which the pass or fail determination is made. Prior notice of any amendment will be afforded to all applicants.~~

~~(6) through (8) remain the same but are renumbered (4) through (6).~~

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

IMP: 37-1-131, 37-1-312, 37-1-316, 37-51-202, 37-51-302, 37-51-303,

MCA

REASON: It is reasonably necessary to amend this rule to reflect the current situation in which the broker and salesperson licensing examinations are administered by a testing entity. The testing entity has established examination rules to ensure security of their examination. The board has determined that an applicant's failure to comply with the rules of the testing entity is a demonstration of unfitness of the applicant. Because the testing entity already has rules in place to ensure exam security, it is unnecessary for the board to duplicate those rules.

The board is proposing to delete the provisions that an applicant failing to take a scheduled examination must reschedule and take the exam within 12 months of the original application date and that the board notify applicants in advance of changes to an examination. Because the board does not process examination applications or administer the examinations, these provisions are unnecessary.

24.210.610 APPLICATION FOR LICENSE -- PREEXAMINATION AND PRECOURSE OF EDUCATION OPTION PREDETERMINATION FOR LICENSING

~~(1) Applications Any applicant may make application for a preliminary determination predetermination prior to completing the examination and required course of education for the sole purpose of determining whether the applicant's of qualifications, other than examination and education, are sufficient may be made to the board on forms approved by the board and accompanied by the required fee.~~

~~(2) Any applicant may make application Application for license prior to examination and course of education for the purpose of obtaining the board's determination predetermination of whether the applicant's qualifications, other than examination and course of education, are sufficient shall be made to the board on forms approved by the board and accompanied by the nonrefundable predetermination application fee.~~

~~(3) The board will render a determination on each such application within two months of the time it is filed, and the determination will remain valid until the next reasonably available course of education and following scheduled examination Any~~

approval of an application for predetermination which is made by the board shall remain valid for 90 days.

~~(4) At the time of notification to the board of successful completion of the examination, the applicant has completed the required education and examination, the applicant must submit an application for licensing and pay the required fees, certify in writing to the board that the information submitted for predetermination contained in the application for license remains current, or provide information to the board about any change changes that may have occurred since the predetermination was filed to the license application.~~

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-302, MCA

REASON: It is reasonably necessary to amend this rule to more accurately and clearly reflect the board's intent and the process for allowing applicants to obtain a predetermination from the board prior to spending time and money on prelicensing education and the licensing examination. The existing rule has proven misleading and confusing for applicants. In addition, the board has determined it is reasonably necessary to impose a 90-day expiration of the approval to ensure that applicants complete the education and examination requirements in a timely manner.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER (1) remains the same.

~~(2) (3) All applicants individuals successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall terminate the application invalidate the examination results. Thereafter the applicant must begin the application process over.~~

~~(3) (2) No application for license will be accepted by the board until the applicant individual has made application for and successfully completed the examination, except as allowed by ARM 24.210.610.~~

~~(6) (4) If an applicant currently holds, or has ever held a real estate license in another jurisdiction, a certified license history verification from that licensing jurisdiction is required before a Montana license will be issued.~~

~~(4) (5) In addition to (1) through (4), All all applicants for licensure as a salesperson must:~~

~~(a) submit proof of completing 60 hours of approved prelicensing education obtained within a period of 24 months immediately preceding the date of the submission of the application; and~~

~~(7) (b) For salesperson applications, the board will require in a form acceptable to the board, submit the proposed supervising broker's certification of the applicant's good repute and the broker's written acceptance of responsibility for supervising the licensed activities of the salesperson.~~

~~(5) (6) In addition to (1) through (4), All all applicants for licensure as a broker must:~~

(a) submit proof of completing 60 hours of approved prelicensing education obtained within a period of 18 months immediately preceding the date of the submission of the application; and

~~(8)~~ (b) submit For for the purpose of determining if a broker applicant has been "actively engaged as a licensed real estate salesperson," ~~the applicant will be required to provide~~ evidence acceptable to the board that the salesperson has performed functions as a licensee as follows:

~~(a)~~ (i) 30 closed real estate property transactions in the last three years from the date of application for a residential applicant. ~~With the 30 transactions, the applicant must have secured five listings and five of the transactions must include activities other than listings such as sales, leases or exchanges, no more than five of which can be leases; or~~

(b) (ii) ten closed real estate transactions within the last three years for an agricultural, farm, ranch, or commercial applicant. ~~With the last ten transactions, the applicant must have secured two listings and two of the transactions must include activities other than listings such as sales, leases or exchanges. No more than two commercial lease transactions other than listings and/or sales may be used; or~~

(iii) a combination of (6)(b)(i) and (ii).

~~(e)~~ (iv) By Upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.

~~(9)~~ (c) The experience required by ~~(7)(a) and (6)(b)~~ must be legally shall have been obtained while licensed as a real estate licensee within the in this state, or licensed in another state jurisdiction.

~~(40)~~ (d) Sales or listing Closed real estate transactions of property owned by the applicant, by a corporation, partnership, trust, or other entity in which the applicant has an interest or by such an entity which employed the applicant as an employee, shall not qualify as experience under ~~(2) and (3) above (6)(b),~~ or under 37-51-302~~(2)(c)~~, MCA.

(e) In order for a listing to be considered a closed real estate transaction, the listing must have sold.

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

IMP: 37-1-131, 37-1-135, 37-51-202, 37-51-302, MCA

REASON: It is reasonably necessary to reorganize and amend this rule to more clearly delineate the license application process and the various requirements for the particular levels of licensing. The board is amending the rule to limit the number of leases to five that may be used to show that an applicant has been "actively engaged as a licensed real estate salesperson." The board concluded that the knowledge and experience gained from transactions other than lease transactions is broader and requires a greater depth of professional knowledge and is therefore more beneficial to licensees than experience from lease transactions.

24.210.615 APPLICATION FOR DETERMINATION OF EQUIVALENT EXPERIENCE FOR BROKER LICENSING (1) A salesperson who has been

licensed for the preceding ~~42~~ 18 months may apply to the board for a determination

that the applicant possesses experience equivalent to that required for broker licensing.

~~(2) An applicant has received a determination by the board that the applicant's experience is equivalent to that required for broker licensing, but who fails the examination on two occasions, shall have the determination of equivalency withdrawn.~~

~~(3) (2) Applications for determination of equivalent experience shall be made on forms approved by the board and accompanied by the required fee.~~

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule and extend the amount of time a salesperson must be licensed from 12 to 18 months before applying for a broker license through an equivalency determination. The board concluded that requiring more experience of an applicant would better protect the public through the corresponding increase in knowledge gained during the additional six months of requisite experience.

The board is deleting the provision that an equivalency determination will be withdrawn for an applicant who twice fails the examination because it is the exam provider, and not the board, that monitors examination attempts. Further, the board concluded that an equivalency determination does not grow stale with the passage of time and it is therefore irrelevant how many times an applicant fails the exam.

24.210.616 WAIVER OF EXPERIENCE TRANSACTION REQUIREMENT FOR BROKER LICENSING PROHIBITED (1) There shall be no waiver of the ~~experience qualifications~~ transaction requirements for a broker license ~~or reciprocity broker license~~.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-304, 37-51-202, 37-51-302, ~~37-51-306~~, MCA

REASON: It is reasonably necessary to amend this rule to more clearly define the requirements the board will not waive in evaluating alternative broker applications. Currently the board calculates the number of transactions when evaluating experience requirements. The number and type of transactions constitute the applicant's experience. Changing "experience" to "transaction" more closely reflects the actual information reviewed and evaluated by the board. The term "reciprocity broker license" is being deleted because where the board has a true reciprocal agreement with another jurisdiction, the board has already determined that the other jurisdiction's requirements are substantially similar to Montana's and there is no need to consider the experience of each individual reciprocal applicant.

24.210.624 INACTIVE LICENSES (1) A licensee who wishes to retain his/her license but licensed broker or salesperson not engage ~~engaged~~ in licensed activities shall may place his or her the licensee's license on inactive status by:

(a) paying the required fee in accordance with ~~37-51-311(2)~~, MCA, and ARM 24.210.401;

(b) forwarding the license to the board office for cancellation of the active license; and

(c) indicating submitting, in writing, "inactive at present"; a written request that the license be placed inactive.

(d) A salesperson must also forward a release from the salesperson's supervising broker.

~~(d) (2) A a real estate licensee who whose has caused the licensee's real estate license to be placed is~~ on inactive status with the board has the sole responsibility to keep the board informed as to any change of the licensee's residency or mailing address during the period of time the real estate licensee remains on inactive status.

~~(2) (3) In order to avoid lapse, expiration, or termination of the license, an inactive licensee must renew the inactive license each renewal period. Inactive licensees must pay the renewal fee, must annually complete the required education and provide verification of the necessary education to maintain licensed status.~~

(4) An inactive licensee does not need to report continuing education until converting the license to active status as found in ARM 24.210.625.

(5) An inactive licensee may not receive compensation for real estate activity not earned while the license was active.

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

IMP: 37-1-319, 37-51-202, 37-51-204, ~~37-51-208, 37-51-302~~, MCA

REASON: It is reasonably necessary to delete the reference to 37-51-311(2), MCA, because that section of law was previously repealed. The balance of this rule is being amended to clarify who may place their license on inactive status and how, and the requirements and expectations while on inactive status. Section (5) is being added to solidify in rule a longstanding board policy about paying compensation to inactive licensees.

The board determined it is reasonable and necessary to amend this rule and eliminate the requirements for inactive status licensees to maintain and report continuing education. The board concluded that it is more important for inactive licensees to complete adequate updated education when reactivating than it is for inactive licensees to continually obtain and report education that may not be utilized or applied for some time. Following the amendment, inactive licensees will not have to maintain or report continuing education while on inactive status.

24.210.625 REACTIVATION OF LICENSES INACTIVE TO ACTIVE LICENSE STATUS (1) For an inactive real estate licensee to ~~again~~ become active, ~~he or she the licensee~~ must:

(a) file a change of address application; and

(b) provide evidence of completing 24 hours of continuing education within the proceeding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; and

(c) pay the required fee in accordance with ARM 24.210.401.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-311,
MCA

REASON: It is reasonably necessary to amend this rule to advise inactive licensees of a change in the requirements for converting to active license status. The board is amending ARM 24.210.624 to no longer require inactive licensees to maintain and report continuing education while on inactive status. The board concluded that it is more beneficial to licensees and provides more public protection for inactive licensees to complete adequate and updated education when converting to active status than it is for inactive licensees to continually obtain and report education that may not be utilized or applied for some time. Requiring the licensees complete the education within a 24-month period immediately prior to becoming active ensures that the education is current, regardless of the time spent on inactive status.

24.210.629 RECIPROCITY (1) Subject to 37-51-306(2), MCA, the board may enter into an agreement with any other state jurisdiction establishing the conditions through which residents of the other state jurisdiction may obtain a nonresident license in this state, and establishing terms of nonresident practice in this state, if the other state jurisdiction grants Montana resident licensees the same privileges.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-1-304, 37-51-202, 37-51-302, 37-51-306, MCA

REASON: It is reasonably necessary to amend this rule in order to clarify and further implement section 37-1-304, MCA, which allows the board to enter into reciprocal agreements with other states and jurisdictions. The amendment clarifies that reciprocal agreements between Montana and other countries are permissible.

24.210.635 RENEWALS (1) Each licensee will renew on or before the date set by ARM 24.101.413 ~~of their expiration year.~~

(2) Renewal notices will be sent as specified in ARM 24.101.414. Active salesperson licensee renewals will be sent to the address of the salesperson's broker of record. Inactive licensee renewals will be sent to the licensee's their home address of record on file with the board. Each licensee is required to renew.

~~(3) Licensees cannot renew their license without also completing and submitting the education reporting form at the time of renewal.~~

~~(4)~~ (3) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the date as set by ARM 24.101.413, or the late penalty fee as specified in ARM 24.101.403 will be required. An unrenewed license will lapse, expire, or terminate per 37-1-141, MCA.

(5) remains the same but is renumbered (4).

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

IMP: 37-1-141, 37-1-319, 37-51-202, 37-51-310, MCA

REASON: It is reasonably necessary to amend this rule to specify the resultant processes for licensees who fail to renew their licenses as per section 37-1-141, MCA, and to clarify current renewal processes within the department.

24.210.641 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) ~~In any transaction in which a licensee is involved as a licensee or as a party, has held himself or herself out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee has failed to meet~~ A licensee involved in any real estate transaction shall comply with the generally accepted standards of practice.

~~(2) A licensee shall not act as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party. This does not prohibit dual agency as permitted in 37-51-313, MCA, except where there is a conflict of interest or the appearance of a conflict of interest. If the board determines that a licensee has committed an act that violates a statute or rule administered by the board, such act shall be deemed an act against the interest of the public for which the board may take disciplinary action, as permitted by law, against the licensee.~~

~~(3) A licensee shall not cause or allow another person to rely on the licensee's status as a licensee in any transaction that is not a real estate transaction.~~

~~(4) Violation of 37-51-321, MCA, constitutes unprofessional conduct.~~

~~(5) The board may take disciplinary action and impose any penalty found in 37-1-312, MCA, against any licensee who violates any statute or rule administered by the board.~~

~~(3) (6) In addition to all other provisions contained in the statutes and rules administered by the board, failure to comply with any of the following shall constitute an act against the interest of the public~~ the following are considered unprofessional conduct:

~~(a) Licensees shall not engage~~ engaging in activities that constitute the practice of law;

~~(b) Licensees will~~ failing to advise their principal and any other party to the transaction with whom the licensee is directly working, that outside professional services should be secured when appropriate. ~~Dual agents should so advise both parties in the transaction. Statutory brokers should inform all parties not otherwise represented;~~

~~(c) Licensees, prior to engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, or other like person or entity, on behalf of a principal, third-party, or other person, shall inform~~ without informing and obtaining consent from the person obligated to pay for the services ~~and obtain consent from that person;~~

~~(d) Licensees, in engaging or recommending the services of an attorney, title company, appraiser, escrow agent, or other like person or entity, on behalf of a principal, third-party, or other person, shall disclose~~ without disclosing any family

relationship, financial relationship, and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(e) ~~Licensees, failing,~~ when entering into a listing agreement, ~~shall make a prompt effort to promptly~~ verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing. ~~The licensee is not required to either investigate or disclose whether a registered sexual or violent offender resides in proximity to any property with which the licensee lists, shows, negotiates for the purchase or otherwise is involved;~~

(f) ~~A licensee shall failing to~~ disclose the fact that ~~he/she~~ the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another;

(g) ~~Licensees shall not falsify falsifying~~ documents, ~~place placing~~ any party's signature on a document, or ~~alter altering~~ or ~~amend amending~~ a document on behalf of any party without authority of a written power of attorney from the party, ;

(h) ~~advise advising~~ that an offer or counter offer has been accepted ~~unless without~~ the licensee ~~has having~~ in the licensee's possession a document signed by the party evidencing the party's acceptance;

(i) ~~or commit committing~~ any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

(~~h~~) (j) ~~Licensees shall not knowingly enter entering,~~ or willfully ~~continue continuing~~ in, any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or ~~his~~ the licensee's principal is to commit any of the following acts:

(i) ~~use, using~~ or ~~conspire conspiring~~ with others to obtain, inflated property appraisals;

(ii) ~~influence influencing~~ others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA);

(iii) ~~file filing~~ an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, the Department of HUD or VA regulations; or

(iv) ~~acquire acquiring~~ as an investor, or personally, properties subject to a loan guaranteed or insured by the Department of HUD, collect rents thereon, while purposely failing to make mortgage payments on the property;

(~~i~~) (k) ~~Licensees shall make failing to make~~ reasonable efforts to perform all obligations arising from any agreement entered into;

(~~i~~) (l) ~~Licensees shall make a reasonable attempt to failing to document in writing and~~ obtain signatures by the parties to all agreements, financial obligations and recommendations ~~between the principals regarding all real estate transactions in writing~~. Licensees ~~should attempt to shall~~ document in writing, and have signed by the parties, any changes as to the terms and provisions of the ~~transaction agreement~~ which occur between the time a buy/sell is executed and the closing of a transaction;

~~(k) (m) When acting as a listing broker, licensees shall failing, as a seller's agent, to continue to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminated terminates, unless the seller has waived this obligation in writing. Licensees Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller.~~

~~(n) Licensees acting failing, as a buyer agents agent, to of buyers shall submit to the buyer all offers and counter offers until an offer has been accepted, but Buyer agents have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed directed in writing to do so by the buyer;~~

~~(l) (o) Licensees shall not represent representing to any lender, guaranteeing agency, or other interested party, either orally or through the preparation of false documents, an amount in excess of other than the true and actual sale price of the real estate or terms differing from those actually agreed upon;~~

~~(m) The licensee shall inform his/her principal at the time an offer is prepared or presented of the estimated costs and fees associated with that offer. A dual agent shall inform both principals to the transaction. A statutory broker will inform all buyers/sellers not otherwise represented;~~

~~(n) Licensees shall disclose to their managing broker, supervising broker, business partner or any other responsible business associate any and all additional wages, tips, bonuses or gifts which have been or are to be recovered by the licensee which are not considered to be real estate commission(s);~~

~~(p) failing to inform the seller in writing of the estimated costs and fees associated with the sale at the time a listing is taken and when an offer is presented;~~

~~(e) (q) A failing, as a licensee, shall to repay the recovery account for any amounts due and owing the account caused by any actions, negligence or misrepresentation of the licensee paid from the account based on an unsatisfied judgment against the licensee;~~

~~(p) (r) Licensees when acting as a listing agents agent, shall not disclose disclosing the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers, except that this This shall not prohibit the listing agent from disclosing that an offer has been made.;~~

~~(s) If a buyer broker has principals making offers on the same property, disclosing to the buyer broker cannot tell a buyer principal the terms and provisions of the a competing buyer's principal's offer when a buyer's broker has more than one principal making offers on the same property;~~

~~(t) failing to disclose in writing to both principals that the agent is involved in competing offers if a buyer's broker has two principals making offers on the same property;~~

~~(q) (u) Licensees, while failing, while managing properties property for owners, to shall abide by the requirements of 37-51-607, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828;~~

~~(r) (v) Licensees may not violate the Landlord-Tenant Act (70-24-101 violating the landlord tenant laws of Title 70, chapter 24, MCA);~~

~~(s) (w) Licensees may not violate violating the state and federal human rights statutes;~~

~~(t) (x) Licensees may not violate violating the Americans with Disabilities Act;~~

~~(u) (y) Licensees may not guarantee guaranteeing or authorize authorizing a person to guarantee future profits which may result from the resale of real property;~~

~~(v) Licensees may not offer real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;~~

~~(w) Licensees may not induce a party to a listing agreement, or a contract of sale or lease to break the agreement for the purpose of entering into a new agreement with another party;~~

~~(x) Licensees may not represent oneself as a licensed appraiser when not licensed as such and solicit business as a licensed real estate appraiser without such license.~~

~~(y) Licensees may not negotiate a sale, exchange or lease of real property directly with a seller or buyer if the licensee knows that the seller/buyer has a written contract with another broker;~~

~~(z) Licensees may not solicit, sell or offer soliciting, selling, or offering for sale real property by conducting lotteries, raffles, or contests for the purpose of influencing a purchaser or prospective purchaser of real property. Door prizes can be awarded so long as the participant is not required to pay any consideration or enter into any contract arrangement in order to participate in the door prize drawing;~~

~~(aa) Licensees shall furnish a copy of a written instrument to a party executing it at the time of its execution;~~

~~(ab) (aa) Licensees may not pay a commission paying consideration in connection to with a real estate sale or transaction to a person who is not licensed as a real estate broker, or real estate salesperson under this chapter; however, payment to the principal or reducing Reducing the commission owed by the principal who pays the commission is not considered payment of a commission to an unlicensed person. This does not prohibit a buyer's broker from reducing commissions received and is not considered payment to an unlicensed person. Licensees may not solicit business by offering gifts, rebates, or promotional items;~~

~~(ac) Licensed brokers and salespersons performing property management duties shall abide by the rules set out in ARM 24.210.828;~~

~~(ad) (ab) Licensees, when advertising, shall present a true picture. Licensees shall not advertise without disclosing failing to disclose in advertising the licensee's name or and identifying that the advertisement is made by a real estate licensee or that the advertising is made by a brokerage company and identify that the advertisement is made by a real estate licensee. Internet advertising is subject to the provisions of ARM 24.210.430-;~~

~~(ac) Licensees shall failing to disclose their identity as a real estate licensee whenever the licensee negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent or lease of real estate at first contact;~~

~~(ae) (ad) Licensees must failing to comply with all completion and reporting requirements for continuing education as established by the board: or~~

~~(ae) failing to respond to a request from the board.~~

~~(4)~~ (7) The revocation, or suspension, or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, ~~whether as an attorney, salesperson, broker, appraiser or similar occupation or profession, shall~~ may be grounds for license discipline in this state, if the board, determines that the substantive grounds for the previous disciplinary treatment relates to the public health, safety, and welfare as it applies to real estate activity after appropriate notice and hearing, determines that the substantive grounds for that disciplinary treatment demonstrates the licensee's unworthiness or incompetency to act as a broker or salesman.

AUTH: 37-1-131, 37-1-136, ~~37-1-306,~~ 37-1-319, ~~37-51-202,~~ 37-51-203, ~~37-51-321,~~ MCA

IMP: 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-204, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: It is reasonably necessary to amend this rule to better define unprofessional conduct, clarify current practice, be more reflective of board interpretation of statutes, and more comprehensively guide licensees in conducting licensed activity.

The board determined there exists a need to specifically delineate for licensees the parameters for determining conflict of interest. The proposed amendments will put licensees and consumers on notice of potential situations of conflict of interest, as well as outlining licensees' responsibility in determining and preventing such conflict. Rule language is also being amended to ensure the board's rules function within the statutory limits of the board's authority.

24.210.646 DISCIPLINARY GUIDELINES -- PUBLIC NOTICE (1) The board, ~~reserves the in its discretion, to take appropriate~~ may impose disciplinary action ~~provided for in 37-1-136, MCA,~~ against a licensee violating any law or rules of the board, ~~and to~~ The board shall decide on a case-by-case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

(a) remains the same.

(b) the detriment to the health, safety, and welfare of the people of Montana; and

(c) remains the same.

(2) In addition to any sanction provided in 37-1-312, MCA, The the board may impose one or more of the following sanctions in appropriate cases against a licensee who violates one or more of the laws or rules of the board:

(a) through (e) remain the same.

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper;

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

~~(g)~~ (h) deferral of disciplinary proceedings or imposition of disciplinary sanctions; or

~~(h)~~ (i) ordering the licensee to successfully complete appropriate professional training.

(3) When a license is revoked or suspended, the licensee license must immediately be surrendered to the board ~~his wall license and pocket card~~.

(4) Any order of license discipline, when final, including those reached by settlement agreement, may be published ~~locally and statewide~~.

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

IMP: 2-4-623, 37-1-319, 37-51-202, 37-51-321, MCA

REASON: It is reasonably necessary to amend this rule to clarify for licensees and the public the board's ability to enforce sanctions in disciplinary actions. The board is amending this rule to specify that the board can impose any disciplinary action that the board deems proper and for which statutory authority exists.

24.210.651 REINSTATEMENT (1) remains the same.

(2) As a condition to the reinstatement of a ~~revoked or~~ suspended license, in addition to any other conditions allowed by law, the board may require the applicant to take and pass a qualifying examination, or course, or both as determined by the board.

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

IMP: 37-1-314, 37-51-202, ~~37-51-203~~, 37-51-321, MCA

REASON: It is reasonably necessary to amend this rule and to clarify for licensees the board's policy for reapplication following revocation of a license. The board has always considered revoked licensees ineligible for reinstatement and instead, requires licensees to reapply for licensure following revocation by the board.

24.210.660 PRELICENSING EDUCATION -- SALESPERSONS AND BROKERS (1) and (2) remain the same.

(3) Distance education courses shall may be approved if the board determines that:

(a) remains the same.

(b) the distance education course meets the content requirements as established under ~~ARM 24.210.660~~ this rule;

(c) and (d) remain the same.

(4) Advanced nationally recognized designation courses may be submitted and may be approved in part to fulfill specific topics of the broker prelicensing education requirement.

(5) through (7) remain the same.

~~(8) Course must not have a title which misleads the public regarding the content of the course.~~

(9) remains the same but is renumbered (8).

(a) a bachelor's degree in a field traditionally associated with the subject matter being taught; or

(b) and (c) remain the same.

(10) remains the same but is renumbered (9).

(a) practices, principles, and essentials of real estate;

- (b) through (f) remain the same.
- (g) estimating closing costs, escrow, and closing/ and settlement practices;
- (h) remains the same.
- (i) hazardous waste/ or environmental issues;
- (j) through (o) remain the same.
- (p) negligence/ or misrepresentation (risk management);
- (q) and (r) remain the same.
- (s) Regulation Z; and
- (t) landlord/tenant law.
- (11) remains the same but is renumbered (10).
- (a) through (d) remain the same.
- (e) ~~ethics~~ professional conduct; and
- (f) remains the same.

(11) Courses must be designed so that no more than ten minutes per hour are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(12) The applicant must attend 90 percent of each hour of the approved course time in order to receive credit for attendance. ~~In order to receive credit for attendance, 90 percent of each hour of the approved course time must be attended.~~

(13) A board representative may, at no charge, audit all board-approved courses ~~at no charge~~ for rule compliance.

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, ~~37-51-203~~, 37-51-302, MCA

REASON: It is reasonably necessary to amend (3) to clarify that the board has the discretion and ability to approve prelicensing education courses provided the courses meet the requirements in this rule. The board is not changing the process for approving prelicensing courses, but simply clarifying that board approval is not mandatory. The rule is being amended to delete the misleading course name prohibition because the board rarely if ever encounters a misleading named course.

The board is amending the rule to clarify that approved instructors no longer need to have a bachelor's degree, advanced training, and a year's experience in real estate education. The board has always evaluated and approved instructors having either a bachelor's or both advanced training and a year's experience, and this amendment establishes this policy. It is reasonably necessary to add "estimating closing costs" to the topics required of prelicensing sales courses as the board determined that knowledge of the topic is essential to the practice of a salesperson. The rule is being amended to change "ethics" to "professional conduct" to bring this rule into accord with statutory language.

The rule is being amended to address allowable breaks in prelicensing course instruction and the instructors' discretion in allowing the accumulation of break time into blocks of time. These changes are consistent with actual practice and with the requirements elsewhere in board rule for licensee continuing education.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS ~~(1)~~ (2) ~~All new sales licensees issued in 2006 are required to~~

~~complete the board mandated new licensee mandatory continuing education requirement by December 31, 2006.~~ Effective January 1, 2007, all new sales licensees are required to complete the board mandated new licensee mandatory continuing education requirement commonly known as the 12-hour rookie course by the ~~October 31~~ renewal date as set by ARM 24.101.413 following their original license issue date.

~~(2)(1) New sales licensees issued in 2006 will receive an interim license that will expire December 31, 2006.~~ Effective January 1, 2007, all new sales licensees will receive an interim license that will expire October 31 of the year of the initial license date.

(3) A new license will be issued upon completion of the new licensee mandatory continuing education required by this rule.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: It is reasonably necessary to amend this rule by deleting provisions regarding the 2006 licensure period and instead providing reference to the standardized departmental renewal dates.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) Each active licensee is required to complete a minimum of 12 hours of continuing real estate education every ~~calendar~~ year.

(2) remains the same.

(3) The required hours shall be in ~~approved~~ real estate related courses ~~given by instructors~~ approved by the board.

(4) By August 1 of each year, the board ~~shall prescribe~~ will identify topics in which the 12 hours of education must be obtained for the following reporting year. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics ~~determined~~ identified by the board and ~~eight hours may come from elective topics approved by the board.~~

(5) ~~For the reporting period ending December 31, 2006, no more than six hours of elective topics may be carried over from a previous year.~~ No mandatory hours may be carried over except as elective credits. For the reporting period beginning January 1, 2007, no carry over hours will be recognized or allowed.

(6) No course licensee shall ~~be repeated~~ repeat a course for credit in the same reporting year.

(7) and (8) remain the same.

~~(9) Passage of an examination shall not be required for the successful completion of an approved course for continuing education purposes.~~

~~(40)~~ (9) A board representative may, at no charge, audit all board-approved courses ~~at no charge~~ for rule compliance.

~~(44)~~ (10) All approved education must be ~~open and~~ available to all licensees.

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

~~(15)~~ (14) All continuing education courses must be taken and completed within the reporting period. No carry over hours will be accepted from one reporting period to another.

AUTH: 37-1-131, 37-1-136, ~~37-1-306~~, 37-1-319, 37-51-203, ~~37-51-204~~, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, ~~37-51-203~~, 37-51-204, MCA

REASON: It is reasonable and necessary to amend this rule and clarify the board's continuing education requirements. This rule is being amended to comply with continuing education requirements for inactive licensees that are being amended elsewhere in this notice. The board is deleting the calendar year reference to facilitate the education reporting period change to coincide with license renewals.

The board is deleting (9) because section 37-51-204, MCA, already addresses when the board can require examination of licensees and duplication of this in rule is redundant and unnecessary. The rule is also being amended to clarify that the board will no longer accept continuing education carry over hours from one period to another. The board has determined that it is becoming more difficult for licensees to track and provide evidence of carryover earned in prior years and has resulted in board disciplinary action imposed against licensees. This amendment will make the reporting process cleaner and simpler for licensees and board staff.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE

APPROVAL (1) Requests for approval of a continuing real estate education course must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended course, with payment of the required fee.

~~(2) Expiration of course approval is December 31 of each year, but may be revoked for cause. The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Course approval may be revoked for cause.~~

~~(3) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board.~~

~~(4) (3) Courses must be designed so that no more than ten minutes per hour are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.~~

~~(5) Courses offered in another state and approved by that state's real estate licensing body for continuing education are recognized and approved.~~

~~(6) (4) Upon request the The board or its designee may, at its discretion and without requiring further qualification, approve courses authorized or approved by another state's licensing authority. from the approved topic list under the following instances:~~

~~(a) courses approved by another jurisdiction's real estate licensing authority;~~
or

~~(a) (b) Courses courses which lead to designations or certifications by board recognized trade or professional associations approved by the National Association~~

~~of Realtors or other recognized trade and professional association are automatically approved without requiring further qualification.~~

~~(b) Courses approved under this rule must fall within the topics or subject matter specified by the board for education credit.~~

~~(7) (5) Distance education courses shall may be approved if the board determines that:~~

~~(a) the distance education course serves to protect the public by contributing to the maintenance and improvement of the quality of real estate services provided by real estate licensees to the public;~~

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

~~(c) (b) the distance education course meets the content requirements as established under ARM 24.210.667(3);~~

~~(d) (c) the distance education course provider must be is certified by the Association of Real Estate License Law Officials (ARELLO) and ~~provide~~ provides appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and~~

~~(e) (d) the distance education course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.~~

AUTH: 37-1-131, 37-1-319, ~~37-51-202~~, 37-51-203, ~~37-51-204~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: It is reasonably necessary to amend this rule to more clearly delineate the board's continuing real estate education course approval requirements and to clarify the board's discretion and ability to approve courses provided the courses meet the requirements in this rule. The board is not changing the process for approving these courses, but simply clarifying that board approval is not mandatory.

This rule is being amended to allow board or department staff to approve the forms used in the board's approval of courses, which will simplify and expedite the preparation of the forms. The board is amending the rule to clarify for licensees that, after expiration of a course approval, updated information must be submitted to maintain board approval. The board is deleting from this rule the requirement that distance education courses contribute to the maintenance and improvement of the quality of real estate services. The board determined that since this is a measurement applied to all courses in developing the acceptable topics lists, it is not necessary to include it in rule as a specific additional requirement.

It is reasonably necessary to delete (3), the provision on course instructor approval, from this rule and relocate it to ARM 24.210.677.

24.210.677 CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR

APPROVAL (1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended instruction with payment of the required fee.

~~(2) Expiration of instructor approval is December 31 of each year, but may be revoked for cause.~~ The initial approval of an instructor will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring

on December 31. Approval may be revoked if the instructor fails to demonstrate effective teaching skills.

(3) remains the same.

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of real estate or current experience or qualifications approved by the board; or

(b) a designated real estate instructor or other nationally-recognized instructor designation; ~~or~~

~~(c) such other qualifications as are determined by the department or board to meet the spirit and intent of these requirements.~~

(4) ~~Insofar as the real estate-related topic of instruction is limited to their fields of expertise, persons~~ Persons such as attorneys, investigators, government officers or employees, or mortgage loan officers, may be approved as instructors or may act as speakers under the supervision of approved instructors as long as instruction is limited to the instructor's field of expertise.

(5) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board or its designee.

AUTH: 37-1-131, 37-1-319, 37-51-203, ~~37-51-204~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: This rule is being amended to allow board or department staff to approve the forms used in the board's approval of instructors, which will simplify and expedite the preparation of the forms. It is reasonably necessary to amend this rule to more clearly delineate the board's approval requirements for continuing real estate education instructors and to clarify the board's discretion in granting and revoking such approval. Further, section (5) is being added to this rule as it is being deleted from ARM 24.210.674, the rule on course approval, as it is more appropriate to include it in this rule on instructor approval.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) Each property manager will maintain a ~~separate bank trust~~ account which will be designated by the words a "trust account," wherein all ~~downpayments, earnest money deposits, rent payments, security deposits~~ or other trust funds received by the property manager on behalf of ~~a principal, third-party or~~ any other person shall be deposited. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the property manager must be identified by agreement as consideration for services performed. Offices or firms having more than one property manager may utilize a single property management trust account.

(2) Trust ~~funds accounts~~ must be maintained deposited in a an federally insured account in a financial institution located in Montana.

(3) All funds belonging to others and accepted by the property manager ~~while acting in his capacity as a property manager~~ must be deposited in an insured

account separate from money belonging to the property manager in a financial institution located in Montana.

~~(a)~~ The name of such separate account must be identified by the words "trust account."

~~(b)~~ (4) Each Funds deposited in a property manager trust account in connection with a property management transaction must only deposit trust funds received on property management transactions in his trust account and shall not be commingle commingled with the property manager's his personal funds or other funds in the trust account with the exception that a the property manager may deposit and keep a sum not to exceed \$1000 in said the trust account from his the property manager's personal funds, including the interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest which accrues to the property manager, ~~which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.~~ Personal funds may be distributed to the property manager or the financial institution for payment of trust account bank charges.

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

~~(5)~~ (6) All security deposits for residential monies belonging to others which are received by a property manager in a residential lease or rental transactions and other trust account money must be deposited in the property manager's trust account within three business days of the receipt of the trust funds. All other security deposits and trust account money monies belonging to others which are received by a property manager in a nonresidential lease or rental transaction must be deposited into the property manager's trust account within three business days, unless otherwise provided in the lease agreement or rental agreement.

(a) ~~If~~ When the property management agreement by which a licensee is managing a property for the owner is terminated for any reason while but the rental agreement is still in effect and the licensee is holding funds deposited by a tenant, the licensee shall promptly and in writing advise the tenant that the funds will be transferred to the property owner or the owner's designee within 30 days of the notification. The notice shall also contain the name and address of the property owner or the owner's designee to whom the funds are to be transferred.

~~(b)~~ The property manager shall timely transfer funds pursuant to the notice to the tenant.

~~(6)~~ (7) Maintenance of the trust account will be the responsibility of the property manager. Property managers are responsible at all times for all funds deposits accepted by them or their property management staff.

~~(7)~~ (8) ~~No~~ Except for personal funds referenced in (4), no payments of personal indebtedness of the property manager shall be made from such trust account ~~other than a withdrawal of earned commissions payable to such property manager or withdrawals made on behalf of the beneficiaries of such trust account.~~

~~(8)~~ (9) Money held in the trust account which is due and payable to the property manager must be withdrawn within five ten business days after such money becomes due and payable or when the property ledger is reconciled to the property manager except as exempted in ~~(3)(c)(4)~~ of this section.

~~(9)~~ (10) A property manager must maintain in his office Maintenance of a property management trust account shall include the property manager keeping at

the property management office a completed record of all funds received on property management transactions, in the following manner:

(a) a bank deposit slip showing the date of deposit, amount, source of money, and where deposited;

(b) monthly bank statements are to be retained and kept on file ~~for five years;~~

(c) trust account checks must be numbered and all voided checks retained.

The checks must denote the property manager's business name, address, and must be designated as "trust account;"

(d) a record ~~book~~ which shows the chronological sequence in which funds are received and disbursed;

(i) for funds received, the journal record must include the date, the name of the party who is giving the money, the name of the principal, and the amount;

(ii) a record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;

~~(ii)(iii)~~ (iii) for disbursements, the ~~checkbook~~ journal record must include the date, the payee, and the amount;

~~(iii)~~ (iv) a running balance must be shown after each transaction entry.

~~(10) (11)~~ (11) A ledger must be kept for each tenant showing all rents, deposits, and disbursements to show the receipts and the disbursements as they affect a single, particular transaction or property as between the landlord and tenant, etc.

The ledger record entries must include clearly identify the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each transaction entry.

(12) A record must be kept for each property owner showing all income, expenses, and disbursements. The record entries must clearly identify the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, the payee, and the amount must be shown. A running balance must be shown after each entry.

(11) remains the same but is renumbered (13).

~~(12) (14)~~ (14) Every property manager shall keep permanent all records required by (10) and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) of all funds and property of others received by them for not less than five years from the date of receipt of any such funds or property the property management agreement terminates.

(15) All required trust account records may be maintained electronically but must be maintained in a manner to permit auditing.

(16) The board is authorized to examine each property manager's trust account. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The property manager is required to fully cooperate with the board representative.

AUTH: 37-1-131, ~~37-1-316~~, 37-1-319, 37-51-203, MCA

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-321, 37-51-601, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align board trust account requirements with current industry practices and modern available technology, such as electronic recordkeeping. The board is reorganizing the rule to better reflect the sequence required to meet trust account requirements and for clarity in reading. The board is proposing to increase the number of days a property manager has to remove personal funds to account for more long-distance trust account transactions, which take longer to complete. The amendments also clarify the ability of a property manager to maintain trust account records electronically while specifying the information necessary to meet audit needs. The amendments also clarify records retention requirements.

The board intends for the amendments to allow property managers more flexibility in maintaining trust accounts while requiring sufficient processes to conduct audits that will ensure the trust funds are accounted for properly.

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER

REQUIREMENTS (1) A licensee who changes ~~his or her~~ the office location or affiliation must notify the board office in writing within ten business days of the change. The ~~pocket card~~ and proper fee must accompany such notice. The board office will then issue a corrected pocket card for the remainder of the renewal year.

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-51-605, MCA

REASON: It is reasonably necessary to delete the requirement that pocket cards be returned with change notification because it is difficult to collect and track the cards and the returned cards served no useful purpose in the process.

24.210.809 PRELICENSURE PROPERTY MANAGEMENT COURSE

REQUIREMENTS (1) and (2) remain the same.

(a) landlord tenant act law (Title 70, chapter 24, MCA);

(b) through (j) remain the same.

~~(3) The effective date of the amendments to this rule will be January 1, 2002.~~

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-51-202, 37-51-601, 37-51-603, MCA

REASON: It is reasonably necessary to amend (2)(a) to clarify the intent of the subsection by providing the specific citation of the relevant statute. Section (3) is being deleted because this rule has been in place for some time and there is no longer a need to provide public notice of the past effective date.

24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

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

(c) provide a recent 2" x 2" photo of ~~himself or herself~~ the applicant.

~~(2) Real estate brokers wishing to obtain a property management license must complete the property management prelicensing course, make application and pay the required fee.~~

~~(3)~~ (2) Real estate brokers and salespersons wishing to obtain a property management license must meet all existing property management licensing requirements, including completion of the prelicensing course described in ARM 24.210.809, passing the examination, make submitting the license application, and paying the required fee.

(4) All ~~applicants~~ individuals successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall invalidate examination results.

~~(5)~~ (3) ~~A property management applicants~~ Applicants for licensure as a property manager must submit proof of have completed completing the a board approved property management prelicensing course obtained within a period of the 24-month period 24 months immediately preceding the date of the submission of the application.

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA
IMP: 37-51-202, 37-51-601, 37-51-603, MCA

REASON: It is reasonably necessary to amend this rule to clarify and better organize the rule for licensee and applicant use. The board is amending this rule to specify that in order to hold a separate property management license, brokers must take and pass the licensing examination. Under current law a salesperson or broker can manage property under a real estate sales or broker license. If the salesperson or broker chooses to pursue a separate property manager license, passing an examination would offer more assurance to the board and the public that the applicant has the same training and knowledge as any other property manager. Further, it will elevate the knowledge of the property management profession and benefit consumers by certifying minimum knowledge levels for all licensed property managers. The board determined that successful passage of an examination is an effective measurement of the applicant's knowledge.

24.210.818 PROPERTY MANAGEMENT EXAMINATION (1) ~~Examination schedule information will be available through the board office~~ License examinations may be held at such times and places as determined by the board.

(2) ~~The following rules established by the examination provider shall be obeyed by all persons taking an examination; , and a disqualification from taking the examination, a finding of lack of good repute, a determination of unsuccessful completion or a license denial may result from any breach thereof:~~ A violation of a rule may result in imposition of any sanction found in 37-1-312, MCA.

~~(a) examinees may not refer to any notes, books, or memoranda during the course of the examination;~~

~~(b) all rough work and calculations must be done on the examination booklet;~~

~~(c) the examinees shall not copy questions, make notes of test content or reveal the contents of examination to others;~~

~~(d) examinees will not leave the examination without permission from the examination proctor for any reason until they have handed in the completed answer sheet and test booklet to the administrator of the examination; and~~

~~(e) examinees will not attempt to obtain or compare answers by viewing or discussing any matter with another examinee during the course of the examination.~~

~~(3) If an applicant for examination fails to take the examination on the date scheduled, he or she must make application in writing to the board or the designated testing entity for rescheduling within 12 months of the date of original application. This application must be accompanied by the rescheduling fee.~~

~~(4)(3) The board may from time to time review and amend the examination type, format, and the score upon which the pass or fail determination is made. Prior notice of any amendment will be afforded to all applicants.~~

~~(5)(4) The passing A score of is 80 percent shall constitute successful completion of the examination.~~

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-312, 37-1-316, 37-51-601, 37-51-603, MCA

REASON: It is reasonably necessary to amend this rule to reflect the current situation in which the property management licensing examinations are administered by a testing entity. The testing entity has established examination rules to ensure security of their examination. The board has determined that an applicant's failure to comply with the rules of the testing entity is a demonstration of unfitness of the applicant. Because the testing entity already has rules in place to ensure exam security, it is unnecessary for the board to duplicate those rules.

The board is proposing to delete the provisions that an applicant failing to take a scheduled examination must reschedule and take the exam within 12 months of the original application date and that the board notify applicants in advance of examination changes. Because the board does not process examination applications or administer examinations, these provisions are no longer necessary.

24.210.825 RENEWALS (1) Except for new licensees as provided in [NEW RULE II], all active and inactive licensees will be required to renew as set by ARM 24.101.413.

~~(2) Renewal notices will be sent as specified in ARM 24.101.414. Each licensee is required to renew.~~

~~(2) Licensees failing to renew their licenses by the date set forth in ARM 24.101.413 may have their licenses reinstated by:~~

~~(a) payment of the current renewal fee as prescribed by the board within 45 days of the renewal date;~~

~~(b) payment of the late penalty fee as specified by ARM 24.101.403; and~~

~~(c) submission of a completed renewal form.~~

~~(3) Licensees cannot renew their license without also completing and submitting the education reporting form at the time of renewal.~~

~~(4) (3) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal date set forth in ARM 24.101.413, or the late penalty fee will be required. An unrenewed license will lapse, expire, or terminate per 37-1-141, MCA.~~

~~(5) remains the same but is renumbered (4).~~

AUTH: 37-1-131, 37-1-141, ~~37-51-202~~, 37-51-203, MCA
IMP: 37-1-101, 37-1-141, 37-51-601, ~~37-51-604~~, MCA

REASON: It is reasonably necessary to amend this rule to clarify that property managers are required to renew their license every year and to provide reference to the applicable department rules on license renewals. In addition, the board is amending this rule to further implement the provisions for licensure lapse, expiration, and termination as set forth in 37-1-141, MCA.

24.210.826 INACTIVE TO ACTIVE STATUS - PROPERTY MANAGEMENT LICENSES AND REACTIVATION OF PROPERTY MANAGEMENT LICENSES (1)

~~A licensee who wishes to retain licensee's license but not engage in licensed activities shall place licensee's license on inactive status by:~~

~~(a) paying the required fee in accordance with 37-51-311, MCA, and ARM 24.210.801;~~

~~(b) forwarding the license to the board office for cancellation of active license; and~~

~~(c) indicating, in writing, "inactive at present".~~

~~(2) A property management licensee who has caused his or her property management license to be placed on inactive status with the board has the sole responsibility to keep the board informed as to any change of the licensee's residency or mailing address during the period of time the property management licensee remains on inactive status.~~

~~(3) To maintain licensed status, inactive licensees must pay the renewal fee and annually complete the required education, and provide verification of that education.~~

(1) In order to become active, an inactive property management licensee must:

(a) file a change of address application;

(b) provide evidence of completing 24 hours of continuing education within the proceeding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; and

(c) pay the required fee in accordance with ARM 24.210.801.

AUTH: 37-1-131, 37-1-319, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-311, 37-51-601, 37-51-603, MCA

REASON: It is reasonably necessary to amend this rule to advise inactive licensees of a change in the requirements for converting to active license status. The board is amending this rule to no longer require inactive licensees to maintain and report continuing education while on inactive status. The board concluded that it is more beneficial to licensees and provides more public protection for inactive licensees to complete adequate and updated education when converting to active status than it is for inactive licensees to continually obtain and report education that may not be utilized or applied for some time. Requiring the licensees complete the education

within a 24-month period immediately prior to becoming active ensures that the education is current, regardless of the time spent on inactive status.

24.210.828 UNPROFESSIONAL CONDUCT GROUNDS FOR DISCIPLINE OF PROPERTY MANAGEMENT LICENSEES - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

(1) In any transaction in which a property management licensee is involved as a licensee or as a party, has held himself or herself self out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee has failed to meet the generally-accepted standards of practice.

(2) remains the same.

(3) In addition to all other provisions contained in the statutes and rules administered by the board, ~~particularly 37-51-606, MCA, failure to comply with any of the following will constitute an act against the interest of the public~~ the following are considered unprofessional conduct:

(a) ~~Licensees must~~ failing to maintain a level of knowledge customary for licensees of this state, including laws and rules administered by the board;

~~and shall not violate~~ violating laws and rules affecting any transaction in which ~~he or she~~ the licensee acts;

~~(b) Licensees shall not engage~~ engaging in activities that constitute the practice of law;

~~(c) Licensees, prior to engaging in the services of any attorney, insurance agent, or other like person or like entity, on behalf of a principal, third-party, or other person, shall inform~~ without informing and obtaining consent from the person obligated to pay for the services ~~and obtain consent from that person;~~

~~(d) Licensees, in engaging or recommending the services of an attorney, insurance company, or other like person or entity, on behalf of a principal, third-party, or other person, shall disclose~~ without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or property management agency with which the licensee is associated may have in that person or entity being engaged or recommended;

~~(e) The licensee is not required to either investigate or disclose whether a registered sexual or violent offender resides in proximity to any property with which the licensee manages, shows, negotiates for the rental, or otherwise is involved;~~

~~(f) Licensees may not falsify~~ falsifying documents, ~~place or placing~~ signatures on documents without authority of a written power of attorney from the party, or ~~commit~~ committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act;

~~(g) Licensees may not entering into~~ a transaction or agreement with the intent not to perform;

~~(h) Licensees may~~ failing to make reasonable efforts to perform all obligations arising from any agreement entered into;

~~(i) Property managers may not act~~ acting as a broker unless they hold without holding that license separately;

~~(j) Licensees may not violate the Landlord-Tenant Act (70-24-101 violating the landlord tenant laws of Title 70, chapter 24, MCA);~~

~~(k) (l) Licensees may not violate violating the state and federal human rights statutes;~~

~~(l) (m) Licensees may not violate violating the Americans with Disabilities Act;~~

~~(m) (n) Licensees when entering into a management agreement shall failing to make a prompt effort to verify that the principal entering the agreement is the owner or is authorized by the owner to enter such agreement;~~

~~(n) (o) Licensees shall failing to disclose to all customers and clients their contractual relationship;~~

~~(o) (p) A licensee may not openly advertise advertising property belonging to others, whether by means of printed material, radio, television, or display, or by other means, unless licensee has without a signed property management agreement from the owner of the property. The agreement must be valid as of the date of advertisement. Internet advertising is subject to the provisions of ARM 24.210.430;~~

~~(p) (q) Licensees shall failing to include the name of the property management company, or the term "property manager" in any real estate advertising, including property owned by the licensee. Internet advertising is subject to the provisions of ARM 24.210.430.~~

~~(q) (r) A licensee shall failing to disclose the fact that he/she the individual is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another.~~

~~(r) (s) A licensee shall failing, as a licensee, to repay the recovery account for any amounts due and owing the account caused by any actions, negligence or misrepresentation of the licensee. paid from the account based on an unsatisfied judgment against the licensee;~~

~~(s) managing property without a written property management agreement in place, signed by the owner;~~

~~(t) failing to comply with all continuing education completion and reporting requirements as established by the board;~~

~~(u) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;~~

~~(v) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act; or~~

~~(w) failing to respond to a request from the board.~~

(4) The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or similar occupation or profession, shall be grounds for license discipline in this state, if the board, after appropriate notice and hearing, determines that the substantive grounds for that disciplinary treatment demonstrates the licensee's unworthiness or incompetency to act as a property manager.

(5) A licensed property manager is responsible for the actions of their employees who aid or assist the property manager in the performance of property management functions. At no time may an unlicensed employee perform an activity for which a license is required.

AUTH: 37-1-131, 37-1-136, 37-1-319, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-1-319, 37-51-202, 37-51-508, 37-51-512, 37-51-601, ~~37-51-606~~, 37-51-607, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to better define unprofessional conduct, clarify current practice, be more reflective of board interpretation of statutes, and more comprehensively guide property managers and property owners in conducting licensed activity. The board is also adding several definitions to the acts constituting unprofessional conduct.

The board is amending this rule regarding the recovery account from which the board can authorize repayment of unsatisfied judgments owed by the licensee to an individual. As the board is authorized to require that the licensee repay disbursed amounts to the account, it is reasonably necessary to include as unprofessional conduct the failure to repay the account and to impose discipline for such failure.

The board determined that it is reasonably necessary to require that written property management agreements, signed by the property owner, are utilized whenever a property manager is managing property. This amendment protects the public by placing licensees on notice that failure to use written property management agreements, detailing the specific duties of the property manager and owner, is considered unprofessional conduct.

The board finds that to protect the public and ensure that licensees have requisite knowledge, it is necessary that licensees complete and report the necessary continuing education as specified by board rule. Failure to do so is therefore considered unprofessional conduct.

It is reasonably necessary to protect the public from licensees who enter into business dealings with individuals without fully disclosing pertinent facts, including disclosure of potential monetary gain by a licensee for referring other service providers or for hiring service providers on behalf of a client. Therefore, it is reasonably necessary to include in unprofessional conduct the act of gaining monetarily without full disclosure of all monetary gain to all parties involved.

The board deems acts of deception, fraud, and misappropriation to be harmful to the public and therefore, it is reasonably necessary to include commission of those acts in this rule so that the board can take disciplinary action against a licensee who conducts such offenses.

The board considers it unprofessional conduct for licensees to fail to respond to board inquiry, such as failure to respond to a complaint or to education audits. The board needs to have complete and accurate information to do its work properly.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each ~~property management~~ active licensee is required to complete a minimum of 12 hours of board-approved continuing property management education every year. ~~A minimum of four hours must come from mandatory property management specific topics determined by the board and eight hours may come from elective topics approved by the board.~~

(2) ~~No more than six hours of elective topics may be carried over. No mandatory hours may be carried over to any other year.~~ The licensee must attend

90 percent of each hour of the approved course time in order to receive credit for attendance.

(3) The required hours shall be in courses approved by the board.

(4) By August 1 of each year, the board will identify topics in which the 12 hours of education must be obtained. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

~~(3) (5) No course shall be repeated~~ licensee may repeat a course for credit in the same calendar year.

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

(7) The course provider must provide board-approved course and instructor evaluation forms to course attendees. A board representative may collect the forms and forward them to the board office.

~~(5) (8) A board representative may, at no charge, audit all board-approved courses at no charge for rule compliance.~~

(9) All approved education must be available to all licensees.

~~(6) The board may audit licensees for compliance with continuing education requirements. Audited licensees must provide copies of completion certificates to the board as verification of compliance within 30 days after mailing the audit request.~~

~~(7) An education reporting form attesting to the successful completion of the continuing education requirement must be submitted to the board by the date set by ARM 24.101.413. Filing of an education reporting form after the renewal date set by ARM 24.101.413, but on or before 45 days following the renewal date, will result in a late penalty fee.~~

(10) All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

(11) Instructors or their designee must report all education attendance in a format approved and provided by the board.

(12) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course approval or withdrawal of the instructor approval.

(13) All continuing education courses must be taken and completed within the reporting period. No carryover hours will be accepted from one reporting period to another.

(14) Failure to comply with the continuing education requirements established by the board is unprofessional conduct and will result in disciplinary action by the board.

AUTH: 37-1-131, 37-1-319, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: It is reasonably necessary to amend this rule to more clearly delineate the board's current continuing education requirements. This will lessen confusion and address questions posed by licensees on continuing education reporting and attendance requirements, and the obligations of course providers to licensees.

Continuing education will no longer be required for inactive licensees until they convert to active status. Therefore, the board is specifying in this rule that the continuing education requirements apply only to active licensees.

It is reasonably necessary to update and amend the property management continuing education rules to require online reporting of continuing education, attendance of all licensees, and elimination of carryover hours in order to accommodate the new education tracking system. This new tracking system will allow licensees to check their education on the Internet throughout the year and determine the amount of continuing education needed prior to renewal. The system will display what courses have been reported to the board for an individual licensee and allow the licensee to monitor their attendance and accumulation of hours, thus eliminating the necessity for licensees to report continuing education. The tracking system will allow the board to determine at renewal time which licenses are eligible for renewal. The board notes that the new tracking system currently lacks the ability to keep track of carryover credits. Therefore, it is reasonably necessary to eliminate carryover credits. The board is also amending this rule to correspond with the addition of failure to comply with continuing education requirements to the unprofessional conduct rule.

24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION -- COURSE APPROVAL (1) Requests for approval of a continuing real-estate property management education course must be made on forms approved by the board or its designee and submitted at least 30 days prior to the date of the intended course, with payment of the required fee.

~~(2) Expiration of course approval is December 31 of each year, but may be revoked for cause.~~ The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Course approval may be revoked for cause.

~~(3) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board.~~

~~(4) (3)~~ Courses must be designed so that no more than ten minutes per hour are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

~~(5) Courses offered in another state and approved by that state's property management licensing body for continuing education, are recognized and approved. Courses must fall within the topics or subject matter specified for the board for education credit. Licensees shall provide evidence of course completion or proof of attendance satisfactory to the board.~~

~~(6) (4)~~ Upon request the The board or its designee may, at its discretion and without requiring further qualification, approve courses authorized or approved by another state's licensing authority. from the approved topic list under the following instances:

(a) courses approved by another jurisdiction's real estate licensing authority,
or

(a)(b) Courses courses which lead to designations or certifications by board recognized trade or professional associations. approved by the National Association

~~of Realtors or other recognized trade and professional associations are automatically approved without requiring further qualification.~~

~~(b) Courses approved under this rule must fall within the topics or subject matter specified by the board for education credit.~~

~~(7) (5) The A distance education course shall may be approved if the board determines that:~~

~~(a) the distance education course serves to protect the public by contributing to the maintenance and improvement of the quality of property management services provided by property management licensees to the public;~~

~~(b) (a) an appropriate and complete application has been filed and approved by the board;~~

~~(c) the information specified in the guidelines for distance education as adopted by the board has been submitted and approved;~~

~~(d) (b) the distance education course meets the content requirements as established under ARM 24.210.835(1); and~~

~~(c) the distance education course provider is certified by the Association of Real Estate License Law Officials (ARELLO) and provides appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should ARELLO certification be discontinued for any reason; and~~

~~(e) (d) the distance education course meets all other requirements as prescribed in the statutes and rules which govern the operation of approved courses.~~

~~(8) Courses which are presently ARELLO certified will be approved under this rule by providing appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of ARM 24.210.835(1), along with any other requirements of the board. Approval under this subsection will cease immediately should ARELLO certification be discontinued for any reason.~~

AUTH: 37-1-131, 37-1-319, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: It is reasonably necessary to amend this rule to more clearly delineate the board's continuing property management education course approval requirements and to clarify the board's discretion and ability to approve courses provided the courses meet the requirements in this rule. The board is not changing the process for approving these courses, but simply clarifying that board approval is not mandatory. The board is also amending this rule so the property management continuing education course approval process mirrors the real estate course approval process. This amendment will assist those providers that offer courses for both professions. It will also assist in the department administration of the education approval process if both programs follow the same process.

This rule is being amended to allow board or department staff to approve the forms used in the board's approval of courses, which will simplify and expedite the preparation of the forms. The board is amending the rule to clarify for licensees that, after expiration of a course approval, updated information must be submitted to maintain board approval. The board is deleting from this rule the requirement that distance education courses contribute to the maintenance and improvement of the quality of real estate services. The board determined that since this is a

measurement applied to all courses in developing the acceptable topics lists, it is not necessary to include it in rule as a specific additional requirement.

It is reasonably necessary to delete the provision on course instructor approval in (3) from this rule and instead relocate the section to ARM 24.210.843, the rule on property management education instructor approval.

24.210.843 CONTINUING PROPERTY MANAGEMENT EDUCATION -- INSTRUCTOR APPROVAL (1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted at least 30 days prior to the intended instruction with payment of the required fee.

~~(2) Expiration of instructor approval is December 31 of each year, but may be revoked for cause. The initial approval of a course an instructor will be in effect for the remainder of that calendar year and the next calendar year in its entirety, expiring December 31. Approval may be revoked if the instructor fails to demonstrate effective teaching skills.~~

(3) remains the same.

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of property management or current experience or qualifications approved by the board; or

(b) a designated real estate instructor or other nationally recognized instructor designation; ~~or,~~

~~(c) such other qualifications as are determined by the department or board to meet the spirit and intent of these requirements; or~~

~~(d) experience in the area of instruction and have a designation as a real estate instructor by the Real Estate Educators Association.~~

(4) ~~Insofar as the property management related topic of instruction is limited to their fields of expertise, persons~~ Persons such as attorneys, investigators, government officers or employees, or mortgage loan officers, may be approved as instructors or may act as speakers under the supervision of approved instructors as long as instruction is limited to the instructor's field of expertise.

(5) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board or its designee.

AUTH: 37-1-131, 37-1-319, ~~37-51-202~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, MCA

REASON: This rule is being amended to allow board or department staff to approve the forms used in the board's approval of instructors, which will simplify and expedite the preparation of the forms. It is reasonably necessary to amend this rule to more clearly delineate the board's approval requirements for continuing property management education instructors and to clarify the board's discretion in granting and revoking such approval. It is reasonably necessary to delete an incorrect reference in (2) to "course" approval and to insert the correct reference to "instructor" approval. Further, section (5) is being added to this rule as it is being deleted from

ARM 24.210.840, the rule on course approval, as it is more appropriate to include it in this rule on instructor approval

It is reasonably necessary to amend this rule to achieve consistency with amendments to the real estate continuing education instructor approval process. This will assist any instructor who wants to teach both real estate and property management courses by allowing them to use the same approval process to instruct both types of courses. It will also assist in the department administration of the education approval process if both programs follow the same process.

It is reasonably necessary to include (5) here as it was previously inadvertently placed in the rule regarding course approval. It is more appropriate to have it in this rule regarding instructor approval.

6. The proposed new rules provide as follows:

NEW RULE I INACTIVE STATUS (1) A licensee not engaged in licensed activities may place the licensee's license on inactive status by:

- (a) paying the required fee;
- (b) forwarding the license to the board office for cancellation of the active license; and
- (c) submitting, in writing, a request that the license be placed on inactive status.

(2) In order to avoid lapse, expiration, or termination of their license, inactive licensees must renew their inactive license each renewal period.

(3) Inactive licensees do not need to report continuing education until they reactivate their license as found in ARM 24.210.826.

(4) Inactive licensees may not receive compensation for property management activity not earned while their license was active.

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-51-203, MCA

IMP: 37-1-101, 37-1-131, 37-1-141, 37-1-319, 37-51-601, MCA

REASON: It is reasonably necessary to adopt this new rule to explain and outline the process to place a property management license on inactive status and to clarify that inactive licensees must continue to renew to avoid licensure lapse, expiration, and termination. This rule also memorializes the board's policy prohibiting the receipt of compensation for licensed activity while on inactive status. The new rule will more clearly inform current licensees of the process and the board's expectations of them while on inactive status.

NEW RULE II NEW LICENSEE MANDATORY CONTINUING EDUCATION -- PROPERTY MANAGER (1) All new property management licensees are required to complete 12 hours of new licensee mandatory continuing education by the second renewal date as set by ARM 24.101.413 following their original license issue date. Six of those hours must consist of:

- (a) two hours of trust accounts;
- (b) two hours of leasing principles; and
- (c) two hours of state law update.

(2) New property managers will receive an interim license that expires on the second renewal date as set by ARM 24.101.413 following their original license issue date.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-306, 37-1-319, 37-51-603, MCA

REASON: It is reasonably necessary to adopt this rule to require that all new property management licensees complete a specific number of hours in specific topics during their first two years of licensing. This requirement is intended to instruct new property managers in areas of responsibility that the board deems critical to good practice. The emphasis of this coursework after a license is received allows the new licensee to have a familiarity with, and apply the course work to, the actual workings of the industry rather than simply book knowledge received through the prelicensing education requirement.

7. The rules proposed to be repealed are as follows:

24.210.405 APPLICATION OF RULES--SUBCHAPTER DISTINCTION found at ARM page 24-24029.

AUTH: 37-51-203, 37-53-104, MCA
IMP: 37-51-203, 37-53-104, MCA

REASON: It is reasonably necessary to repeal this rule since the rules are now organized and numbered according to license type following the 2001 transfer from the Department of Commerce to the Department of Labor and Industry. The title of each rule section identifies its purpose, so this rule is no longer necessary.

24.210.435 INVESTIGATIONS COMMITTEE found at ARM page 24-24047.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-322, MCA

REASON: It is reasonably necessary to repeal this rule as it no longer reflects the complaint and investigative process used by all boards within the department. An investigation is conducted by department investigators and not by board members or a committee of the board and a reasonable cause determination is made by the complaint screening panel of the board as required by 37-1-307, MCA.

24.210.603 APPLICATION FOR EXAMINATION -- SALESPERSON AND BROKER found at ARM page 24-24070.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-302, 37-51-303, MCA

REASON: It is reasonably necessary to delete the requirement that examination applicants use board forms and additional fees. Application for examination is made directly to the testing entity according to their established requirements. It is not necessary for the board to place additional requirements on the applicant.

24.210.621 NONRESIDENT LICENSE -- SALESPERSON AND BROKER
found at ARM page 24-24081.

AUTH: 37-1-131, 37-51-203, MCA
IMP: 37-51-202, 37-51-302, 37-51-306, MCA

REASON: It is reasonably necessary to repeal this rule as unnecessary because it does not further clarify any board statute or rule. All licensees, resident or nonresident, must meet the same requirements for a Montana real estate license.

24.210.815 APPLICATION FOR PROPERTY MANAGEMENT
EXAMINATION found at ARM page 24-24135.

AUTH: 37-1-131, 37-51-202, 37-51-203, MCA
IMP: 37-51-603, MCA

REASON: It is reasonably necessary to repeal this rule because the board does not receive or process license examination applications. That function is contracted to the exam provider and this rule is no longer necessary.

24.210.836 CONTINUING PROPERTY MANAGEMENT EDUCATION
REPORTING REQUIREMENTS found at ARM page 24-24148.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-101, 37-1-131, 37-1-306, 37-1-319, MCA

REASON: It is reasonably necessary to repeal this rule because it is no longer necessary for licensees to report continuing education as the board has implemented a new computerized education tracking system.

8. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to realestate@mt.gov, and must be received no later than 5:00 p.m., May 11, 2007.

9. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at realestate.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text

will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to realestate@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

12. Kathy Lubke, Rules Unit Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
TEDDY BEEBE, CHAIRPERSON

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

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

DEPARTMENT OF LABOR AND INDUSTRY

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

Certified to the Secretary of State April 2, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption) NOTICE OF EXTENSION OF
of NEW RULES I through V related to) COMMENT PERIOD ON
country of origin placarding for beef, pork,) PROPOSED ADOPTION
poultry, and lamb)

TO: All Concerned Persons

1. On October 26, 2006, the Department of Labor and Industry (department) published MAR Notice No. 24-351-212 regarding the adoption of the above-stated rules, at page 2469 of the 2006 Montana Administrative Register, issue no. 20.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 11, 2007 to advise us of the nature of the accommodation that you need. Please contact the Business Standards Division, Department of Labor and Industry, Attn: Lisa Johnson, P.O. Box 200517-0517, Helena, MT 59620-0517; telephone (406) 841-2046; fax (406) 841-2050; TDD (406) 444-5549; or e-mail lisaj@mt.gov.

3. On November 29, 2006, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Numerous individuals attended the hearing. Some spoke as proponents and some as opponents. Several comments were received by the December 6, 2006, deadline. However, after the comment period closed, the department received a number of additional written comments concerning the proposed rules. Upon due consideration, the department concludes that it is in the public interest to extend the public comment period with respect to MAR Notice No. 24-351-212. The department hereby extends the comment period to May 25, 2007. The text of the rules remain as originally proposed. Persons who have already submitted comments with respect to MAR Notice No. 24-351-212 do not need to resubmit comments as the department will respond when the department takes final action on the proposed new rules.

4. Concerned persons may submit their data, views, or arguments to: Jack Kane, Deputy Administrator, Business Standards Division, Department of Labor and Industry, P.O. Box 200517, Helena, Montana 59620-0517; by facsimile to (406) 841-2050; or by e-mail to jkane@mt.gov, and must be received no later than 5:00 p.m., May 25, 2007. Persons who desire a copy of the original proposed text may contact Jack Kane.

5. An electronic copy of this Notice of Public Hearing is available through the department's site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in

the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing the web site or sending an e-mail 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 list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 2, 2007

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

In the matter of the proposed)
amendment of ARM 36.12.101,)
definitions and ARM 36.12.113,)
reservoir standards)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On May 2, 2007, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Bannack Conference Room (bottom floor), at the Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 26, 2007, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620, (406) 444-6614, fax (406) 444-0533, or e-mail to kovercast@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (48) remain the same.

(49) "Place of storage" means a reservoir, pit, pit-dam, or pond.

(49) through (77) remain the same, but are renumbered (50) through (78).

AUTH: 85-2-113, MCA

IMP: 85-2-402, 85-2-407, MCA

36.12.113 RESERVOIR STANDARDS

(1) through (5) remain the same.

(6) Place of storage does not include:

(a) reservoirs, pits, pit-dams, or ponds with a capacity of less than 0.10 acre-foot; or

(b) the use of a temporary or permanent diversion structure within a canal or ditch designed to raise water surface elevation for primary diversions or to direct flows to a secondary conveyance facility.

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

AUTH: 85-2-113, MCA

IMP: 85-2-402, 85-2-407, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary to ensure that the public understands when a water right change application must be filed for a place of storage and will comply with filing such a change application.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than May 10, 2007.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The agency 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 conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, MT 59620, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State on April 2, 2007.

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

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
37.30.404 and 37.30.405 pertaining to)	ON PROPOSED AMENDMENT
Vocational Rehabilitation Program)	
financial need standards and payment)	
for services)	

TO: All Interested Persons

1. On May 2, 2007, 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 April 23, 2007, 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; e-mail 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.

37.30.404 VOCATIONAL REHABILITATION PROGRAM: ADAPTATIONS OF FINANCIAL NEED STANDARDS (1) ~~The department may, within its discretion, use adaptations of the financial need standard where the situation of a client is one of special circumstances which are subject to objective definition by documentation. These objectively defined circumstances include: variations in need due to special needs accompanying designated types of disabilities; variations in need based on the nature of living requirements in different localities; variations in need based on the nature of living requirements caused by particular rehabilitative services to be provided; and variations in need due to short periods of medical care for acute physical and mental conditions arising during the course of vocational rehabilitation. The department will direct the exercise of this discretion and determine the circumstances in which it may be utilized.~~ The department may, within its discretion, use in relation to a particular consumer adaptations of the financial need standard and other standards describing specific financial limitations adopted through these rules when the department determines:

- (a) one or more standards limit the consumer's access to an identified rehabilitation need in the consumer's individual employment plan;
- (b) there is not a commensurate service option available through the

department or another program available to the consumer to address the rehabilitation need; and

(c) the consumer has insufficient financial resources by which to obtain the rehabilitation need.

AUTH: 53-7-102, 53-7-206, 53-7-302, 53-7-315, MCA

IMP: 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-205, 53-7-303, 53-7-306, 53-7-310, MCA

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

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

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2006~~ 2007 U.S. Department of Health and Human Services poverty guidelines for households of different sizes.

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

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

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

3. ARM 37.30.404

The Vocational Rehabilitation Program is a federally authorized program of services administered by the state to assist persons who are injured or disabled in achieving gainful employment. Coverage of the services available through the program in part is predicated upon the financial status of the consumer. There are various criteria and procedures that determine how much financial support is available to a consumer and to what degree the consumer is to participate in financially contributing to payment for the services coordinated by through the Vocational Rehabilitation Program. Currently, in ARM 37.30.404 the department allows for exceptions to the imposition of those various financial standards.

The Rehabilitative Services Division of the United States Department of Education conducts Federal Technical Assistance and Monitoring of state administered Vocational Rehabilitation Programs. After the most recent review of the Montana program, the federal authorities instructed the Montana Vocational Rehabilitation to further refine the criteria in ARM 37.30.404 allowing for exceptions to the financial standards relating to a consumer's participation in vocational rehabilitation services. The standards are not applied so as to arbitrarily limit the nature and scope of services. The department is to assure that the exception criteria to the standards allow the standards to be adjusted as appropriate to individual cases so that the provision of services may be "based on the rehabilitation needs of the individual

consistent with the IPE” (34 CFR 361.50). In response, the department is proposing changes to ARM 37.30.404 to broaden the scope of the permissible exceptions to be inclusive of nonfinancial standards governing access to the services available through the program. The proposed rule changes address the concerns of the federal authorities by allowing for more broader application of the discretionary exceptions available from the department under the rule and also by providing for more consistent application of the exceptions. The department, in order to reflect this broader scope, is proposing that the rule title be changed from "Adaptations of Financial Need Standard" to "Adaptations of Standards".

ARM 37.30.405

The department is proposing to amend ARM 37.30.405, Vocational Rehabilitation Program: Payment for Services. This rule sets forth the criteria that allow for the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

The proposed amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2006 United States Department of Health and Human Services poverty guidelines for households. The proposed rule change would revise this level by replacing the year 2006 guidelines with the year 2007 guidelines.

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

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

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 10, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to 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.

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

/s/ Cary Lund
Rule Reviewer

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

Certified to the Secretary of State April 2, 2007.

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

In the matter of the amendment of ARM)
37.85.212 pertaining to the resource)
based relative value scale (RBRVS))
)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 2, 2007, at 3:00 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 amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice 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 April 23, 2007, 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; e-mail dphhslegal@mt.gov.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) through (e) remain the same.

(f) "Resource based relative value scale (RBRVS)" means the most current version of the Medicare resource based relative value scale contained in the physicians' Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~70~~ 71 Federal Register ~~70116 (November 21, 2005)~~ 69736 (December 1, 2006), effective January 1, ~~2006~~ 2007 which is adopted and incorporated by reference. A copy of the Medicare Physician Fee Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(g) through (2)(s) remain the same.

(3) Except as set forth in ~~(8)~~ (7) through ~~(12)(a)(vi)~~ (11)(a)(vi), the fee for a covered service provided by any of the provider types specified in (2) through (2)(s) is determined by multiplying the RVUs determined in accordance with ~~(7)~~ (6) through

~~(7)(b)(iii)~~ (6)(a)(ii)(C) by the conversion factor, which is required to achieve the overall budget appropriation for physician provider services in House Bill 2 of the 2005 legislative session (the General Appropriations Act of 2005) made by the Montana Legislature in the most recent legislative session and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in ~~(4) or (5)~~, if any.

~~(4)~~ On July 1, 2006, \$324,500 total additional funds for state fiscal year 2007 will be applied to well child preventative visits.

~~(5)~~ (4) For state fiscal year ~~2007~~ 2008, policy adjustors will be used to accomplish the targeted funding allocations, which apply to family planning services, maternity services, and well child preventative visits as directed by the legislature. The department's list of services affected by policy adjustors through January 1, ~~2006~~ 2007 is adopted and incorporated by reference. The list is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(6)~~ (5) The RVUs for most services are adopted from the resource based RBRVS. ~~For most services for which the RBRVS does not specify RVUs, the department sets those RVUs.~~

(6) For services for which the RBRVS does not specify RVUs, the department sets those RVUs as follows:

~~(7)~~ (a) The RVUs for a Medicaid covered service provided by any of the provider types specified in (2) are calculated as follows:

~~(a)~~ (i) if Medicare sets RVUs, the Medicare RVUs are applicable;

~~(b)~~ (ii) if Medicare does not set RVUs but Medicaid sets RVUs, the Medicaid RVUs are set in the following manner:

~~(i)~~ (A) convert the existing dollar value of a fee to an RVU value;

~~(ii)~~ (B) evaluate the RVU of similar services and assign an RVU value; or

~~(iii)~~ (C) convert the average by report dollar value of a fee to an RVU value.

~~(8)~~ (7) Except for physician administered drugs as provided in ARM 37.86.105(3), clinical, laboratory services and anesthesia services, if neither Medicare nor Medicaid sets RVUs, then reimbursement is by report.

(a) Through the by report methodology the department reimburses a percent of the provider's usual and customary charges for a procedure code where no fee has been assigned. The percentage is determined by dividing the previous state fiscal year's total Medicaid reimbursement for RBRVS provider covered services by the previous state fiscal year's total Medicaid billings.

(b) For state fiscal year ~~2007~~ 2008, the by report rate is ~~46%~~ 46% of the provider's usual and customary charges.

~~(9)~~ (8) For clinical laboratory services for which there is an established fee:

(a) the department pays the lower of the following for procedure codes with fees:

(i) the provider's usual and customary charges for the service; or

(ii) 60% of the Medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(iii) the established Medicaid fee.

(b) for clinical laboratory services for which there is no established fee, the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the service;
(ii) the rate established using the by report methodology; or
(A) for purposes of ~~(9)(b)~~ (8)(b) through ~~(9)(b)(iii)~~ (8)(b)(iii), the by report methodology means averaging 50 paid claims for the same code that have been submitted within a 12 month span and then multiplying the average by the amount specified in ~~(8)(b)~~ (7)(b).

(iii) the historical comparative value of the procedure as indicated by the reimbursement amount paid by Medicaid and other third party payors for the same procedure within the last 12 months.

~~(40)~~ (9) For anesthesia services the department pays the lower of the following for procedure codes with fees:

(a) the provider's usual and customary charges for the service;
(b) a fee determined by multiplying the anesthesia conversion factor by the sum of the applicable base and time units, and then multiplying the product by a factor of one plus or minus the applicable policy adjustor, if any;

(c) the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the services; or
(ii) the by report rate.

~~(44)~~ (10) For equipment and supplies:

(a) the department pays the lower of the following for durable medical equipment (DME) items with fees:

(i) the provider's invoice cost for the DME; or
(ii) the Medicaid fee schedule as provided in ARM 37.86.1807.

(b) the department pays the lower of the following for DME items without fees:

(i) the provider's invoice cost for the DME; or
(ii) the by report rate provided in ~~(8)(b)~~ (7)(b).

(c) except for the bundled items as provided in ~~(43)~~ (12), the department pays the lower of the following for supply items with fees:

(i) the provider's invoice cost for the supply item; or
(ii) the Medicaid fee schedule as provided in ARM 37.86.1807.

(d) except for bundled items as provided in ~~(43)~~ (12), the department pays the lower of the following for supply items without fees:

(i) the provider's invoice cost for the supply item; or
(ii) the by report rate provided in ~~(8)(b)~~ (7)(a).

~~(42)~~ (11) Subject to the provisions of ~~(42)(a)~~ (11)(a), when billed with a modifier, payment for procedures established under the provisions of ~~(7)~~ (6) is a percentage of the rate established for the procedures.

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) The department obtains information from Medicare and other third party payors regarding the comparative value utilized for payment of procedures billed with modifiers.

(ii) The department establishes a specific percentage for each modifier based upon the purpose of the modifier, the comparative value of the modified service and the medical insurance industry trend of reimbursement for the modifier.

(iii) The department's list of the specific percents for the modifiers used by Medicaid as amended through January 1, 2005 is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) Notwithstanding any other provision, procedure code modifiers "80", "81", "82", and "AS", used by assistant surgeons shall be reimbursed at 16% of the department's fee schedule.

(v) Notwithstanding any other provision, procedure code modifier "62" used by cosurgeons shall be reimbursed at 62.5% of the department's fee schedule for each cosurgeon.

(vi) Notwithstanding any other provision, subsequent surgical procedures shall be reimbursed at 50% of the department's fee schedule.

~~(13)~~ (12) In applying the RBRVS methodology set forth in this rule, Medicaid reimburses in accordance with Medicare's policy on the bundling of services, as set forth in the physicians' Medicare Fee Schedule adopted by CMS and published in the Federal Register annually, whereby payment for certain services constitutes payment for certain other services which are considered to be included in those services.

~~(14)~~ (13) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the Federal Health Care Administration's Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the Health Resources Division at the address previously stated in this rule.

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

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

3. The Medicaid program provides medical assistance to qualified low income and disabled residents of Montana. The state of Montana and the federal government jointly fund the program. The Montana Medicaid program pays enrolled providers for services to eligible individuals. The purpose of this rule amendment is to update the Resource Based Relative Value Scale (RBRVS) fees paid to enrolled providers in accordance with the most recently published relative value units (RVUs) released by the Centers for Medicare and Medicaid Services (CMS). This rule amendment is necessary to incorporate the updated relative value units (RVUs) published in the Federal Register in December 2006. The updated RVUs are effective for the Medicare program on January 1, 2007. The change in the Montana Medicaid fees is effective July 1, 2007.

Since August 1997 the Department of Public Health and Human Services (DPHHS) has used RBRVS-based fee schedules as the basis for paying almost all services provided by physicians, mid-level practitioners, therapists, and other individual practitioners. RBRVS was developed by the Medicare program and first implemented in 1992. It is now widely used by the Medicare plans, Workers' Compensation plan, and private sector insurers. For DPHHS and these other payors, the only services not typically paid via RBRVS are anesthesia services,

clinical lab services, drugs provided in the office, durable medical equipment and supplies provided in the office, and a few miscellaneous items such as blood products.

Each procedure is identified by a number system, referred to as CPT code and Healthcare Common Procedure Coding System (HCPCS). The CPT and HCPCS code is assigned a relative value unit (RVU). The RVUs represent work, practice expense, and professional liability insurance. Annual updates to RVUs are based on recommendations of a committee of the American Medical Association (AMA) and the Specialty RVS Update Committee (RUC). Montana Medicaid incorporates these updates at the beginning of each state fiscal year. For each CPT and HCPCS code the RVUs are set at a national level and are adjusted to the Montana setting using Medicare's Geographic Practice Cost Index (GPCI) for Montana.

Payments are calculated by multiplying the combined costs (the RVU) by a conversion factor (CF), a monetary amount that is determined by each payor. Medicaid is a payor. Additionally, policy adjustors are applied for those services that receive either fewer or additional targeted funds such as obstetric care, well child screens, and family planning. Policy adjustors can be used to increase or decrease a level of payment.

The RBRVS calculation formula is $RVU * CF * \text{policy adjustor} = \text{reimbursement rate}$. For example, in SFY 2006 two commonly billed services in the physician related service program were 99213 (office/outpatient visit) and 59400 (obstetric care). The RBRVS calculation for these are:

59400 - global package for vaginal delivery
RVU = 40.948
CF = \$32.81
Maternity policy adjustor = 1.25
 $40.948 \times 32.81 \times 1.25 = \text{fee of } \1679.38

99213 - level 3 office visit
RVU = 1.279
CF = \$32.81
 $1.279 \times 32.81 = \text{fee of } \41.96

The 60th Legislature (2007-2008) is in session on the date of publication of this proposed rule amendment. The conversion factor, the by report rate, and the fiscal impact of this rule amendment are estimated as of April 12, 2007. The final rule will reflect changes, if any, resulting from the final actions of the Legislature.

To date the 60th Legislature (2007-2008) has primarily focused on physician reimbursement. ARM 37.85.212 specifies the reimbursement methodology for many medical professional providers (therapists, mid-level practitioners, and podiatrists for example) in addition to physicians. The final impact of the rule change is dependent on the Legislature's appropriation. The proposed amendment to ARM 37.85.212

impacts approximately 84,000 Medicaid clients and 6000 providers.

4. The department intends to apply these rules effective July 1, 2007. In the event the rules are amended retroactively no negative impact is anticipated.

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 May 10, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to 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.

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State April 2, 2007.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.150.401 fees, 24.150.501 examination) AND ADOPTION
pass/fail point, 24.150.503 traineeship)
requirements and standards, 24.150.510)
transactional document requirements -)
form and content, and 24.150.2202)
exceptions, and the adoption of NEW)
RULE I fee abatement)

TO: All Concerned Persons

1. On February 8, 2007, the Board of Hearing Aid Dispensers (board) published MAR Notice No. 24-150-35 regarding the proposed amendment and adoption of the above-stated rules, at page 175 of the 2007 Montana Administrative Register, issue no. 3.

2. On March 5, 2007, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the March 9, 2007, deadline.

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

COMMENT 1: One commenter favored the proposed fee increases.

RESPONSE 1: The board acknowledges the comment.

COMMENT 2: One commenter stated that the fee increase amount is inappropriate and that the legislative mandate of self-sufficiency is not working well for the board. The commenter suggested the board consider merging with another board or transferring the board's function to a consumer protection department.

RESPONSE 2: The board has projected a budget shortfall in FY 2007-2008 if fees are not increased and although unfortunate, the fee increases are appropriate. The board agrees that fiscal self-sufficiency is difficult for a board with relatively few licensees. The board will continue to monitor its expenses, be fiscally responsible, and explore all options including those suggested by the commenter if necessary.

COMMENT 3: One commenter stated that the fee increase of a couple of years ago was acceptable as the fees hadn't been raised in many years, but questioned the justification for this fee increase. The commenter acknowledged the large number of complaints handled by the board and their costs to the board and suggested there

must be other ways to manage board costs instead of raising licensing fees for everyone. The commenter asserted that high fees will drive people from the profession.

RESPONSE 3: The board has determined that the fee increases are necessary to meet operational expenses. The board is statutorily mandated to maintain fees that are commensurate with costs. The board is not authorized to assess discipline costs against the disciplined licensees and so those costs are borne by all licensees. The board will continue to be fiscally responsible in ensuring that qualified individuals are licensed and the public has access to safe and appropriate hearing aid dispensers.

COMMENT 4: One commenter had not heard of the proposed fee increases until March 1, 2007, and objected to any increase because Montana fees are expensive compared to license fees elsewhere.

RESPONSE 4: The Notice of Public Hearing on Proposed Amendment and Adoption (notice) of rules was posted on the board's web site on February 2, 2007. The notice was mailed to all board licensees on February 5, 2007 and was published on February 8, 2007, in the Montana Administrative Register. The public hearing was conducted March 5, 2007, and comments were received until 5:00 p.m. on March 9, 2007. The board met on March 15, 2007, and took action to amend the fees as proposed. The board is statutorily obligated to ensure fees are commensurate with board costs and has projected a 2007-2008 budget shortfall if fees are not increased. The board notes that comparing fees between states can be misleading because the number of licensed dispensers varies from state to state and, in many states, hearing aid dispensers, audiologists, and speech-language pathologists are regulated by a single board resulting in more board licensees and lower fees.

COMMENT 5: Several commenters objected to requiring audiologists to be dually licensed as hearing aid dispensers in order to dispense hearing aids and to paying fees for two licenses.

RESPONSE 5: In order to sell, dispense, or fit hearing aids in this state, an individual is required to hold a hearing aid dispenser license irrespective of any other professional license an individual may have.

COMMENT 6: One commenter who does not dispense hearing aids for profit and whose employer does not pay her state license fees, opposed the fee increase. The commenter suggested no fee increases for audiologists or for the board to waive the license fee for audiologists.

RESPONSE 6: In order to sell, dispense, or fit hearing aids or parts, attachments, or accessories of the instrument or device in this state, an individual is required to hold a hearing aid dispenser license. The board is statutorily required to ensure that fees are commensurate with board costs and the board has no authority to waive fees for

anyone, including those persons who are dually licensed as hearing aid dispensers and audiologists. The board will continue to review its fee structuring and expenses in order to make responsible decisions within budgetary and legal constraints.

4. The board has amended ARM 24.150.401, 24.150.501, 24.150.503, 24.150.510, and 24.150.2202 exactly as proposed.

5. The board has adopted NEW RULE I (24.150.404) exactly as proposed.

BOARD OF HEARING AID DISPENSERS
STEVE WILSON, CHAIRPERSON

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

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

Certified to the Secretary of State April 2, 2007

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.180.401, 24.180.404, and 24.180.407) AND ADOPTION
general provisions, 24.180.504 and)
24.180.506 licensing and scope of practice,)
24.180.601 and 24.180.604 reciprocity)
licensure, and the adoption of NEW RULE)
I temporary exemptions and NEW RULE)
II reciprocity)

TO: All Concerned Persons

1. On November 22, 2006, the Board of Plumbers (board) published MAR Notice No. 24-180-43 regarding the amendment and adoption of the above-stated rules, at page 2892 of the 2006 Montana Administrative Register, issue no. 22.

2. On December 14, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.180.401, 24.180.404, 24.180.407, 24.180.504, 24.180.506, 24.180.601, and 24.180.604 exactly as proposed.

4. The board has adopted NEW RULE I (24.180.508) and NEW RULE II (24.180.603) exactly as proposed.

BOARD OF PLUMBERS
TIM REGAN, CHAIRPERSON

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

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

Certified to the Secretary of State April 2, 2007

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.207.506 qualifying education) AND ADOPTION
requirements for residential certification,)
24.207.509 qualifying experience,)
24.207.517 trainee requirements, and)
24.207.2101 continuing education, and the)
adoption of NEW RULE I scope of practice)

TO: All Concerned Persons

1. On January 25, 2007, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-28 regarding the amendment and adoption of the above-stated rules, at page 75 of the 2007 Montana Administrative Register, issue no. 2.

2. On February 15, 2007, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the February 23, 2007, deadline.

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

COMMENT 1: One commenter questioned the meaning of progressive participation in ARM 24.207.509(3) and stated that it could have many different meanings. The commenter asked how progressive participation is documented in the experience log and noted that the current board log shows assignment types such as "a completed" or "a limited" which are terms no longer used in the business.

The commenter questioned the function of the appraisal process and what the board is trying to accomplish by adding progressive participation. The commenter asserted that progressive participation is more than what The Appraisal Foundation requires. The commenter also stated that if there are reasons for having trainees provide more documentation, it should be tied to something other than progressive participation in the appraisal process such as scope of work as defined in the Uniform Standards of Professional Practice (USPAP).

RESPONSE 1: After discussing the proposed language and considering the comments, the board concluded that the proposed amendment carries enough clarification to serve the board's purpose at this time. The board notes that the amendment was proposed to prevent people from acquiring all their experience simply driving around and taking pictures. The board intends for mentors to bring trainees along in the process of gaining experience, using progressive participation in the appraisal process. The board is amending the rule exactly as proposed.

COMMENT 2: Several commenters supported the proposed rule changes.

RESPONSE 2: The board acknowledges and appreciates all comments received.

4. The board has amended ARM 24.207.506, 24.207.509, and 24.207.2101 exactly as proposed.

5. At the public hearing, it was noted that the rules as proposed contained two typographical errors to be corrected in the final notice. The correction of the typographical error in ARM 24.207.517 modifies the language to correctly identify the Uniform Standards of Professional Appraisal Practice. The correction of the typographical error in NEW RULE I (ARM 24.207.510) indicates the market value that is used in the nationally recognized parameters for the scope of real property appraisal practice which had not been previously delineated in administrative rule.

6. The board has amended ARM 24.207.517 with the following changes, stricken matter interlined, new matter underlined:

24.207.517 TRAINEE REQUIREMENTS (1) through (1)(b) remain as proposed.

(c) have completed 45 hours of approved qualifying education including 15 hours of ~~Universal~~ Uniform Standards of Professional Appraisal Practice (USPAP) in the principles of real estate appraisal prior to making application; and
(d) through (12) remain as proposed.

7. The board has adopted NEW RULE I (24.207.510), with the following changes, stricken matter interlined, new matter underlined:

24.207.510 SCOPE OF PRACTICE (1) remains as proposed.

(a) The licensed real property classification applies to the appraisal of noncomplex one to four residential units having a market value less than \$1,000,000 and complex one to four residential units having a market value less than ~~\$250,000,000~~ \$250,000.

(i) through (c) remain as proposed.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, CHAIRPERSON

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

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

Certified to the Secretary of State April 2, 2007

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

In the matter of the amendment of ARM)
37.30.102 pertaining to vocational)
rehabilitation IPE care requirements) NOTICE OF AMENDMENT

TO: All Interested Persons

1. On, January 11, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-399 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 18 of the 2007 Montana Administrative Register, issue number 1.

2. The department has amended ARM 37.30.102 as proposed.

3. No comments or testimony were received.

/s/ Cary Lund
Rule Reviewer

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

Certified to the Secretary of State April 2, 2007.

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

In the matter of the adoption of New)
Rules I through V, and amendment of)
ARM 37.5.125 pertaining to Older Blind)
Program)

CORRECTED NOTICE OF
ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On August 24, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-389 pertaining to the proposed adoption and amendment of the above-stated rules at page 1987 of the 2006 Montana Administrative Register, issue number 16, and on January 11, 2007 published notice of the adoption and amendment on page 48 of the 2007 Montana Administrative Register, issue number 1.

2. This corrected notice is being filed to correct an error in the proposed location and numbering of the adopted rules in Title 37. The new location and numbering of the rules is outlined in paragraph 3 of this notice.

3. The rules are corrected as follows:

RULE #:	ADOPTED #:	CORRECTED #:	
I	37.18.101	37.30.2301	Older Blind Program: Definitions
II	37.18.102	37.30.2302	Older Blind Program: Eligibility
III	37.18.103	37.30.2303	Older Blind Program: Reduction of Service Population
IV	37.18.106	37.30.2306	Older Blind Program: Scope of Services
V	37.18.110	37.30.2310	Consumer Grievances and Fair Hearings

4. All other rule changes adopted and amended remain the same.

5. The replacement pages for this corrected notice were submitted to the Secretary of State for the March 31, 2007 deadline.

/s/ Cary Lund
Rule Reviewer

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

Certified to the Secretary of State April 2, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 42.2.621 and repeal of ARM) REPEAL
42.2.115 relating to Final Agency)
Decisions)

TO: All Concerned Persons

1. On February 12, 2007, the department published MAR Notice No. 42-2-772 regarding the proposed amendment and repeal of the above-stated rules at page 254 of the 2007 Montana Administrative Register, issue no. 4.

2. A public hearing was held on March 15, 2007, to consider the proposed amendment and repeal. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.2.621 and repeals ARM 42.2.115 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 2, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 42.11.104, 42.11.105, 42.11.211,)	REPEAL
42.11.243, 42.11.245, 42.11.251,)	
42.11.402, 42.11.405, 42.11.406,)	
42.11.409, 42.11.421, 42.11.422,)	
42.11.423, 42.11.424, and 42.11.425)	
and repeal of 42.11.201, 42.11.401,)	
and 42.11.407 relating to liquor)	
vendors, purchasing, and distribution)	

TO: All Concerned Persons

1. On December 21, 2006, the department published MAR Notice No. 42-2-769 regarding the proposed amendment and repeal of the above-stated rules at page 3031 of the 2006 Montana Administrative Register, issue no. 24.

2. A public hearing was held on January 16, 2007, to consider the proposed amendment and repeal. Oral and written testimony was received and is summarized as follows along with the response of the department:

COMMENT NO. 1: Brian and Debbie Gustafson, Northside Liquor Store No. 5, Helena, Montana, presented written comments stating that there is no harm in allowing registered representatives to provide sample products to retailers regardless of purchasing brands within the last 12 months or to grant or pay anything of value in order to display a product. They stated that as small business owners their goal is to sell liquor as efficiently as possible. In turn, their sales create money for the state. They stated that the amendments inhibit their ability to do business.

They further stated that the merchandise that they did receive was given to customers to promote customer appreciation which in turn drove up their sales. The state is purposefully limiting their ability to sell products on the state's behalf. They stated that their business should not be treated as a government entity because they are a private business with a contract with the state. They stated that they disagree with limiting the incentive to sell.

RESPONSE NO. 1: The department believes the language as proposed in ARM 42.11.243 is necessary because it conforms to the language contained in 27 CFR, section 691 and the department does not believe stores should be given samples of products that are already stocked in that particular store. Samples are needed so that the agents and their employees know about new products that have been introduced. In a case where a store has not carried a common label in the past, such as "Black Velvet" samples of this product would be allowed. The language in this rule is similar to the language contained in 27 CFR, section 6.91, regarding samples provided to retailers by industry representatives.

COMMENT NO. 2: Chris Byrd, President of the Liquor Store Owner's Association submitted written comments stating that most of the agency store owners agree with the comments he is presenting. Mr. Byrd questioned whether the amendment to ARM 42.11.243(5) means that the liquor representatives are not allowed to give samples to the owners, managers, or employees.

Mr. Byrd stated that they are not asking for, nor do they want, liquor sampling by the public in their stores. But if a bar owner and the owner's employees can sample a new product from a liquor representative it is only right and fair that the agency store owners, managers, and employees be able to do the same. He stated that it is difficult to order and sell a new product to the public if they don't know what it is like. If they know what the product tastes like and they know the tastes of some of their customers, they would know whether to recommend the product to those customers. He stated that they believe this to be a help to both the liquor representative and the public they serve.

Mr. Byrd requested the department consider inserting language that would allow only owners and employees of the agency liquor stores to sample new products in their stores.

RESPONSE NO. 2: Section 16-2-107, MCA does not allow any alcoholic beverage container to be opened on the premises of an agency liquor store or be consumed on the premises of an agency liquor store. Samples may be consumed off premise as allowed by law.

COMMENT NO. 3: Del Rupert, a representative for Barton Brands, Inc., testified at the hearing, stating that the size of the samples as stated in ARM 42.11.406(3)(a) should be increased.

He also stated that the department should consider relocating the department's forms currently stored in the liquor warehouse in order to allow for more product storage space.

RESPONSE NO. 3: The department believes that the size stated in ARM 42.11.406(3)(a) is sufficient, and therefore will not be amending the rule.

Relocating the department's forms to another location involves many considerations, including space availability and budget restrictions. The department is not in a position at this time to consider this suggestion.

COMMENT NO. 4: Brett Wiensch, State Manager of Young's Market - Montana, submitted written comments.

He suggested the language contained in ARM 42.11.105(7) have language similar to that found in (11) such as: "such material includes, but is not limited to".

He questioned the amendment in ARM 42.11.243(2) that states samples may only be purchased through state agency liquor stores by a registered liquor "representative". He stated that this allows samples to be bought by a visiting or resident supplier employee.

He stated ARM 42.11.243(5) should be amended to read: "consumption of samples for the adult general public must take place at an establishment with an on

premise and/or catering license."

He suggested the state may want to have the ability to carry more special order products if the retail demand accelerates rapidly. Out of stock merchandise hurts the state, liquor stores, and suppliers. He suggested amending ARM 42.11.405(1)(c) to read: "Supply will be maintained in the warehouse but will only be available at the discretion of the Department of Revenue and on an order-by-order basis, and depending on supplier requirements and availability of a product, orders may take six weeks or more to be filled."

He asked what the "equivalent number" referenced in ARM 42.11.406(1)(a) stood for, and questioned whether that number would change, and if so, who would change it? He also asked what the time frame for the change would be and would the representatives be advised of the change.

He suggested amending the last sentence of ARM 42.11.406(2)(c)(iv) to read: "No additional supplier promotions will be allowed until the stock is removed from the warehouse."

He asked if the reference to "brand" in ARM 42.11.406(3)(a) means Stoli as a brand in all or each label as a brand.

He asked who approves the shipment of products to the bailment warehouse and whom does the approver notify as stated in ARM 42.11.422.

RESPONSE NO. 4: The department concurs with Mr. Wiensch's suggested amendment to ARM 42.11.105(7) and has amended the rule as shown below.

The department believes that the language in ARM 42.11.243(2) is clear as written and does not imply that samples may be bought by a visiting or resident supplier employee.

The department concurs that the language in ARM 42.11.243(5) should include a reference to catering events and has amended the rule as shown below.

The department believes ARM 42.11.405(1)(c) is clear as written.

The "equivalent number" referenced in ARM 42.11.406(1)(a) is a number that is determined by the Liquor Control Division's warehouse team and, yes this number can change. The change would occur in May and November. The liquor representatives would be notified of the change by the division staff.

The department concurs with Mr. Wiensch's suggested change for ARM 42.11.406(2)(c)(iv) and has amended the rule as shown below.

The department will amend ARM 42.11.406(3)(b) to add the word "label" after the word "brand" to help clarify that this requirement applies to each label. The shipment of products is approved by the Liquor Control Division and there is no need to notify anyone of the approval.

3. As a result of the comments received the department amends the following rules with the following changes, new material underlined, stricken material interlined:

42.11.105 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (6) remain as proposed.

(7) "Consumer advertising specialties" are items that are designed to be

carried away by the consumer, such as material includes, but is not limited to: trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

(8) through (22) remain as proposed.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

42.11.243 SAMPLES (1) through (4) remain as proposed.

(5) Consumption of samples must take place at an establishment with an on-premise license or at an event conducted under a catering endorsement.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.245 ADVERTISING SPECIALTIES (1) Registered representatives are allowed to distribute point of sale advertising materials and consumer advertising specialties to a retailer as set forth in regulation number 6.84 of the Tobacco Tax and Trade Bureau (TTB), United States Department of the Treasury as set forth in 27 CFR as revised on April 1, ~~2005~~ 2006, which is incorporated by reference as fully set forth as the regulations for consumer advertising specialties and retailer advertising specialties. Copies may be obtained at the United States Treasury web site located at www.ttb.gov/Regulations.

(2) remains as proposed.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.406 PRODUCT LISTING (1) through (2)(c)(iii) remain as proposed.

(iv) if promotional products fail to sell at the proposed level after a six month promotion period, the department will notify the vendor and make arrangements to remove the excess stock from the warehouse at the vendor's expense. No additional supplier promotions will be allowed until the stock is removed from the warehouse.

(3) Sample products, like all regular inventory products, must be shipped to the state liquor warehouse for distribution purposes. Sample products must meet the following criteria:

(a) samples are limited to bottles containing no more than 750 milliliters; and

(b) limit of 72 bottles per brand label, per vendor, per calendar year in addition to 720 bottles of 50 milliliters or 200 milliliters.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

4. The department amends ARM 42.11.105, 42.11.243, 42.11.245, and

42.11.406 with the amendments shown above and amends ARM 42.11.104, 42.11.211, 42.11.251, 42.11.402, 42.11.405, 42.11.409, 42.11.421, 42.11.422, 42.11.423, 42.11.424, 42.11.425, and repeals ARM 42.11.201, 42.11.401, and 42.11.407 as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 2, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I)	NOTICE OF ADOPTION AND
(ARM 42.13.210), II (ARM 42.13.802),)	AMENDMENT
III (ARM 42.13.803), IV (ARM)	
42.13.804), and V (ARM 42.13.805))	
and amendment of ARM 42.13.101,)	
42.13.111, 42.13.221, and 42.13.222)	
relating to regulations of liquor)	
licensees)	

TO: All Concerned Persons

1. On December 21, 2006, the department published MAR Notice No. 42-2-770 regarding the proposed adoption and amendment of the above-stated rules at page 3044 of the 2006 Montana Administrative Register, issue no. 24.

2. A public hearing was held on January 16, 2007, to consider the proposed adoption and amendment. Oral and written testimony was received and is summarized as follows along with the response of the department:

COMMENT NO. 1: Pam Langley, Montana Beer and Wine Distributors Association, stated they support the rules as proposed and believe the new language will provide better guidance to the industry for the necessary recordkeeping.

RESPONSE NO. 1: The department thanks the Montana Beer and Wine Distributors Association for their support of these rules.

COMMENT NO. 2: Mark Staples, representing the Montana Tavern Association, requested an additional amendment to ARM 42.13.101(7) in order to clarify that the issuance of a written reprimand for a first offense only applies if the licensee were to commit the same offense during the same year.

RESPONSE NO. 2: The department concurs with Mr. Staples request and has amended the rule to reflect this change as shown below.

3. As a result of the comments received the department amends ARM 42.13.101 with the following changes, new material underlined, stricken material interlined:

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) through (6) remain as proposed.

(7) Mitigating circumstances in the case of sale to a minor could result in a reprimand for the first offense under Title 16, MCA, within the most current three-year period if the licensee has provided alcoholic beverage service training

acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The licensee must demonstrate that the person who made the sale to a minor has completed alcoholic beverage service training prior to the department considering issuance of a reprimand. A written reprimand will be considered a first offense for the application of the progressive penalty schedule only if the licensee commits the same offense again within one year. The written reprimand in lieu of a violation shall be available only one time per licensee.

(8) through (11) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-4-406, 16-6-305, 16-6-314, MCA

4. Therefore, the department amends ARM 42.13.101 with the amendments listed above, adopts New Rule I (ARM 42.13.210), II (ARM 42.13.802), III (ARM 42.13.803), IV (ARM 42.13.804), V (ARM 42.13.805), and amends ARM 42.13.111, 42.13.221, and 42.13.222 as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 2, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of a tax) NOTICE OF ADOPTION
benefit rule New Rule I (ARM)
42.15.205) relating to individual)
income taxes)

TO: All Concerned Persons

1. On February 22, 2007, the department published MAR Notice No. 42-2-774 regarding the proposed adoption of the above-stated rule at page 257 of the 2007 Montana Administrative Register, issue no. 4.

2. A public hearing was held on March 16, 2007, to consider the proposed adoption. No oral comments were received during the hearing. Written comments were received subsequent to the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Mike Green, on behalf of the Montana Society of Certified Public Accountants (society), submitted written comments stating the society supports New Rule I because the rule is in line with the federal rule and the Montana Legislature's original intent of 15-30-111, MCA. The rule corrects problems created by a previous interpretation that was included in the department's 2006 individual income tax form instructions.

The society appreciates the substantial efforts of the department's staff to respond to the concerns raised by the society's members, and their prompt work to prepare the rule and the corresponding worksheet.

RESPONSE NO. 1: The department thanks the society for its comments and support for the adoption of this rule.

3. The department adopts New Rule I (42.15.205) as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 2, 2007

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2006. This table includes those rules adopted during the period January 1 through March 31, 2007, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2006, 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 2006 and 2007 Montana Administrative Register.

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