

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review)

17-258 (Air Quality) Notice of Public Hearing on Proposed Amendment - Definitions - Air Quality Operation Fees - Open Burning Fees. 795-799

17-259 (Air Quality) Notice of Public Hearing on Proposed Amendment - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules. 800-812

LABOR AND INDUSTRY, Department of, Title 24

24-7-221 (Board of Labor Appeals) Notice of Public Hearing on Proposed Amendment and Adoption - Procedural Rules. 813-822

24-30-220 Notice of Public Hearing on Proposed Amendment - Occupational Safety Matters in Public Sector Employment. 823-825

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-408 Notice of Public Hearing on Proposed Amendment - Medicaid Nursing Facility Reimbursement. 826-832

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-197 Notice of Public Hearing on Proposed Amendment and Repeal - Protective Orders - Protection of Confidential Information. 833-844

REVENUE, Department of, Title 42

42-2-775 Notice of Public Hearing on Proposed Adoption - Taxpayer Qualifications for the 2006 Property Tax Refund. 845-847

RULE SECTION

JUSTICE, Department of, Title 23

AMD (Gambling Control Division) Display of Antique Illegal Gambling Devices - Dealer License Application Process - Temporary Dealer Licenses - Possession of Dealer License - Card Game Tournament Rules - Card Dealer Restrictions - House Player Restrictions - Rake Restrictions - Casino Night Requirements. 848-850

LABOR AND INDUSTRY, Department of, Title 24

AMD Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services - Nonconstruction Services. 851-858

AMD (Board of Barbers and Cosmetologists) Premises - General Requirements - Restrooms. 859

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD Vocational Rehabilitation Program Financial Need Standards and Payment for Services. 860

INTERPRETATION SECTION

Opinions of the Attorney General.

3 Counties - 38 Op. Att'y Gen. No. 57 (1979) Overruled in Its Entirety - Lease-Purchase Agreement with "Non-Appropriation" Clause Under County Debt Limit Statutes - Lease-Purchase Agreement with "Non-Appropriation" Clause Under Statute Requiring Election on Incurrence of Indebtedness or Liability for a Single Purpose - County Government - Elections - Local Government. 861-865

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	866-867
How to Use ARM and MAR.	868
Accumulative Table.	869-876
Boards and Councils Appointees.	877-885
Vacancies on Boards and Councils.	886-901

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.8.501, 17.8.505, and 17.8.514)	PROPOSED AMENDMENT
pertaining to definitions, air quality)	
operation fees, and open burning fees)	(AIR QUALITY)

TO: All Concerned Persons

1. On August 1, 2007, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The board 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 no later than 5:00 p.m., July 18, 2007, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.8.501 DEFINITIONS For the purposes of this subchapter:

(1) and (2) remain the same.

(3) "Registered oil and gas well facility" means any registration eligible oil or gas well facility that has been registered for operation under the requirements in ARM Title 17, chapter 8, subchapter 17.

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

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (1)(c) remain the same.

(2) Pursuant to this rule, fees shall be assessed to the owner or operator of record on the date of billing, for all facilities that meet the description in (1) as of ~~January~~ March 1 of the calendar year in which fees are billed.

(3) remains the same.

(4) Annually, the department shall provide the owner or operator of each facility required to pay an air quality operation fee with written notice of the amount of the fee and the basis for the fee assessment.

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

~~(5)~~ (7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is based on the actual, or estimated actual,

amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of ~~\$470~~ \$500, plus ~~\$22.30~~ 29.96 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

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

(9) The air quality operation fee for registered oil and gas well facilities is \$600.

(7) through (10) remain the same, but are renumbered (10) through (13).

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10 (particulate matter with a diameter of 10 microns or less), sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

The board is proposing to assess an annual flat fee of \$600 for registered oil and gas well facilities, rather than basing their fee on emissions of air pollutants. A flat fee is more appropriate for registered oil and gas well facilities than a fee based on emissions of air pollutants. Registered oil and gas well facilities require approximately the same amount of regulatory review regardless of size. There are approximately 510 currently registered oil and gas well facilities. This would be the first year in which registered oil and gas well facilities will pay an annual operating fee. The cumulative fee for all oil and gas well facilities would be approximately \$306,000.

The board is proposing to raise the administrative fee component of the air quality operation fee, which would apply to facilities other than portable facilities and oil and gas well facilities, 6% from \$470 to \$500. This increase is commensurate with the 6% increase in the Consumer Price Index (CPI) since 2005, when the administrative fee was increased to \$470.

The board is proposing to change the date used to determine which facilities have active permits or registrations, and therefore are required to pay an annual air quality permit fee, from January 1 to March 1. This change is intended to allow owners or operators of facilities that are no longer operating, or are no longer required to hold a Montana Air Quality permit, additional time to request revocation of their permit or withdrawal of their registration.

The amount of money the department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also

revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

This rulemaking would set the air quality operation fees to be billed in calendar year 2007. Air quality fees billed in 2007 will be based on emissions from calendar year 2006 and will fund the department's activities in fiscal year 2008.

The legislative appropriation for fiscal year 2007 was \$2,996,826. The amount of the carryover from fiscal year 2006 was \$308,362. The total amount of pollutants reported for calendar year 2006 fees was 106,590 tons, and the per-ton component of the air quality operation fee was \$22.30.

The appropriation for fiscal year 2008 is \$3,875,703, an increase of \$878,877 from this fiscal year. The projected carryover from fiscal year 2007 is \$203,327. The total amount of pollutants reported for 2007 fees is 95,832 tons. Air quality fees are normally based upon the appropriation, the estimated carryover, the projected permit application fees, and the emission inventory, in order to cover the department's costs of developing and administering the air quality permitting program. Due to the timing of the special session of the legislature, the department did not have a final appropriation available at the time the initial air quality fee calculations were completed. While the proposed fee rate of \$29.96 will not collect the entire legislative appropriation, the board does not believe it is necessary to increase the proposed per-ton charge beyond \$29.96. The board believes the resulting revenue shortfall can be made up through additional vacancy savings. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$22.30 with \$29.96.

For comparison, the Federal Title V operating permit presumptive minimum fee effective August 31, 2006, is \$39.48.

In calendar year 2006, the total amount of fees assessed was \$2,665,639. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$3,541,368, for an increase of \$875,729. In calendar year 2007, fees would be assessed for 1,170 facilities.

The board is proposing to amend ARM 17.8.501 to add a definition of "registered oil and gas well facility," because the term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.505 would institute a new method of fee assessment for these facilities.

The board is proposing to renumber current ARM 17.8.505(4)(a) and (b), and the subsequent sections, to conform to current rule numbering style.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

~~(a)~~ (5) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to ~~(4)~~~~(b)~~ (6):

~~(i)~~ (a) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year, multiplied by ~~\$16.47~~ 21.07; plus tons of oxides of nitrogen emitted in the previous appropriate calendar year, multiplied by ~~\$4.12~~ 5.27; plus tons of volatile organic compounds emitted in the previous appropriate calendar year, multiplied by ~~\$4.12~~ 5.27; or

(ii) remains the same, but is renumbered (b).

~~(b)~~ (6) To conduct wildland fire use burning, an applicant for an air quality major open burning permit shall, in addition to submitting the fees specified in ~~(4)(a)~~ (5), submit a fee of \$1,000.

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

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2008. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2006, the major open burners reported 4,826 tons of emissions, compared to 6,070 tons for calendar year 2005, or a decrease of 1,244 tons.

The operating budget for 12 major open burners in fiscal year 2008 is \$46,159, compared to a budget of \$42,955 for fiscal year 2007. The increase of \$3,204 in major open burning funding is due to increases of \$2,503 in personnel costs, \$678 in travel costs, \$230 in newspaper publication costs, \$733 in indirect costs, a new cost of \$1,660 for internet service to enter burner data into the Airshed Management System database, and an increase of \$2,550 in the cost of satellite communications for transmitting meteorological data. Certain budget decreases offset these increases. The costs of technical equipment and contract services decreased \$5,000 because fewer significant capital expenditures in satellite communications infrastructure and equipment are anticipated for this fiscal year. The annual meeting room expense of \$150 was eliminated because a member of the Montana/Idaho Airshed Group has agreed to provide the facility to the department without charge. The board is proposing to increase the permit fees from \$16.47 per ton of particulate, \$4.12 per ton of oxides of nitrogen, and \$4.12 per ton of volatile organic compounds emitted to \$21.07, \$5.27, and \$5.27, respectively.

The cumulative amount of the fees would equal the budget of \$46,159. This amount would be distributed among the 12 major open burners.

The board is proposing to renumber current ARM 17.8.514(4)(a) through (c), and the subsequent sections, to conform to current rule numbering style.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., August 8, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David M. Rusoff
DAVID M. RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, June 11, 2007.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.102, 17.8.103, 17.8.201, 17.8.202,)
17.8.302, 17.8.602, 17.8.767, 17.8.801,)
17.8.802, 17.8.818, 17.8.901, 17.8.902,)
17.8.1002, 17.8.1007, 17.8.1102,)
17.8.1201, 17.8.1202, 17.8.1206,)
17.8.1212, 17.8.1232, 17.8.1234,)
17.8.1302, 17.8.1402, 17.8.1502, and)
17.8.1509 pertaining to incorporation by)
reference of current federal regulations)
and other materials into air quality rules)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On August 2, 2007, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board 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 no later than 5:00 p.m., July 19, 2007, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2005~~ 2006, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement III IV (~~2003~~ 2006);

~~(c) referred to a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA;~~

~~(d)~~ (c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2005~~ 2006, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (d) remain the same.

~~(e) 40 CFR Part 52, subpart BB, pertaining to the implementation plan for control of air pollution in Montana;~~

(f) and (g) remain the same, but are renumbered (e) and (f).

~~(h) (g) 40 CFR Part 60, Appendix B, pertaining to EPA performance specification and test procedures for continuous emission monitoring systems, except for the revisions to Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));~~

(i) through (p) remain the same, but are renumbered (h) through (o).

(2) remains the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) remains the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.201 DEFINITIONS In this subchapter, the following words and phrases shall have the following meanings:

(1) and (2) remain the same.

(3) "Annual average" means an arithmetic average of any four consecutive valid calendar quarterly averages, where calendar quarterly averages are determined as specified in (3)(a) and (b); except that for hourly data at least 6,570 valid hourly averages must be contained in the four consecutive calendar quarters.

(a) through (33) remain the same.

AUTH: 75-2-111, 75-2-202, MCA

IMP: 75-2-202, MCA

17.8.202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources and modifications, with the following exceptions:

(i) remains the same.

(ii) ~~the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR)) are not incorporated by reference~~ 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;

(b) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) ~~the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.~~

(4) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.602 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference ARM Title 17, chapter 53, subchapter 5, identifying and defining hazardous wastes.

(2) remains the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) ~~the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.~~

(4) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference:

(a) and (b) remain the same.

~~(c) 40 CFR Part 52, subpart BB specifying the Montana State Implementation Plan for controlling air pollution in Montana;~~

~~(d) (c) 40 CFR Part 60, specifying standards of performance for new stationary sources, except for 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;~~

(e) through (h) remain the same, but are renumbered (d) through (g).

(2) remains the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-215, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

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

(4) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (4)(b) below; and

(ii) through (21)(d) remain the same.

(22) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) and (ii) remain the same.

(iii) any physical change that would occur at a stationary source not otherwise qualifying under (22)(a)(i) or (ii) above, as a major stationary source if the change would constitute a major stationary source by itself.

(b) through (29) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.802 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for ~~the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR))~~ 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;

(e) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) and (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

- (a) through (a)(x) remain the same.
- (b) the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in (7)(a) above; or
- (c) the pollutant is not listed in (7)(a) above.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) through (10)(b) remain the same.

(11) "Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA.

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

(iii) use of an ~~alterative~~ alternative fuel by reason of an order or rule under section 125 of the FCAA;

(iv) through (vii) remain the same.

(12) The following apply to the definition of the term "major stationary source":

(a) through (a)(ii) remain the same.

(iii) any physical change that would occur at a stationary source not qualifying under (12)(a)(i) or (ii) ~~above~~ as a major stationary source, if the change would constitute a major stationary source by itself.

(b) through (20) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for ~~the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR))~~ 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;

(b) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) and (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1002 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR)) 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;

(b) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) and (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1007 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) For the purposes of this subchapter, the following requirements shall apply:

(a) and (b) remain the same.

(c) in the case of emission offsets involving volatile organic compounds and oxides of nitrogen, offsets will generally be acceptable if they are obtained from within the areas specified in (1)(b) above. If the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available; and

(d) and (e) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1102 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) remains the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

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

(e) incorporates any other type of change which the department and EPA have determined to be similar to those revisions set forth in (1)(a) through (d) above.

(2) through (22)(b) remain the same.

(23) "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in (23)(a) through (c) below. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) through (33) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) remains the same.

(b) 40 CFR Part 72, pertaining to the operating permit requirements for acid rain sources subject to Title IV of the FCAA, ~~except for the revisions to 40 CFR 72.2, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));~~

(c) 40 CFR Part 75, pertaining to the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA, ~~except for the revisions to 40 CFR 75.2, 6, 10, 15, 20-22, 24, 31-33, 38-39, 53, 57-59, 80-84, and Appendices A, B, F, and K, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR)) and sources subject to mercury monitoring requirements;~~

(d) through (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) and (5) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1206 INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS (1) through (4) remain the same.

(5) The applicant shall, at a minimum, provide the information specified below:

(a) through (c) remain the same.

(d) identification and description of all points of emissions described in (5)(c) above, in sufficient detail to establish both the basis for fees and the applicability of any applicable requirement;

(e) through (j) remain the same.

(k) all calculations on which the information in (5)(a) through (j) above is based;

(l) through (11) remain the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1212 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) through (2)(b) remain the same.

(3) Each air quality operating permit shall incorporate the following requirements relating to reporting:

(a) and (b) remain the same.

(c) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. To be considered prompt, deviations shall be reported as part of the routine reporting requirements under (3)(b) above, and if applicable, in accordance with the malfunction reporting requirements under ARM 17.8.110, unless otherwise specified in an applicable requirement.

(4) remains the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1232 PUBLIC PARTICIPATION (1) Except for permit changes not requiring revisions under ARM 17.8.1224, administrative permit amendments under ARM 17.8.1225, department review of activities to be conducted pursuant to general permits under ARM 17.8.1222, and minor permit modifications where the department has not made a determination that public notice is required under ARM 17.8.1226(12), all air quality operating permit proceedings, including initial permit

issuance, minor permit modifications where the department has made a determination that public notice is required under ARM 17.8.1226(12), significant permit modifications, and renewals, shall provide adequate procedures for public notice, including an opportunity for both public comment and a hearing on the draft permit. These procedures shall include the following:

- (a) remains the same.
- (b) The notice required under (1)(a) above, shall identify the following:
 - (i) through (3) remain the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1234 ACID RAIN--PERMITS REGULATION (1) For the purpose of this rule, the following definitions apply:

- (a) remains the same.
- (b) The terms and associated definitions specified in 40 CFR Part 72 shall apply to this rule, except as specified in (1)(a) above.
- (2) remains the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, MCA

17.8.1302 INCORPORATION BY REFERENCE (1) remains the same.
(2) Copies of federal materials incorporated by reference in this subchapter may be obtained from:

- (a) through (c) remain the same.
- (d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.
- (3) remains the same.

AUTH: 75-2-111, MCA
IMP: 75-2-202, MCA

17.8.1402 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates ~~herein~~ by reference the following:

- (a) through (a)(iv) remain the same.
- (2) Copies of federal materials incorporated by reference in this subchapter may be obtained from:
 - (a) through (c) remain the same.
 - (d) the EPA regional office libraries of each of the 10 EPA regional offices listed at <http://www.epa.gov/natlibra/libraries.htm>.
 - (3) remains the same.

AUTH: 75-2-111, MCA
IMP: 75-2-202, MCA

17.8.1502 INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR part 51.214 and 40 CFR Part 51, Appendix P, which set forth EPA minimum emissions monitoring requirements for the Montana State Implementation Plan;

(b) 40 CFR part 60.13 and 40 CFR Part 60, Appendix B, which set forth EPA performance specification and test procedures for continuous emission monitoring systems for new stationary sources, ~~except for the revisions to 40 CFR Part 60, Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));~~

(c) 40 CFR Part 63, which sets forth monitoring requirements and performance specifications for source categories of hazardous air pollutants; and

(d) 40 CFR part 72.2, which contains the definition of utility unit, ~~except for the revisions to 40 CFR 72.2, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));~~

(e) 40 CFR part 75, which describes the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA, ~~except for the revisions to 40 CFR 75.2, 6, 10, 15, 20-22, 24, 31-33, 38-39, 53, 57-59, 80-84, and Appendices A, B, F, and K, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR))~~ and sources subject to mercury monitoring requirements; and

(f) and (2) remain the same.

(3) Copies of federal materials also may be obtained from:

(a) through (c) remain the same.

(d) the EPA regional office libraries of each of the ten EPA regional offices listed at <http://www.epa.gov/natlbra/libraries.htm>.

(4) remains the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1509 DEADLINES FOR SUBMITTALS (1) For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in ARM 17.8.1501(16)) the applicable regulated air pollutant in an amount equal to or greater than 100% of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under ARM 17.8.1507 and 17.8.1508 at the following times:

(a) through (b) remain the same.

(c) The owner or operator shall submit any information not submitted under the deadlines set forth in (1)(a) and (b) ~~above~~, as part of the application for the renewal of an air quality operating permit.

(2) For all other pollutant-specific emissions units subject to this subchapter and not subject to (1) ~~above~~, the owner or operator shall submit the information required under ARM 17.8.1507 and 17.8.1508 as part of an application for a renewal of an air quality operating permit.

(3) The effective date for the requirement to submit information under ARM 17.8.1507 and 17.8.1508 shall be as specified pursuant to (1) and (2) ~~above~~, and a permit reopening to require the submittal of information under this rule shall not be required pursuant to ARM 17.8.1228(1)(a), provided, however, that, if an air quality operating permit is reopened for cause by the department pursuant to ARM 17.8.1228(1)(c) or (d), the department may require the submittal of information under this rule for those pollutant-specific emissions units that are subject to this subchapter and that are affected by the permit reopening.

(4) remains the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal statutes and regulations that are incorporated by reference. This is necessary to maintain primacy from the U.S. Environmental Protection Agency (EPA) over air quality regulation in the state. The board also is proposing to amend the rules to adopt the current editions of state rules that are incorporated by reference, in order to maintain consistency with any changes to those rules.

The board is proposing to amend ARM 17.8.102(1)(c) to delete the reference to the Montana Code Annotated (MCA). Incorporating the current edition of the MCA is not necessary, because the version of state statutes in effect at the time would apply in all instances where a state statute is applicable.

The board is proposing to amend ARM 17.8.102 to adopt revisions to federal regulations published in the Federal Register (FR) between July 1, 2005, and June 30, 2006, that are included in the July 1, 2006, edition of the Code of Federal Regulations (CFR). Revisions include additions and changes to EPA's "Guideline on Air Quality Models"; revision of standards for PM, NOX, and SO2 emissions for electric utility steam generating units; updating five instrumental test methods that measure emissions from stationary sources; clarification amendments to the national emission standards for hazardous air pollutants (NESHAPs) General Provisions; removal of methyl ethyl ketone (MEK) from the list of hazardous air pollutants; finalizing exemptions from the Title V operating permit program for five categories of area sources subject to the NESHAPs (dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters); and clarifying and technical amendments to the NESHAPs for hazardous waste combustors, cement kilns, plywood and composite wood production, primary aluminum reduction plants, secondary aluminum production, reinforced plastic composites production, and commercial boilers and process heaters.

The board is proposing to amend ARM 17.8.103(3)(d), 17.8.202(3)(d), 17.8.302(3)(d), 17.8.602(3)(d), 17.8.767(3)(d), 17.8.802(3)(d), 17.8.902(3)(d),

17.8.1002(3)(d), 17.8.1102(3)(d), 17.8.1202(3)(d), 17.8.1302(2)(d), 17.8.1402(2)(d), and 17.8.1502(3)(d) to update a source of federal materials. EPA suggested these changes because some of its regional libraries have closed and the references in the listed sections were no longer accurate.

The board is proposing to delete ARM 17.8.103(1)(e) and 17.8.767(1)(c) to remove the incorporation by reference of 40 CFR 52, subpart BB, which describes the Montana State Implementation Plan (SIP). The reason for this proposed amendment is because 40 CFR 52, subpart BB, describes existing state requirements already adopted by the board which EPA has published in the CFR in order to make them federally enforceable, so this incorporation is not necessary.

The board is proposing to amend ARM 17.8.103(1)(h), 17.8.302(1)(a)(ii), 17.8.767(1)(d), 17.8.802(1)(d), 17.8.902(1)(a), 17.8.1002(1)(a), 17.8.1202(1)(b) and (c), and 17.8.1502(1)(b), (d), and (e) to revise references to the federal mercury regulations. The existing rules except EPA's Clean Air Mercury Rule (CAMR) from adoption and incorporation by reference. These exceptions were made pending the board's decision on state mercury rules. The board now has adopted state mercury rules that became effective on October 27, 2006, and that adopt and incorporate by reference all provisions of CAMR except the mercury emission credit allocation provisions of 40 CFR 60.4141-4142, because ARM 17.8.772 includes the state's own mercury emission credit allocation system. See, ARM 17.8.740, 17.8.767, 17.8.771, and 17.8.772. The proposed amendments would reflect the adoption and incorporation by reference of CAMR into the state mercury rules.

The board also is proposing several minor editorial revisions to change internal references to rule sections to conform to the current rule drafting style of the Secretary of State's office and to correct a typographical error. These amendments are not intended to change the meaning of the rules.

The board will also take testimony on submission of the proposed amendments to EPA as proposed revisions to the Montana SIP.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., August 9, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk

vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to the board secretary at ber@mt.gov or may be made by completing a request form at any rules hearing held by the board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

/s/ David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, June 11, 2007.

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.7.201, 24.7.301, 24.7.303,) ON PROPOSED AMENDMENT
24.7.304, 24.7.305, 24.7.306, 24.7.312,) AND ADOPTION
24.7.313, 24.7.315, and the proposed)
adoption of NEW RULE I related to Board)
of Labor Appeals procedural rules)

TO: All Concerned Persons

1. On July 20, 2007, at 1:00 p.m., the Board of Labor Appeals (board) will hold a public hearing to be held in the first floor conference room (Room 104), the Department of Labor and Industry, Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The board 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 no later than 5:00 p.m., on July 13, 2007, to advise us of the nature of the accommodation that you need. Please contact the Office of Legal Services, Department of Labor and Industry, Attn: Marieke M. Beck, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2917; fax (406) 444-1394; TDD (406) 444-5549; or e-mail mabeck@mt.gov.

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

24.7.201 ADOPTION OF MODEL RULES (1) Pursuant to the authority vested in the The Board of Labor Appeals of the Department of Labor and Industry, the board adopts by reference the following Model Rules proposed recommended by the Attorney General, namely; ARM 1.3.102 through 1.3.234 (Rules 1-28);

(a) ARM 1.3.102; and

(b) ARM 1.3.203 through 1.3.210.

(2) ARM 1.3.211 through 1.3.225 have not been adopted because the board does not conduct contested case proceedings.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASON: There is reasonable necessity to amend ARM 24.7.201 while the Board of Labor Appeals (board) is otherwise amending its procedural rules because it recognizes that the board does not conduct contested cases, and therefore portions of the Attorney General's Model Rules are not applicable to board proceedings.

There is also reasonable necessity to remove archaic and unnecessary language from the rule, while the rule is otherwise being amended.

24.7.301 POLICY (1) The board of labor appeals adopts the following general statement as the policy for the board:

~~(a) The "fair hearing" provisions in Section 303(a)(3) of the Social Security Act requires a reasonable opportunity for workers whose claims are denied to be heard by an impartial tribunal in an adjudicatory proceeding which assures them of elementary fairness. Likewise, Section 39-51-1109 MCA of the Montana Unemployment Compensation Law provides for a fair hearing of a deputy's determination of an employer's contribution liability and rate. The "methods of administration" provision in Section 303(a)(1) requires that procedures for appeals and hearings be reasonably calculated to pay benefits promptly when due. This board recognizes that appeal and hearing procedures take account of the circumstances of unemployed works and the special needs of the program.~~

~~(b) It is the intent of this board insofar as is practical to keep appeal and hearings procedures as simple, speedy, and inexpensive as possible. Simplicity assures that parties may know and understand their rights; it precludes formal and technical procedures which place undue burdens on parties which tend to impair their ability to protect their rights. Speed assures the prompt payment of benefits when due. Low expense means that no individual may be deprived of his rights merely because he cannot afford to retain representation or to incur other expense in the pursuit of these rights.~~

~~(c) Hearings The board hearing on an appeal of a hearing officer's decision board must be fair and such hearings will be conducted in accordance with procedural safeguards. The essential requisites of fairness include but are not limited to the following elements:~~

~~(i) (a) Timely notice to all claimants of must be provided to interested parties for every material step in the appeal proceedings.~~

~~(ii) Full opportunity to be heard in respect of all that bears upon the validity, extent, and priority of claims on appeal.~~

~~(iii) (b) That every claimant be availed of the An opportunity for interested parties to present argument and to hear the evidence introduced against him and to know the claims of his an opponent.~~

~~(iv) To produce evidence and witnesses and to permit the offering of evidence in explanation or rebuttal.~~

~~(v) To permit the cross-examination of witnesses and to make argument.~~

~~(vi) To rely on evidence only which is adequate to support pertinent and necessary findings of fact.~~

~~(c) Interested parties will receive a copy of the board's decision and notification of appeal rights.~~

~~(vii) (2) That the A decision of the board shall must be based solely on substantial evidence as revealed by the files, records, and any new evidence taken at the appeal hearing to support it.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: There is reasonable necessity to amend ARM 24.7.301 because the existing rule sets out a policy for contested case proceedings as well as the appeal before the Board of Labor Appeals. The procedural safeguards for an appeal to the board differ because the board is not conducting the contested case proceeding. It is reasonably necessary to amend the rule at this time in order to clarify the role of the board, as the board has noted that parties do not adequately understand the board's functions and duties. In addition, there is reasonable necessity to amend the rule to identify additional statutes that are being implemented by the rule.

24.7.303 DEFINITIONS ~~(1) "Board" means the board of labor appeals, created in Section 2-15-1704 MCA.~~

~~(2) "Referee" means all first appeal authorities, regardless of differences in statutory or state designation.~~

~~(3) "Department" means the department of labor and industry, created in Section 2-15-1701 MCA.~~

~~(4) "Division" means the appeals division of the department of labor and industry, created in Section 2-15-1703 MCA.~~

~~(5) (1) "Administrator" means the administrator of the appeals Unemployment Insurance Division of the Department of Labor and Industry.~~

~~(6) (2) "Claimant" means an applicant for unemployment compensation insurance benefits.~~

~~(3) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming good cause and which could not be overcome by reasonable diligence on the part of the person.~~

~~(4) "Hearing officer" means the impartial salaried appeal referee designated to hear and decide the disputed claim in a contested case proceeding.~~

~~(7) (5) "Respondent" means an interested party who contends against an appeal a nonappealing party.~~

~~(8) "Interested Parties" means:~~

~~(a) The claimant for unemployment benefits.~~

~~(b) The claimant's most recent employing unit.~~

~~(c) The employment units involved in any separation from employment within three (3) weeks or longer at the discretion of the department prior to claimant's claim for eligibility.~~

~~(d) The deputy who made the determination.~~

~~(e) The staff member in the local office who accepted the claim.~~

~~(f) The employment unit whose account may be charged with any benefits paid to claimant.~~

~~(g) Any party other than the foregoing who shall, upon written application to the board, be found by the board to have an interest in the claim or in an appeal arising from the claim.~~

~~(9) "Employer" means any employing unit.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: There is reasonable necessity to amend ARM 24.7.303 because it contains definitions that are defined in statute. Additionally, the definitions need to be updated to reflect current terminology used by the department. The provisions defining "interested party" have been removed and are now explained in New Rule I. In addition, there is reasonable necessity to amend the rule to identify an additional statute that is being implemented by the rule.

24.7.304 RIGHT TO APPEAL (1) Any interested party dissatisfied with a decision made by a referee hearing officer is entitled to appeal to the board in accordance with the provisions of ~~Section~~ 39-51-2404, MCA.

(2) The address and contact number for the board are as follows:

Board of Labor Appeals

Montana Department of Labor and Industry

1327 Lockey Street

P.O. Box 1728

Helena, MT 59624-1728

Fax: (406) 444-9038

TTY/TTD: (406) 444-0532

Telephone: (406) 444-3311

~~(2) (3) Interested parties appealing to the board from a decision of a referee hearing officer, or from a determination of a contribution liability and classification and rate shall must file with the board within the time provided by law, at either a local office of the department, the board, or the central office of the department, a notice of appeal setting forth the reasons thereon. Appropriate forms for filing such appeals shall be available to claimants and employers at all local offices of the department. The board may accept an appeal made after the time allowed if the board determines there is good cause to do so.~~

(4) An interested party's notice of appeal should set forth errors of the hearing officer and the issues that will be raised on appeal.

~~(3) (5) Upon scheduling of an appeal, the board shall give to the appellant and to all other interested parties, written notice of the date, time, and place of hearing, and such notice shall be mailed to such parties at least ten (10) days prior to the date of the board's hearing.~~

~~(4) The board may, at its discretion and for good cause, continue the hearing, but in no case may the hearing be continued without review for more than sixty (60) days beyond the date originally set for hearing.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: There is reasonable necessity to amend ARM 24.7.304 to make it easier for parties to correctly file an appeal, because the existing rule fails to identify the appropriate contact information for the board. The proposed amendments also clarify that a late appeal will be considered for "good cause", as provided for in statute. The provision regarding the length of time allowed for a continuance has been moved to ARM 24.7.305. In addition, there is reasonable necessity to amend the rule to identify additional statutes that are being implemented by the rule.

24.7.305 HEARING PROCEDURE (1) Hearings The board hearing on an appeal of a hearing officer's decision shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. All issues relevant to an appeal shall be considered and passed upon. ~~Any interested party, his witness or witnesses, under oath, or affirmation, may present such evidence as may be pertinent, subject to examination by any member of the board and to cross-examination by any opposing interested parties or representative.~~

~~(2) The parties to an appeal may stipulate the facts involved orally or in writing. Such stipulation shall be approved by the board. Further hearing to take additional evidence shall be ordered, upon notice as set out in these rules, if such stipulation is found inadequate for the determination of the case.~~

~~(3) If any party to any appeal fails to appear at the board hearing and no good cause for continuance is shown, the board shall render its decision on the basis of the best evidence available to it; provided, however, a hearing before the board may be continued for good cause upon application to the board orally or in writing before the hearing is concluded, and may be continued or reopened by the board on application or on its own motion. Any party who fails to appear in person or by authorized representative at a hearing before the board may, within ten (10) days after the scheduled date of the hearing, file an application for reopening, and such application for reopening shall be granted if good cause is shown for failing to appear. An application for reopening must be in writing; it must state the reason(s) believed to constitute good cause for failing to appear at the hearing; and it must be delivered or mailed within such ten (10) day period to the board at either the local office where the appeal was filed or to the central office of the department, employment security building, corner of lockey and roberts streets, P.O. Box 1728, Helena, Montana, 59601. If an application for reopening is not allowed, a copy of such decision shall be given or mailed to each party to the appeal, and in the reopening proceedings the allowance of the application may be contested. Where it appears that an appeal, or application for leave to appeal to the board, or an application for reopening, or any other request or application may not have been filed within the period of time prescribed for filing, the appellant or applicant (as the case may be) shall be notified and be given an opportunity to show that such appeal, application or request was timely. If it is found that such appeal, application or request was not filed within the applicable time limit, it may be dismissed on such grounds. If it is found that such appeal, application, or request was timely, the matter shall be decided on the merits. Copies of a decision under this provision shall be given or mailed to all interested parties, together with a clear statement of right of appeal or judicial review.~~

~~(4) The board may, in its discretion, adjourn any hearing for a reasonable period of time, in order to secure all the evidence that is necessary and to be fair to the parties.~~

(2) The board may hear argument concerning the findings of fact and the conclusions of law reached by the hearing officer.

(3) An interested party to an appeal before the board may appear at any conference or hearing held in such appeal, either on the party's own behalf, by an attorney at law, or through an authorized lay representative as prescribed by (4).

(4) Authorized lay representatives may be permitted to appear in proceedings before the board on behalf of interested parties so long as the lay representative does not charge a fee to represent the interested party's interests and is not otherwise compensated for representation except:

(a) A claimant may be represented by a person employed by the claimant's labor union if the person's duties include handling unemployment insurance matters for the union;

(b) An employer may be represented by:

(i) an employee of the employing unit that is subject to a benefit charge or the owner of that employing unit as long as employee's or owner's typical duties include handling unemployment insurance matters for the employing unit and the employee or owner is not receiving separate remuneration; or

(ii) a person employed by a not-for-profit organization to which an employing unit pays a membership due or fee; and

(c) The department may be represented by an employee of the department.

(5) At any time prior to the issuance of the board's decision, the board may at its discretion continue a hearing in order to secure evidence or argument that is necessary and to be fair to the parties, but in no case may the hearing be continued without review for more than 60 days beyond the date originally set for hearing. In the event that a scheduled hearing is continued, the hearing shall be rescheduled with due notice to all interested parties.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: There is reasonable necessity to amend ARM 24.7.305 because the existing rule's procedure for "reopening" conflicts with ARM 24.7.315, as recently noted by the board. Additionally, in order for lay representatives to appear before the Board of Labor Appeals (board), it must have a policy in place. The board is attempting to balance the informal nature of the process against concerns regarding the unauthorized practice of law. In January 2007, the board enacted an interim policy on lay representation. The rule reflects the intention of the interim policy. In addition, there is reasonable necessity to amend the rule to identify additional statutes that are being implemented by the rule.

24.7.306 DETERMINATION OF APPEALS (1) The department shall transmit to the board all records that are pertinent to the appeal. The board will consider such records or portions of those records as the board deems appropriate. ~~The board will not consider any new evidence introduced at the board hearing unless good cause is shown that it was unavailable at the lower level appeal hearing.~~ As soon as possible after the hearing, the board will decide whether to reverse, modify, or affirm the decision of the ~~appeals referee hearing officer~~. Written notice of the board's action will be mailed to all interested parties.

(2) The board will review the hearing officer's decision for errors of law or fact. In making its determination, the board will consider the record on appeal, written or oral arguments, ~~as to whether the referee erred in either law or fact~~ as well as any new evidence admitted pursuant to ~~subsection (1)~~ ARM 24.7.312.

(3) If the appealing party fails to appear at the board hearing and no good cause for continuance is shown, the board shall render its decision on the basis of the record. If the decision on appeal to the board is based on the best evidence available pursuant to ARM 24.11.320, the board may render its decision based on the best available evidence.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-310, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: There is reasonable necessity to amend ARM 24.7.306 in order to clarify the scope of what the board considers in reaching a determination on an appeal. The board has determined that because parties increasingly appear to be unclear about the functions and role of the board, it is necessary to clarify the board's procedures. In addition, there is reasonable necessity to amend the rule to identify additional statutes that are being implemented by the rule.

24.7.312 EVIDENCE (1) The board will not consider any new evidence introduced at the board hearing unless good cause is shown that it was unavailable at the hearing before the hearing officer. If new evidence is admitted, The Board will admit relevant evidence at its hearing if it is it must be the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

~~(2) During the hearing each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing parties and witnesses on any matter relevant to the issues even through that matter was not covered in the direct examination; to impeach any witness; and to offer rebuttal evidence.~~

(2) If the board finds that additional evidence is required to reach a decision, it may remand the matter to the hearing officer to conduct a hearing to obtain additional evidence in the matter. The board shall promptly notify the interested parties of such action. The hearing officer must make a new decision based on the additional evidence and the existing record.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-2404, 39-51-2407, MCA

REASON: There is reasonable necessity to amend the rule because the board does not conduct the contested case proceeding. The board has determined that because parties increasingly appear to be unclear about the functions and role of the board, it is necessary to clarify the board's procedures. In addition, there is reasonable necessity to amend the rule to identify additional statutes that are being implemented by the rule.

24.7.313 OFFICIAL NOTICE (1) The board may take official notice of any generally accepted technical fact in the field of employment security, unemployment insurance procedures adopted by the Unemployment Insurance Division and determinations, rulings, orders, findings, and decisions required by law to be made by the Administrator of the Division, referees, claims examiners, and this Board.

(2) The board ~~shall~~ may take official notice of ~~those~~ matters which ~~must~~ may be judicially noticed by a court of record in the state of Montana.

(3) If official notice is taken of facts, the parties shall be so notified of any facts of which official notice is taken, and afforded an opportunity to contest the correctness of those facts.;

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASON: There is reasonable necessity to amend ARM 24.7.313 while the board's rules are otherwise being amended, because the existing rule contains out-dated terminology.

24.7.315 STANDARDS AND PROCEDURES FOR RECONSIDERATION OF DECISIONS (1) ~~Definitions.~~ As used in this rule, the following definitions apply:

(a) "Petition" means a petition for rehearing or reconsideration.

(b) "Requester" means the interested party requesting a petition for rehearing or reconsideration.

(2) All petitions shall be made within ten days of ~~receipt~~ the issuance of the board's decision by the requester. The requester shall serve upon all interested parties a copy of the petition.

(3) The filing of a petition is not a prerequisite for seeking judicial review of a final board decision.

(4) Petitions are addressed to the sole discretion of the board.

(5) ~~Grounds.~~ A petition will be granted only upon the following grounds:

(a) to correct clerical error.;

(b) to present relevant evidence that was not known or discoverable with reasonable diligence by the requester at the time of the hearing.;

(c) to present relevant evidence or argument that proper procedures ~~was~~ were not followed in appealing the matter to the board.;

(d) to present argument because good cause exists for failing to appear at the previously scheduled board hearing.

(6) ~~Contents of petition.~~ The petition must state the ground or grounds upon which reconsideration is sought and a detailed statement as to why the requested rehearing or reconsideration will likely mandate a change in the board's decision.

(7) The board shall rule upon the petition at its next regular meeting and notify the parties of its decision. In the event there is a finding of good cause to grant the petition, the hearing shall be rescheduled with due notice to all interested parties.

(8) A decision of the board denying a petition is a final decision pursuant to 39-51-2410, MCA.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: There is good cause to amend the existing rule in order to incorporate the "reopening" provisions of ARM 24.7.305. The board has determined that

because parties increasingly appear to be unclear about the functions and role of the board, it is necessary to clarify the board's procedures. In addition, there is reasonable necessity to amend the rule to identify additional statutes that are being implemented by the rule.

4. The proposed new rule provides as follows:

NEW RULE I INTERESTED PARTY (1) An interested party is entitled to receive notice of Board of Labor Appeals proceedings as well as a copy of the board's decision. An interested party will be given an opportunity to participate in the board's hearing on the appeal.

(a) A claimant is an interested party in an appeal of the claimant's benefits determination decision.

(b) An employer is an interested party to an appeal that is determinative of whether benefits paid to a claimant are chargeable to that employer's account.

(c) An employer is an interested party to an appeal of decision on contribution, liability, contribution rate, application for refund, subject wages, self-employment, or other contribution related issues.

(d) The department is an interested party.

(e) Any party who, upon written application to the board, is found to have a substantial interest in an issue may be deemed to be an interested party relative to the appeal.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: There is reasonable necessity to adopt this new rule in order to clarify who is an interested party in proceedings before the Board of Labor Appeals. The board has determined that because parties increasingly appear to be unclear about the functions and role of the board, it is necessary to clarify the board's procedures.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Marieke M. Beck, Agency Counsel, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-1394; or by e-mail to mabeck@mt.gov, and must be received no later than 5:00 p.m., July 27, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the Department of Labor and Industry's (department) 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.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, 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.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ ELIZABETH BEST
Elizabeth Best, Chair
BOARD OF LABOR APPEALS

Certified to the Secretary of State June 11, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On July 20, 2007, at 10:00 a.m., or as soon thereafter as is feasible, the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana 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 July 13, 2007, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Sandra Mihalik, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; fax (406) 444-9396; TDD (406) 444-0532; or e-mail smihalik@mt.gov.

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

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

(3) The Department of Labor and Industry adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~July 1, 2006~~ July 1, 2007:

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

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of ~~July 1, 2006~~ July 1, 2007, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Safety Act apply to the administration of the provisions of the safety code adopted by this rule.

- (5) remains the same.

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

REASON: There is reasonable necessity to amend this rule in order to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). These rules are periodically updated to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The July 1, 2007, version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most current version.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Chris Catlett, Bureau Chief, Safety Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-9396; or by e-mail to smihalik@mt.gov, and must be received no later than 5:00 p.m., July 27, 2007.

5. 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.

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.

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

8. 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 by the Secretary of State June 11, 2007

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

In the matter of the amendment of ARM)
37.40.307, 37.40.330, and 37.40.361)
pertaining to Medicaid Nursing Facility)
Reimbursement)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 11, 2007, at 3:30 p.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, 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 July 2, 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.

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain the same.

(d) The total payment rate available for the period July 1, ~~2006~~ 2007 through June 30, ~~2007~~ 2008 will be the rate as computed in ~~(5)~~ (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, ~~2006~~ 2007. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

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

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

37.40.330 SEPARATELY BILLABLE ITEMS (1) through (3)(b) remain the same.

(4) Physical, occupational, and speech therapies which are not nursing facility services may be billed separately by the licensed therapist providing the service, subject to department rules applicable to physical therapy, occupational therapy, and speech therapy services.

(a) Maintenance therapy and rehabilitation services within the definition of nursing facility services in ARM 37.40.302, are reimbursed under the per diem rate and may not be billed separately by either the therapist or the provider.

(b) and (5) remain the same.

(6) All prescribed medication, ~~including flu shots and tine tests,~~ may be billed separately by the pharmacy providing the medication, subject to department rules applicable to outpatient drugs. The nursing facility will bill Medicare directly for 100% reimbursement of ~~influenza~~ Medicare Part B covered drugs and vaccines and their administration when they are provided to an eligible Medicare Part B recipient. Medicaid reimbursement is not available for ~~influenza~~ Medicare Part B covered drugs and vaccines and related administration costs for residents that are eligible for Medicare Part B.

(7) through (10) remain the same.

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

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

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1)

Effective for the period July 1, ~~2005~~ 2007 and every six months thereafter, nursing facilities must report to the department ~~entry level and average~~ actual hourly wage and benefit rates paid for all direct care workers that will receive the benefit of the increased funds. The reported data shall be used by the department for the purpose of comparing rates of pay for comparable services.

(2) The department will pay Medicaid certified nursing care facilities located in Montana that submit an approved request to the department a per day add-on payment in addition to the amount paid as provided in ~~(4)~~ ARM 37.40.307 and 37.40.311 as an add-on to their computed Medicaid payment rate to be used only for wage and benefit increases for direct care workers in nursing facilities.

(a) The department will determine a per day add-on payment, commencing July 1, ~~2005~~ 2007 and at the beginning of each state fiscal year thereafter, as a pro rata share of appropriated funds allocated for increases in direct care wages and benefits.

(b) To receive the direct care add-on, a nursing facility shall submit for approval a request form to the department stating how the direct care add-on will be spent in the facility to comply with all statutory requirements. The facility shall submit all of the information required on a form to be developed by the department in order to continue to receive the additional add-on amount for the entire rate year. The form will request information including but not limited to:

(i) ~~the number of full-time equivalents employed~~ number by category of each ~~authorized~~ direct care worker that will receive the benefit of the increased funds;

(ii) the ~~current~~ actual per hour rate of pay ~~with~~ before benefits and before the direct care wage increase has been implemented for each ~~category of worker that will receive the benefit of the increased funds~~;

(iii) through (3) remain the same.

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

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

3. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.40.307, 37.40.330, and 37.40.361 pertaining to Medicaid nursing facility reimbursement. The proposed amendments are intended to implement funding for nursing facility reimbursement appropriated for state fiscal year 2008, commencing July 1, 2007. Funding from the health and Medicaid initiatives account in the state special revenue fund and funds in the general fund provides funding for a 2.5% rate increase for nursing facility providers, as well as funding for a direct care worker wage increase to raise Certified Nurse Aide direct care worker wage and related benefits to \$8.50 an hour. Any remaining funds may be used only to raise wages and related benefits up to \$0.70 an hour for all direct care workers and other low-paid staff.

The department is also proposing amendments to incorporate changes in federal regulations that would adjust cost limits. Other amendments would update the rules where necessary, to provide clarifications, and to make the rules easier to understand and administer.

ARM 37.40.307

The department does not, at the time of publication, have all the information necessary to calculate final payment rates for nursing facility providers according to the methodology at ARM 37.40.307. This methodology is explained below. The department intends to make the rates effective July 1, 2007. The final rates will be set according to final case mix information and the funding levels authorized by the 2007 Montana Legislature.

The department will deliver rate sheets to all providers in advance of the rule hearing. The rate sheets will verify proposed rates and are intended to facilitate comments. They will be delivered as soon as case mix information, Medicaid utilization data, and other details necessary to compute accurate reimbursement rates become available. The rates will distribute available funding as necessary to meet the department goal of a price-based system of reimbursement and will be computed to incorporate and implement legislatively appropriated funding levels.

ARM 37.40.330

The department is taking this opportunity to update the prescription on drug provisions of this rule to make it clear that Medicare Part B should be billed for all drugs covered under that Part. The existing language only mentioned influenza

vaccines and could have been interpreted as limiting nursing facilities to that service only. The proposed language would avoid confusion and would make the rule easier to understand and administer. The proposed amendment would have no actual effect on department policy.

ARM 37.40.361

The 2007 Montana Legislature authorized the department to distribute additional provider reimbursement amounts for nursing facility direct care worker wages and benefits increases. Funds in the direct care worker wage increase may be used only to raise direct care worker wages and related benefits. They cannot be used to offset any other wage increase mandated by other laws, contracts, or written agreements that will go into effect at the same time as or after implementation of the appropriation. Funds in the direct care worker wage increase must be used first to raise Certified Nurse Aide direct care worker wages and related benefits to the equivalent of \$8.50 an hour. Any remaining funds could be used only to raise wages and related benefits up to \$0.70 an hour for all direct care workers and other low-paid staff. The department will be required to provide documentation that the appropriated funds are used solely for direct care worker wage increases. The documentation must include initial wage rates, wage rates after the rate increases have been applied, and wage rates every six months after the rate increases have been granted. In addition to the appropriation for a direct care worker wage increase, the pending budget includes funding for the department to prepare a semiannual report for the legislative finance committee and the children, families, health, and human services interim committee summarizing direct care wage rates and the effects of the direct care worker wage increase on wage levels.

The 2007 Montana Legislature authorized the department to distribute funds from the health and Medicaid initiatives account in the state special revenue fund to provide a 2.5% rate increase for nursing facility providers.

Additionally, the Montana Legislature considered whether it will continue to approve the use of local county matching funds as a source of additional revenue for nursing facility providers in order to maintain public access to high quality nursing facility services. The Centers for Medicare and Medicaid Services (CMS) has issued a notice of proposed rulemaking (CMS-2258-P), with changes to 42 CFR Parts 433, 447, and 457 related to cost limits for providers operated by "units of government" and altering the definition of "public" status that would apply to nursing facility services rendered on or after September 1, 2007. If approved, Montana will incorporate the proposed CMS changes and update Medicaid nursing facility reimbursement rules using a separate rule notice.

Price Based System:

For rate year 2008 (July 1, 2007 through June 30, 2008) the nursing facility per diem rate will be computed as follows:

(1) The Medicaid per diem rates will include two components. The operating component, which includes both operating and capital combined, will be the same rate for all nursing facilities and will be 80% of the overall price. The nursing component will be adjusted for individual nursing facility acuity and will be 20% of the overall price.

(2) Medicaid per diem rates will be established annually each July 1.

(3) The minimum data set (MDS) case mix assessment data will be used in the computation of each facility's resident acuity. Each nursing facility's case mix index will be calculated quarterly based on a point in time, using the most recent annual or quarterly MDS information. Medicaid case mix data for annual rate setting will be based on the most recent four quarter average of Medicaid CMIs for each nursing facility.

Price-based rate increase:

Funding from the health and Medicaid initiatives account in the state special revenue fund in the amount of approximately \$3,544,542 would provide funding for a 2.5% rate increase for nursing facility providers based on the state and federal share of funding for nursing facility reimbursement.

Additional Payments for Direct Care Wage and Benefit Increases:

The 2007 Montana Legislature approved legislation that would authorize the department to distribute about \$5,107,142 to facilities for wage and benefit increases. The bill would fund a minimum for Certified Nurse Aide direct care worker wages and related benefits of \$8.50 an hour. Any remaining funds would be used only to raise wages and related benefits up to \$0.70 an hour for all direct care workers and other low-paid staff.

These funds would be distributed in the form of a direct care wage add-on in addition to the established price-based provider reimbursement rate effective July 1, 2007.

Alternative:

If funding levels are not sufficient to continue a price-based approach, the department will be faced with the following issues. Statewide occupancy rates are currently 74% in Montana nursing facilities. At the same time, the care needs of the typical nursing facility resident are increasing. Residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As the trend toward lower occupancy and increased acuity continues, it will become more important than ever that nursing facility providers receive rate increases that are reflective of the increased cost of doing business. If Medicaid rates are not sufficient to stabilize small rural providers of nursing facility services, they will find it more difficult to keep their doors open due to decreasing occupancy levels and an inability to predict the level of revenue

available. It would be impossible to plan the best way to provide nursing facility services in their communities. Facility reductions would make it more difficult for Medicaid recipients to access nursing facility services, especially in rural communities. Without sufficient Medicaid reimbursement, increased costs due to lower occupancy levels and higher acuties are likely to be shifted to privately paying individuals and insurers.

Estimated Financial and Budget Effects:

The proposed rule changes are necessary to implement legislative funding for nursing facility reimbursement for state fiscal year 2008. The total state and federal funding available for fiscal year 2008 is currently projected at \$141,781,696 which includes \$15,531,931 in state special revenue, and \$28,973,343 in State General Funds. The estimated total funding available for fiscal year 2008 for nursing facility reimbursement is estimated at approximately \$181,138,754 of combined state funds, federal funds, including \$30,667,011 in patient contributions, \$3,544,542 in a 2.5% provider rate increase, and \$5,107,142 in Direct Care Wage funding. Anticipated utilization for state fiscal year 2008 is estimated to be 1,189,566 days according to estimates of caseloads adopted by the Legislature.

The estimated financial effect of the proposed provider funding is approximately \$4,834,874 in reductions of state revenue, federal funds, and patient contributions in fiscal year 2008 from the FY 2007 funding levels due to declining census projected in nursing facilities over the next biennium.

The estimated total funding effect of the one time payment to 'at risk' nonstate government providers and other nursing facilities not determined to be 'at risk' has been projected at \$3,072,497 of state special revenue funds and about \$9,710,800 in total appropriated funding for the Nursing Facility program. The Centers for Medicare and Medicaid Services (CMS), notice of proposed rulemaking (CMS-2258-P) would apply to Nursing Facility services rendered on or after September 1, 2007 and could narrow the sources of funds available in Montana to finance Medicaid expenditures under the rate adjustment for county funded rural nursing facilities, ARM 37.40.311.

These rule changes impact 89 nursing facility providers that participate in Medicaid and up to 5,043 recipients who annually receive nursing facility services under Medicaid.

4. The bill sponsor notice requirements of 2-4-302, MCA, do not apply. This proposal notice does not initially implement new or amended legislation.

5. The department intends to apply the proposed amendments retroactively to July 1, 2007. The department was unable to file this rule at an earlier date because final funding levels had not been authorized by the Legislature. This date will comply with legislative intent to increase Medicaid reimbursement to nursing facilities. No detrimental effects are anticipated as a result of the proposed

retroactive effective date.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 19, 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.

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

/s/ John Koch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State June 11, 2007.

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

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of ARM 38.2.5001,)	HEARING ON PROPOSED
38.2.5002, 38.2.5004, 38.2.5007,)	AMENDMENT AND REPEAL
38.2.5008, 38.2.5014, 38.2.5015,)	
38.2.5017, 38.2.5021, 38.2.5022,)	
38.2.5023, 38.2.5024, 38.2.5028,)	
38.2.5030, and the proposed repeal of)	
ARM 38.2.5016, 38.2.5020, 38.2.5027)	
pertaining to Protective Orders and)	
Protection of Confidential Information)	

TO: All Concerned Persons

1. On July 26, 2007, at 9:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (commission) offices, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on July 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, commission secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@mt.gov.

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

38.2.5001 DEFINITIONS Terminology used in these rules has the following meanings, except where the context clearly indicates otherwise:

(1) through (3) remain the same.

(4) "Legal counsel" means an individual authorized to practice law before the commission in a proceeding in which a protective order has been issued, and who represents a party to the proceeding;

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

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend to define "legal counsel" in the specific context of these rules. Without this definition there could be confusion

over the meaning of "legal counsel" in some of the rules, and assertions of rights granted by the rules that are not intended by the commission.

38.2.5002 PROTECTIVE ORDERS AND RULES--RELATIONSHIP, WAIVER, SPECIAL PROVISIONS, INAPPLICABILITY (1) remains the same.

(2) Requests for waiver of one or more of these rules will not be routinely granted, but may be granted for good cause. Requests for waiver must include a concise statement of the reasons supporting for the request.

(3) Requests that special provisions or terms and conditions not provided by these rules be included in a protective order will not be routinely granted, but may be granted for good cause. Requests for special provisions or terms and conditions must include proposed language and a concise statement of the reasons supporting for the request.

(4) These rules do not apply to all information in the possession of the commission which may be lawfully withheld from public disclosure. Generally, these rules apply to confidential information necessary to commission regulation and decision-making, normally but not exclusively in a contested case process. Information to which these rules do not apply includes agency personnel records or identities of certain informants or complainants. Also, these rules do not apply to ~~access to~~ information, access to which ~~that~~ will create a risk of personal safety or impede law enforcement efforts.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is reasonable necessity to amend in order to simplify and clarify language.

38.2.5004 PROVISIONAL TERM PROTECTIVE ORDERS (1) On the motion of a provider, the commission may issue a provisional "term protective order," which is a provisional protective order applicable to specific confidential information expected to be required periodically by the commission. An example of such information would be information supplied in response to routine or repetitive reporting requirements, such as commission annual reports or information required by special commission order. A provisional term protective order may be effective for a period of not more than four years. ~~The requirements for requesting, for issuing, and for gaining access to confidential information under a term protective order are the same as the requirements applicable to protective orders under these rules.~~ The requirements for requesting and issuing a provisional term protective order are the same as the requirements applicable to provisional protective orders under ARM 38.2.5007(6). When a provisional term protective order is issued, providers may submit applicable information under the terms of that order. The process for deciding whether to issue a protective order covering that information will be the same as described at ARM 38.2.5007(7).

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule in order to make the process for term protective orders consistent with the amended process for protective orders at ARM 38.2.5007.

38.2.5007 PROTECTIVE ORDER--REQUESTS, TIMING OF REQUESTS, AND PROCEDURE (1) and (2) remain the same.

~~(3) The factual showing facts and legal analysis contained in a request for protective order must make a prima facie showing and must make clear to the commission the basis for the claim of confidential request, and must make a prima facie showing of confidentiality. information. A provider has the burden of demonstrating that information is confidential information. Unless the commission has granted a waiver pursuant to ARM 38.2.5002, t~~The request for protective order must include:

(a) remains the same.

(b) a complete and specific nonconfidential identification, description, and explanation of the information, item by item or by category of items which are alike, of all information for which protection is requested, suitable for meaningful use in testimony, arguments, public discussion, orders, and the public record;

(c) a complete and specific factual basis, ~~including a thorough identification and explanation of the specific facts,~~ supported by affidavit of a qualified person, that supports a the claim of confidential information; and

(d) through (4)(b)(ii) remain the same.

(iii) the information is ~~in fact~~ secret;

(iv) through (vi) remain the same.

(5) If there are bases for confidential information other than individual privacy or trade secret, requests for protection must explain, and demonstrate compliance with, the legal standards required for protection.

(6) ~~Prior to issuing a protective order the commission will~~ After reviewing the demonstrations made pursuant to (3), (4), and (5), and may if necessary, questioning a provider on those demonstrations, the commission for cause will either decline to issue a protective order, or will issue a provisional protective order to the provider.

(7) ~~A request for protective order must not include the claimed confidential information. Generally, claimed confidential information must not be filed at the commission before the issuance of a requested protective order. If it is necessary for the commission to access claimed confidential information prior to the issuance of a protective order, such access will be by special commission order. Following receipt of a provisional protective order the provider must immediately file the claimed confidential information with the commission. The commission will review the information in camera, and for cause will either decline to issue a protective order for all or part of the information, or will issue a protective order for all or part of the information. If the commission declines to issue a protective order for all or part of the information, the claimed confidential information for which a protective order was not issued will be returned to the provider. A provisional protective order will remain in force for the duration of the commission proceeding in which it is issued, for the purpose of commission review of all claimed confidential information, that is~~

within the scope of the provisional protective order, submitted periodically during the course of the proceeding.

~~(8) The commission will notice each requests for protective orders, and the issuance of protective orders, on its weekly agenda. When the commission determines that a request for protective order constitutes a prima facie showing that the information is confidential information, it will issue a protective order. Notice of issuance of protective orders will be given in the next commission weekly agenda.~~

(9) remains the same.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is reasonable necessity to amend in order to improve, simplify, and clarify language at ARM 38.2.5007(3)(c), 38.2.5007(4)(b)(iii), 38.2.5007(5), and 38.2.5007(8). There is a reasonable necessity to remove the second sentence at ARM 38.2.5007(3) because it is unnecessary in that section. The sentence has been moved to a new ARM 38.2.5008(4), where a statement on the imposition of burden in this context is more correctly placed. See the "reason" explanation for the proposed amendments to ARM 38.2.5008. There is a reasonable necessity to amend ARM 38.2.5007(6) and (7) to add a step to require a review of the claimed confidential information before granting a protective order. This additional step appears to be required by the Montana Supreme Court in Great Falls Tribune v. Public Service Commission and Montana Power Company, 2003 MT 359, paragraph 57, 319 Mont. 38, paragraph 57, 82 P. 3d 876, paragraph 57. There is a reasonable necessity to amend ARM 38.2.5007(3)(b) in order to move the requirement at ARM 38.2.5016, which the commission proposes to repeal, to ARM 38.2.5007. The commission deems it better to require that this information be provided in the pleadings than on the submission of protected information.

38.2.5008 PROTECTIVE ORDER--ISSUANCE, RECONSIDERATION, CHALLENGE TO CONFIDENTIALITY, BURDEN ON PROVIDER, NOTICE OF CHANGE OF STATUS OF PROTECTED INFORMATION (1) and (2) remain the same.

(3) Protective orders establish a procedure for handling confidential information. Issuance of a protective order means the commission has determined at least that the ~~provider has shown good and sufficient cause in fact and law, i.e., request for protective order conforms to these rules, and makes~~ has made a prima facie showing, that the information for which protection is requested is confidential information. A person or ~~entity~~ with proper standing, or the commission on its own motion, may challenge a request for protective order or a protective order at any time by using the following procedure:

(a) A motion and supporting memorandum challenging a protective order or a request for a protective order must be filed with the commission and served on the providing party. The providing party must file a response to the motion within 40 ten business days of service. Service means physical delivery or deposit in the mail. If necessary, following receipt of the response the commission will set the challenge for hearing. Requests for hearing or oral argument may be granted for good cause,

~~or may be scheduled on the commission's own motion.~~

(b) remains the same.

(4) A provider has the burden at all times of demonstrating that information is confidential information.

(5) On becoming aware that there is no longer a legal or factual basis to protect information covered by commission protective order, the provider must immediately notify the commission so that such information can be made public.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is reasonable necessity to amend in order to improve and clarify certain language. The new language at ARM 38.2.5008(4) was previously at ARM 38.2.5007(3). At ARM 38.2.5007(3) this language was redundant because the placement of the burden on the provider is implicit in the requirement to make a prima facie showing. It is necessary at ARM 38.2.5008 to make clear that the burden of demonstrating confidentiality remains on the provider at all times when information is withheld from public disclosure. There is reasonable necessity to add the requirement at ARM 38.2.5008(5) in order to ensure, to the extent possible, that the commission does not protect any information that is not legally protectible.

38.2.5014 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS
--GENERAL (1) Confidential information must not be provided to, disclosed to, discussed with, or accessed by any person, including legal counsel, who has not first signed a commission-approved nondisclosure agreement, thereby agreeing to access, maintain, use, and disclose confidential information in strict accordance with the governing protective order and these rules. All persons who are entitled to receive or access confidential information shall neither use nor disclose the confidential information for any purpose other than the purposes of preparation for and conduct of the proceedings before the commission; in which the protective order has been issued, and then solely as contemplated in the governing protective order and these rules, and shall take reasonable precautions to keep the confidential information secure in accordance with the purposes and intent of the protective order and these rules.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule to include a requirement stated at ARM 38.2.5020(2), thereby making ARM 38.2.5020 redundant and justifying its repeal.

38.2.5015 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS
--IDENTIFICATION OF CONFIDENTIAL INFORMATION (1) Except as otherwise ordered by the commission, confidential or claimed confidential information must be provided and maintained at all times on yellow paper, and must be clearly marked and maintained as marked in a fashion substantially equivalent to "confidential –

subject to protective order, [or provisional protective order] PSC Docket No. (insert docket number)" and may include additional markings not inconsistent with the governing protective order and these rules.

(2) On request and for good cause the commission will authorize the provision of confidential or claimed confidential information through a medium other than yellow paper.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend to reflect the new review process at ARM 38.2.5007(6) and (7), and to account for situations when it may not be practical or possible to provide information on yellow paper.

38.2.5017 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --PROVIDING CONFIDENTIAL INFORMATION--GENERAL (1) remains the same.

(2) Except as described at ARM 38.2.5023 and below, confidential information is only available from the provider and only available in accordance with the governing protective order, and confidential information is not to be obtained from the commission or others, including the consumer counsel. However, the commission may allow inspection of confidential information maintained at the commission office, by any person having signed, filed with the commission, and served on the provider a nondisclosure agreement ~~40~~ ten days before asking to inspect the confidential information.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule in order to clarify by adding a reference to ARM 38.2.5023.

38.2.5021 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --USE OF CONFIDENTIAL INFORMATION -- GENERAL (1) Where written or oral

reference to confidential information is required, reference must be by general citation of title or exhibit number or by nonconfidential description and summary, such as the nonconfidential summary supplied by the provider pursuant to ARM 38.2.5007(3)(b). If further reference to confidential information is necessary, oral reference must be presented in camera and written reference must be separated, clearly marked, filed with the commission in a sealed envelope ~~under seal~~, and served only on legal counsel of record for each party.

(2) Where reference to confidential information is required in a commission decision, every effort will be made to make such reference through nonconfidential summary. If it is not possible to make such reference by nonconfidential summary, such reference must be separated, clearly marked, placed in a sealed envelope, and served only on legal counsel of record for each party.

(3) Where in camera proceedings are recorded, stenographically or otherwise, the recording and all transcription of the recording must be separated,

clearly marked, sealed in an envelope, and ~~maintained in accordance with the governing procedural order served on the commission and legal counsel for each party who has ordered a record of the proceedings.~~ The person recording the in camera proceeding and the person transcribing the recording of the in camera proceeding must comply with the governing protective order and must sign a nondisclosure agreement.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule in order to provide an internal reference; to make the rule language consistent with other rules and with the new definition of "legal counsel;" and to clarify existing language, remove unnecessary language, and clarify who may receive transcription of confidential information.

38.2.5022 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS
--ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION--

COMMISSION AND CONSUMER COUNSEL (1) Except as otherwise provided by the commission in a protective order, The commissioners, and commission staff, and the requesting parties consumer counsel and consumer counsel staff may have access to all confidential information made available pursuant to protective order, and shall be bound by the terms of the protective order.

(2) While in the custody of the commission or requesting parties ~~consumer counsel~~, confidential or claimed confidential information must remain on yellow paper and remain marked with a clear indication that the information has been designated confidential information in a proceeding before the commission. Confidential or claimed confidential information maintained by the commission will be kept in a separate locked file cabinet, except when commissioners or commission staff are reviewing the information as part of their regulatory responsibilities. Requesting parties must similarly ensure that confidential information is kept separate and secure, and only accessible by individuals who are lawfully entitled to see the information by the terms of the protective order. sealed and segregated in the files of the commission. Confidential information maintained by the consumer counsel will be sealed and segregated in the files of the consumer counsel.

(3) ~~The consumer counsel shall have access to all confidential information which is subject to a protective order, so long as access is in accordance with the governing protective order.~~

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend in order to delete unnecessary references to the consumer counsel; to add language required by the creation of a two step review process at ARM 38.2.5007; and to improve the language of the rule with respect to maintaining and securing confidential information by the commission and requesting parties. The additional language at

the beginning of section (1) of this rule is reasonably necessary to accommodate an unusual situation, such as a requirement of a federal agency, federally created entity, or other entity that the commission limit access to confidential information as a condition of receipt of the information.

38.2.5023 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS
--ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION--PARTIES

~~(1) Confidential information must be provided by the provider to legal counsel for the requesting party when legal counsel has signed a nondisclosure agreement agreeing to be bound by the terms of the protective order. The provider, and legal counsel for requesting parties who have been granted access to confidential information, must give confidential information to legal counsel for requesting parties, when legal counsel for requesting parties has signed a nondisclosure agreement pursuant to these rules.~~ Access to confidential information may be authorized by legal counsel to expert witnesses of the requesting party. Except as otherwise agreed to by the provider, the designated expert may not be an officer, director, or employee of any party, or an officer, director, employee, stockholder, or member of an association or corporation of which any party is a member or affiliate. Prior to giving access to an expert, legal counsel shall deliver a copy of the governing protective order and these rules to the expert and the expert shall sign a nondisclosure agreement. A copy of the nondisclosure agreement must be ~~provided~~ served on the provider.

(2) remains the same.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule to allow legal counsel for requesting parties to give confidential information to legal counsel for other requesting parties when legal counsel have signed nondisclosure agreements. This amendment corrects the unnecessary and sometimes burdensome requirement that only the provider can grant access to confidential information covered by a protective order.

38.2.5024 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS
--ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION--EMPLOYEE
EXPERTS OF PARTIES

(1) ~~Legal Counsel for the~~ a requesting party may propose access to confidential information by an employee expert of the requesting party in accordance with the following procedure.

(a) ~~Legal Counsel for the~~ requesting party shall ~~notify~~ serve written notice on the legal counsel for the provider, ~~in writing~~, of the intent to provide confidential information to an employee expert of the requesting party. The notice must contain the name, title, job description, description of previous positions and experience, and area of expertise of the employee expert accessing the information.

(b) ~~Within five ten business days of the provider's receipt~~ service of notice, the provider must serve on the requesting party in writing either an objection or a statement indicating no objection. ~~if it is the good faith position of the provider that~~

~~the designated employee expert should not be given access to the information, the provider must object in writing.~~

(c) ~~If the requesting party does not receive an objection within the time required,~~ receives a statement of no objection, legal counsel for the requesting party may provide access to the information by the designated employee expert in accordance with the governing protective order.

(d) ~~If the requesting party receives an objection within the time required,~~ the requesting party and provider must attempt to resolve the objection. If the parties are unable to resolve the objection, either may apply to the commission, not later than ten business days from the receipt service of the objection by on the requesting party, for a ruling. If neither party applies for a ruling, the provider's objection is deemed granted and the designated employee expert may not be given access to the information. Access to the information shall not be given to the designated employee expert pending ruling by the commission.

(e) The standard applied by the commission ~~in~~ when determining a question of employee expert access to confidential information is whether access would be reasonably likely to jeopardize the confidential nature of the information.

(f) ~~and (2) remain the same.~~

(3) All written communication between or among parties that occurs pursuant to this rule must be served on the commission.

(4) Written communication as used in this rule does not include electronic communication. Service of written communication means physical delivery or deposit in the mail.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule to improve and clarify the process for gaining access to confidential information by employee experts.

38.2.5028 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION--PUBLIC

(1) A person not a party to a proceeding in which a protective order has been issued may ~~propose~~ request access to confidential information in accordance with the following procedure.

(a) The person shall ~~notify~~ serve a written request to access confidential information on the commission and legal counsel for the provider, ~~in writing, of the intent to request access to confidential information.~~ The notification request must include the name and address of the person, an identification of the information for which access is requested, the reason access is requested, and the intended use of the information if access is granted.

(b) ~~Within 40 ten business days of the provider's receipt of service of the request notice, if it is the good faith position of the provider that the person should not be given access to the information, the provider must either object in writing, clearly stating the reasons for the objection, or indicate in writing that the provider has no objection. An objection and statement of no objection must be served on the person and the commission. and copy the objection to the person and the~~

commission.

~~(c) If the person and the commission do not receive an objection within the time required, the person may access the information in accordance with the governing protective order. If the person and the commission receive a statement of no objection, the person may access the protected information in accordance with the governing protective order.~~

(d) If the person and the commission receive an objection ~~within the time required~~, the person and the provider shall must attempt to resolve the objection. If unable to resolve the objection, either the person or the provider may apply to the commission for a ruling. Access to the information ~~must~~ will not be given to the person pending ruling by the commission.

(e) and (f) remain the same.

(2) Written communications as used in this rule does not include electronic communications. Service of written communications means physical delivery or deposit in the mail.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule to improve and clarify the process for gaining access to protected information by persons not a party to the commission proceeding in which a protective order has been issued.

38.2.5030 CONFIDENTIAL INFORMATION-RETENTION, RENEWAL OF PROTECTION BY PROVIDER, RETURN TO PROVIDER ~~(1) Confidential information remains protected permanently, whether or not returned to the provider, unless:~~

~~(a) the commission otherwise orders following notice and opportunity to be heard;~~

~~(b) the provider agrees otherwise, in writing, communicated to each person having obtained access to the confidential information; or~~

~~(c) a court having jurisdiction over the subject matter and persons affected otherwise orders.~~

(1) Confidential information subject to commission protective order that is in the possession of the commission, the consumer counsel, or other state agency will be maintained, destroyed, or returned to the provider according to Montana laws governing records management by state agencies.

~~(2) Removal of protection relieves all persons having access to the confidential information from ongoing compliance with the governing protective order and these rules.~~

(3) (2) Except for the commission, and the consumer counsel, or other state agency, and unless the provider agrees to another disposition, all persons having obtained confidential information will return the confidential information to the provider within 45 days of final action, including court action, in the proceeding in which the information was designated confidential; or, in instances where confidential information has been obtained outside a commission proceeding, confidential information shall be returned to the provider within 30 days of obtaining

the confidential information. Return of confidential information does not relieve the receiving party or any person having access to the confidential information ~~permanently. from ongoing compliance with the governing protective order and these rules.~~ ~~The consumer counsel, in its discretion, may return confidential information to the provider. The commission may return or destroy confidential information, when no longer required to be maintained by the commission in accordance with laws governing records retention by state agencies.~~

(3) The commission may periodically, in the course of reviewing confidential information in its possession covered by protective order, require that the provider demonstrate, by making a filing consistent with the requirements at ARM 38.2.5007, that the information remains confidential information and lawfully entitled to protection.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to amend this rule in order to remove unnecessary language; to indicate simply that retention of protected information will be pursuant to Montana law; and to indicate that the commission may, recognizing that time may affect the legal basis of protection, periodically require that a provider renew the legal basis for protection.

4. The commission proposes to repeal the following rules:

38.2.5016 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --PROVIDING CONFIDENTIAL INFORMATION--NON-CONFIDENTIAL WRITTEN SUMMARY found at Administrative Rules of Montana page 38-111.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to repeal this rule because the requirement to file a nonconfidential summary of claimed confidential information is now at ARM 38.2.5007(3)(b).

38.2.5020 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --MAINTENANCE AND USE OF CONFIDENTIAL INFORMATION – GENERAL found at Administrative Rules of Montana page 38-113.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to repeal this rule because it repeats requirements, terms, and conditions stated at ARM 38.2.5014, as amended.

38.2.5027 PUBLIC ACCESS TO CONFIDENTIAL INFORMATION found at Administrative Rules of Montana page 38-119.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

REASON: There is a reasonable necessity to repeal this rule because it is unnecessary in light of ARM 38.2.5028.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and ten copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than July 26, 2007, or may be submitted to the commission through the commission's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than July 26, 2007. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-07.05.1-RUL.")

6. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission. 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: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, and rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the commission.

9. The bill sponsor notification requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by regular mail sent on May 25, 2007.

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

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

Certified to the Secretary of State June 11, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC
New Rules I and II relating to Taxpayer) HEARING ON PROPOSED
Qualifications for the 2006 Property Tax) ADOPTION
Refund)

TO: All Concerned Persons

1. On July 12, 2007, at 1:00 p.m., a public hearing will be held in the Fourth East Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., July 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I QUALIFYING FOR THE 2006 PROPERTY TAX REFUND

(1) If a taxpayer or taxpayers changed principal Montana residences during 2006, the department may consider the ownership and occupancy of the successive residence as a principal residence when determining whether the taxpayer or taxpayers qualify for the minimum term of residence for the property tax refund as provided in 2007 Mont. Laws, ch. 6 (effective June 1, 2007).

(2) For the successive residence to be considered as a principal residence for purposes of a minimum term of residence for the property tax refund as stated in 2007 Mont. Laws, ch. 6 (effective June 1, 2007), the taxpayer or taxpayers must, during 2006:

(a) release ownership of the primary principal residence in Montana and take ownership of the successive principal residence in Montana;

(b) move out of the primary principal residence in Montana and into the successive principal residence in Montana; and

(c) have paid Montana property taxes on either or both residences for at least seven months.

(3) The taxpayer or taxpayers may only make a claim for a refund under 2007 Mont. Laws, ch. 6 (effective June 1, 2007), for one of the residences.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: 2007 Mont. Laws, ch. 6 (effective June 1, 2007), 15-1-201, 15-30-140,
MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the 60th Legislature during Special Session enacted HB 9, Chapter 6, which provides for a \$400 property tax refund for residents of Montana who resided in their principal residential property for more than seven months during 2006 and paid property taxes which exceeded \$400 (possibly including 2005 and 2004 taxes). This rule is necessary to clarify the criteria the department will use when determining eligibility for this tax refund when a Montana taxpayer moved from one principal residence to another principal residence within the state during 2006.

NEW RULE II PROPERTY TAX REFUND FOR ENTITIES OWNING A RESIDENCE (1) The property tax refund claimed by a tax paying entity that owned a residence for at least seven months during 2006 shall be issued to the person or persons that:

- (a) occupied the residence as their principal residence for at least seven months during 2006; and
- (b) owned 20% or more of the shares or other membership interests of the entity owning the residence.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: 2007 Mont. Laws, ch. 6 (effective June 1, 2007), 15-1-201, 15-30-140,
MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to clarify who is eligible to receive the \$400 property tax refund as it applies to the percentage of ownership interest in a residence when that residence is owned by an entity rather than a person.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than July 20, 2007.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing 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 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.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Jon Sonju, was notified on June 8, 2007, by electronic mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State June 11, 2007

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
23.16.209, 23.16.401, 23.16.406,)	
23.16.410, 23.16.1101, 23.16.1224,)	
23.16.1225, 23.16.1231, and 23.16.3103)	
concerning display of antique illegal)	
gambling devices, dealer license)	
application process, temporary dealer)	
licenses, possession of dealer license,)	
card game tournament rules, card dealer)	
restrictions, house player restrictions,)	
rake restrictions, and casino night)	
requirements)	

TO: All Concerned Persons

1. On May 10, 2007, the Department of Justice published MAR Notice No. 23-16-186 regarding the public hearing on the proposed amendment of the above-stated rules at page 567, 2007 Montana Administrative Register, Issue Number 9.

2. The Department of Justice has amended ARM 23.16.209, 23.16.401, 23.16.406, 23.16.410, 23.16.1101, 23.16.1224, 23.16.1225, 23.16.1231, and 23.16.3103 exactly as proposed.

3. A public hearing was held on May 31, 2007. The following comments were received and appear with the Department of Justice's responses.

Comment 1: Written testimony was received from Rich Miller, executive director, Gaming Industry Association of Montana, Inc. (GIA), relating to the proposed amendment to the rules for issuance of temporary card dealer licenses under ARM 23.16.406. Mr. Miller states that the proposed amendments to rule appear to be too restrictive for operators who want to hire unlicensed card dealers on short notice. Mr. Miller states that a trial period should be permitted to allow operators to hire unlicensed dealers in order to determine if the dealer has the necessary skills prior to going through the licensure process. Mr. Miller also commented that some people may live too far from a GCD field office or Driver Services office, and that the application process could be too time consuming for some potential license applicants.

Response 1: The proposed rule amendments were drafted to conform the rules to the legislative mandate of HB 190. The new legislation requires these rules to allow temporary licenses for card dealers only upon submission of the application, payment of the license fees, and proof of an offer of employment. The new law is designed to ensure temporary licenses are issued to applicants who are suitable, who have paid the license fees, and who actually need a license issued on a

temporary, expedited basis. There is no change to the law which requires card dealers to be licensed. Furthermore, the division anticipates that changes to drivers services business practices will allow card dealer license applications to be processed in approximately 20 to 30 days, or less. These proposed procedures are not significantly more burdensome than under current law. Applicants had previously been required to appear at a drivers services station to have photos taken and to submit fingerprints; the applicant was then required to mail the completed application and required fees to the division prior to using the temporary license attached to the application. Experience reveals the majority of card dealer license applications come from Montana's larger urban areas where GCD field offices are located. Additionally, the division plans to utilize Local Workforce Service Centers located in certain areas of the state to assist in handling temporary card dealer license applications, which should limit travel distances for some applicants.

Comment 2: Written comment from Rich Miller was received relating to the proposed amendment to the rules detailing card dealer restrictions under ARM 23.16.1224. Mr. Miller contends that the proposed amendment fails to clarify the rule, and that the entire rule should be rewritten.

Response 2: The division has recently encountered many operators who pay their card dealers a percentage of the rake. These operators and card dealers were unaware that this practice results in a prohibited undisclosed ownership interest in the license. The division believes the proposed amendment will serve to clarify this point.

Comment 3: Written comment from Rich Miller was received relating to the proposed amendment to the rule addressing the rake in a card game under ARM 23.16.1231. Mr. Miller states that the proposed amendment is redundant since the restriction is addressed under ARM 23.16.1224. He further comments that ARM 23.16.1231 deals with the mechanics of the game as it relates to the rake, and that the current rule should not be cluttered with what he views is an employment issue.

Response 3: While this amendment may be redundant to the rake restriction expressed in the proposed amendment to ARM 23.16.1224, the division believes it should be included in the rule addressing rakes. Investigators for the division have recently discovered numerous situations where card dealers are paid a percentage of the rake, and neither the dealer nor the operator understood this to be a prohibited undisclosed ownership interest in the license.

Comment 4: Oral testimony was received at the hearing from Ronda Wiggers, representing the Montana Coin Machine Operators Association. Ms. Wiggers stated that she supported the proposed amendments to ARM 23.16.209 relating to the display of antique gambling devices, but she stated that the legislation which prompted the amendments conflicts with the federal Johnson Act. Ms. Wiggers suggested the division develop an informational flyer advising the public that possession and transportation of gambling devices may be prohibited by federal law.

Response 4: The division will consider producing an informational flyer to send to Montana antiques dealers regarding the Johnson Act, and the availability of a license to sell antique gambling devices in Montana.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State June 11, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On April 12, 2007, the Department of Labor and Industry published MAR Notice No. 24-17-215 regarding the public hearing on the proposed amendment of the above-stated rule at page 404 of the 2007 Montana Administrative Register, issue no. 7.

2. On May 8, 2007, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional written comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: Rick Toland, of Sprinklerfitters Local 669, questioned the wages and benefits set in Districts 1, 2, and 5 for sprinklerfitters. He stated that because the union has a statewide agreement all the rates should be equal to the union rate.

Response 1: The department received sufficient survey response to set rates in each district. A collectively bargained rate is used only if there is insufficient survey data upon which to set a rate. The department has reviewed the rates set in Districts 1, 2, and 5 and has determined that the rates were set according to the methodology provided by state law and the implementing administrative rules.

Comment 2: The same commenter also asked if the comment period could be extended to incorporate a collective bargaining agreement that was in the process of being finalized.

Response 2: No. The building construction services rates are based upon survey responses for wages paid through the end of 2006. A collective bargaining agreement executed in 2007 would not provide information relevant to the survey period.

Comment 3: Rion Miles of the Operating Engineers union noted that the Operating Engineers no longer use certain locations for dispatch points, but these locations are

still listed in the prevailing wage publications. He asked whether the publications could be modified to reflect this change.

Response 3: Because the dispatch points listed are used by all trades and crafts for calculating travel pay, the department believes that the dispatch locations need to remain in the wage rate publications. For building construction services rate-setting purposes, the Commissioner of Labor has determined the ten prevailing wage districts in accordance with 18-2-411, MCA. Each district has a designated city for computing travel pay within that district. For heavy construction and highway construction purposes the department adopts federal Davis-Bacon determinations; therefore, the towns listed in those determinations for computing travel pay are the ones used by the state of Montana.

Comment 4: The Montana Contractors Association also questioned the wage rate for Painters shown in the proposed Highway Construction prevailing wage publication, noting that a recent modification to the federal rates had gone into effect.

Response 4: The department has reviewed the proposed rates and the wage and fringe benefit rates contained in Modification Number 1 to General Decision Number MT070002, dated February 23, 2007. The department notes that the federal government issues modifications to Davis-Bacon Act rates applicable in Montana from time to time throughout the year, and may even issue multiple determinations for Montana in the course of a single year. The federal government is not required to go through a formal rulemaking process to adopt or change those rates. The department, on the other hand, is required by state law to undertake formal rulemaking to change prevailing wage rates. In order to timely update rates for 2007, the department decided to incorporate by reference the federal Davis-Bacon Act rates that were in effect on December 31, 2006. (That date also coincides with the period covered for the survey of building construction and nonconstruction service wages.) The department concludes that it is reasonable to pick a cut-off date for the adoption by reference of federal Davis-Bacon Act rate, especially given that pursuant to ARM 24.17.121(5), the adoption is done annually. Accordingly, the department declines to change the Painters rates as requested.

Comment 5: Keith Allen of the International Brotherhood of Electrical Workers, Local 233, questioned the rates set for Electricians in building construction services for District 3 (wages), District 4 (fringe benefits), and District 7 (wages and fringe benefits). He also stated that the rates for Heavy Construction for Electricians are 2 or 3 years old.

Response 5: The department has reviewed the information received during the survey period and the public comment period and has recalculated certain wage rates and fringe benefit rates in the districts noted. The fringe benefit rate for District 7 will remain at \$4.65 per hour pursuant to 18-2-401(13)(a)(ii), MCA, the "50% rule". The revised rates for building construction services are listed below in paragraph 4.

With respect to the comment on Heavy Construction rates for electricians, the commenter is correct, in that the federal Davis-Bacon Act rates appear to be based on rates originally established about 2 years ago. The department adopts the rates set by the U.S. Department of Labor under the provisions of the Davis-Bacon Act. Please also see Response 4.

Comment 6: Various individuals and entities submitted additional data or documents for inclusion in the rate setting process during the comment period.

Response 6: The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting standards. Revised rates are identified below in paragraphs 4 and 5.

Comment 7: Kim Greco, of Laborers' Local 1686, questioned the rates set for Laborers Group 1 for fringe benefits in District 5 and 6; the rates set for Laborers Group 2 for the fringe benefit rate in all districts; the rates set in Laborers Group 3 for fringe benefits in Districts 6 and 8; and the rates set for Laborers Group 4 for the fringe benefit rate in District 8.

Response 7: The department has reviewed information received during the survey period and the public comment period in relation to Laborers Groups 1 through 4. For Laborers Group 1, the fringe benefit rates for District 5 are changed to \$6.70 per hour and the fringe benefit rate for District 5 will remain at \$3.95 per hour, as the rate for District 5 was set in accordance with existing methodology and administrative rules. Likewise, the department concludes that for Laborers Group 3, the fringe benefit rates for Districts 6 and 8, and for Laborers Group 4, the fringe benefit rate in District 8, will remain as set as these rates were set in accordance with existing methodology and administrative rules. For Laborers Group 2, the fringe benefit rates in Districts 4, 8, and 10 are revised as shown in paragraph 4.

Comment 8: Kim Greco of Laborers' Local 1686 also commented in regards to the proposed rates for Heavy Construction, and requested that the hourly rates and fringe benefit rates be increased to those reflected in the recently submitted collective bargaining agreement.

Response 8: The department adopts the rates set by the U.S. Department of Labor under the provisions of the Davis-Bacon Act. Please also see Response 4.

Comment 9: Jim Rickard of the Montana Labor-Management Alliance, letter signed by Jim Rickard requested that Hod Carriers (listed in Laborers Group 4, Building Construction) receive the same travel allowance rates as Bricklayers, and provided documentation supporting the request.

Response 9: The department has reviewed this request and the accompanying documentation. It notes that the "Special Work Rules and Risk Pay" section of the submitted collective bargaining agreement states that "Hod Carriers and Brick

Tenders will receive the same amount of travel pay and/or subsistence as the Bricklayers when required to travel" Therefore, a note in the appropriate section of the Building Construction publication will be added to reflect this provision.

Comment 10: Jerry Laughery of the Montana Contractors Association requested a review of the zone pay rates contained in the federal Davis-Bacon Act determination being adopted for Highway Construction rates.

Response 10: The department has reviewed the federal determination being considered for adoption and agrees that a discrepancy exists between the copy of the determination used to prepare the Montana rates and the copy of the determination maintained in the archives located on the Internet at <http://www.dol.gov>. Therefore, to bring the determination in line with the federal Davis-Bacon determination, the proposed publication is changed as shown in paragraph 6 with respect to travel pay for zones 2 and 3, and for the hourly rates for cement masons, millwrights, and power equipment operators in group 5.

Comment 11: Cary Hegeberg of the Montana Contractors Association requested that the department undertake formal rulemaking to revise the rate setting process for the building construction trades. He stated that prior to the 2007 legislative session, there was broad agreement that the rate making process should be changed.

Response 11: The department will, starting this summer, hold meetings with interested parties to discuss how the rate setting process could be revised. Whether or not those suggested revisions can be implemented by rule, or whether legislative changes would be needed, is unclear at this time. The department remains committed to being open to all reasonable suggestions for changes in the rate setting process.

Comment 12: Bryon Cook of aBCc Erectors Inc., objected to the method used to calculate fringe benefit rates, specifically the exclusion of survey responses that list "\$0" as the fringe benefit rate. The commenter stated that this exclusion leads to the setting of fringe benefit rates that are higher than the average for the industry.

Response 12: The department initially notes that prevailing wage rates (including benefit rates) do not necessarily represent the "average" [the arithmetic mean] wage paid within a given industry or occupation. Section 18-2-401(13)(a)(ii), MCA, provides for the primary method of determining prevailing wages rates, and ARM 24.17.121 specifies the alternative methods to be used if the criteria of the primary method cannot be met.

As noted in the department's response to a similar comment made in 2005 by the same commentor, the department has historically looked at the language of 18-2-412(2), MCA, which states "The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions or retirement or death, life insurance, disability and sickness insurance, or

bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor." It is the department's conclusion that a "zero" amount does not meet the criterion of plans that "provide benefits"; therefore, "zero" amounts or negative replies are excluded from figuring the average benefit amount on the survey.

Comment 13: The same commenter also objected that as a nonunion employer, it was a lopsided application of the rules to require the benefit package paid on a prevailing wage project in the form of an irrevocable contribution to nonunion employees, while union employees are subject to vesting (minimum number of hours worked) requirements.

Response 13: The department notes that the comment appears to go to the underlying provisions of law, rather than the proposed rule amendments and the prevailing wage and benefit rates being incorporated by reference. Section 18-2-412, MCA, specifies the ways in which a contractor on a public works project may fulfill the contractor's obligations to pay the standard prevailing rate of wages, including fringe benefit amounts. The department notes that a contractor may pay the fringe benefit amount directly to the worker (18-2-412(1)(a), MCA); the contractor may make an irrevocable contribution to a trustee of an approved benefit fund or plan (18-2-412(1)(b), MCA); or a combination of the two alternatives (18-2-412(1)(c), MCA). The department respectfully suggests that if the commenter believes that the statute should be changed, the commenter should raise that issue with the Legislature.

Comment 14: During the comment period, department staff received a telephone call alerting the department to an apparent error in the travel allowance rates for Carpenters in Districts 4 through 10 in the proposed Building Construction publication.

Response 14: The department has reviewed the rates for travel pay for Carpenters in Districts 4 through 10 and has determined that a typographical error is present. Therefore, the travel pay rate for 30-50 miles is corrected from "Base Pay + \$2.50" to "Base Pay + \$1.50". The correction is also noted in paragraph 4.

Comment 15: Several commentors complimented the department's survey process for the 2006 survey cycle.

Response 15: The department acknowledges the comments.

Comment 16: Several members of the public informally asked if the department could adopt Davis-Bacon Act determinations when they are published by the federal government, without going through the public hearing process.

Response 16: No, it cannot. Under current law, the department must follow the rulemaking provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, MCA) to establish the prevailing wage and fringe benefit rates. Section 2-4-307,

MCA, expressly prohibits (with a limited exception) state agencies from adopting any later amendments or editions of materials adopted by reference (including federal regulations) without going through the rulemaking process. As noted in Response 9, the federal government changes its rates without having to go through rulemaking, and typically there is no advance notice of a federal rate change, which goes into effect on the date the rate change is announced.

4. The rule has been amended exactly as proposed. The following rates in "The State of Montana Prevailing Wage Rates - Building Construction Services" publication incorporated by reference in the rule have been amended as follows, stricken matter interlined, new matter underlined:

Carpenters:

Travel

Districts 4 – 10:

0-15 miles	free zone
15-30 mi	Base pay + \$1.00
30-50 mi	Base pay + \$2.50 <u>\$1.50</u>
Over 50 mi	Base pay + \$2.00

Construction laborers, group 2:

	Wage Rate	Benefit Rate
District 4	\$16.02	\$4.89 <u>\$6.00</u>
District 8	\$15.26	\$6.32 <u>\$4.74</u>
District 10	\$14.50	\$2.51 <u>\$2.97</u>

Electrician:

	Wage Rate	Benefit Rate
District 3	\$23.85 <u>\$24.85</u>	\$9.87
District 4	\$24.96	\$8.09 <u>\$9.72</u>
District 7	\$23.96 <u>\$22.57</u>	\$4.65 <u>\$8.01</u>

5. The rule has been amended exactly as proposed. The following rates in "The State of Montana Prevailing Wage Rates - Nonconstruction Services" publication incorporated by reference in the rule have been amended as follows, stricken matter interlined, new matter underlined:

Boiler operator:

	Wage Rate	Benefit Rate
District 2	\$13.88 <u>\$18.79</u>	\$3.92 <u>\$7.45</u>
District 3	\$14.47 <u>\$16.63</u>	\$3.89 <u>\$6.62</u>
District 6	\$13.88 <u>\$18.79</u>	\$3.92 <u>\$7.45</u>

Bus driver (school):

	Wage Rate	Benefit Rate
District 2	\$13.17 <u>\$11.38</u>	\$4.58 <u>\$4.77</u>
District 3	\$12.94 <u>\$11.10</u>	\$3.95 <u>\$4.98</u>
District 4	\$ 9.00	\$5.28 <u>\$4.05</u>

Bus and truck mechanic (diesel engine):

	Wage Rate	Benefit Rate
District 4	\$16.10	\$2.94 <u>\$4.75</u>

Cook, institution or cafeteria:

	Wage Rate	Fringe Benefits
District 3	\$6.70 <u>\$8.28</u>	\$2.79
District 4	\$9.40 <u>\$7.95</u>	\$3.67 <u>\$2.52</u>

Janitors and cleaners:

	Wage Rate	Benefit Rate
District 1	\$11.65 <u>\$10.45</u>	\$3.88 <u>\$5.39</u>

Licensed practical nurse:

	Wage Rate	Benefit Rate
District 8	\$16.32 <u>\$13.79</u>	\$3.67

Nursing aides, orderlies, and attendants:

	Wage Rate	Benefit Rate
District 4	\$ 9.00 <u>\$ 8.75</u>	\$1.17

Refuse and recyclable collectors:

	Wage Rate	Benefit Rate
District 4	\$12.92 <u>\$13.75</u>	\$6.45

Sanitary landfill operator/attendant:

	Wage Rate	Benefit Rate
District 4	\$14.27 <u>\$13.75</u>	\$1.27 <u>\$6.96</u>

6. The rule has been amended exactly as proposed. The following rates in "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction

Services" publication incorporated by reference in the rule have been amended as follows, stricken matter interlined, new matter underlined:

Highway construction services:

Carpenters, cement masons, iron workers, laborers, power equipment operators and truck drivers:

Zone 2: 30 to 60 miles - Base Pay + ~~\$2.20~~ \$2.50

Zone 3: Over 60 miles - Base Pay + ~~\$3.20~~ \$4.00

Highway construction services:

Occupation	Base pay	Fringe benefits
Cement mason	\$19.39 <u>\$20.36</u>	\$8.50
Millwright	\$21.64 <u>\$23.64</u>	\$8.85
Power equipment operator, group 5	\$25.29 <u>\$25.28</u>	\$8.00

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN

Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State June 11, 2007

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.121.407 premises and general)
requirements and 24.121.1505 restrooms)

TO: All Concerned Persons

1. On January 11, 2007, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-4 regarding the proposed amendment of the above-stated rules, at page 4 of the 2007 Montana Administrative Register, issue no. 1.

2. On February 1, 2007, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.121.407 and 24.121.1505 exactly as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING OFFICER

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

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

Certified to the Secretary of State June 11, 2007

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

In the matter of the amendment of ARM)
37.30.404 and 37.30.405 pertaining to)
Vocational Rehabilitation Program)
financial need standards and payment)
for services)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 12, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-401 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 458 of the 2007 Montana Administrative Register, issue number 7.
2. The department has amended ARM 37.30.404 and 37.30.405 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 June 11, 2007.

VOLUME NO. 52

OPINION NO. 3

COUNTIES - 38 Op. Att'y Gen. No. 57 (1979) overruled in its entirety;
COUNTIES - Lease-purchase agreement with "non-appropriation" clause under county debt limit statutes;
COUNTIES - Lease-purchase agreement with "non-appropriation" clause under statute requiring election on incurrence of indebtedness or liability for a single purpose;
COUNTY GOVERNMENT - 38 Op. Att'y Gen. No. 57 (1979) overruled in its entirety;
COUNTY GOVERNMENT - Lease-purchase agreement with "non-appropriation" clause under county debt limit statutes;
COUNTY GOVERNMENT - Lease-purchase agreement with "non-appropriation" clause under statute requiring election on incurrence of indebtedness or liability for a single purpose;
ELECTIONS - Lease-purchase agreement with "non-appropriation" clause under statute requiring election on incurrence of indebtedness or liability for a single purpose;
LOCAL GOVERNMENT - 38 Op. Att'y Gen. No. 57 (1979) overruled in its entirety;
MONTANA CODE ANNOTATED - Title 76, chapter 6; sections 7-7-2101(1), (2), -2402, -3413, -4201, 7-21-3413;
MONTANA CONSTITUTION OF 1889 - Article XVIII, section 2;
MONTANA LAWS OF 2007 - Chapter 187;
OPINIONS OF THE ATTORNEY GENERAL - 38 Att'y Gen. No. 56 (1979), 49 Op. Att'y Gen. No. 3 (2001).

HELD: A Lease-Purchase Agreement which includes a non-appropriation clause and which allows for termination without penalty to the County does not constitute indebtedness or liability for the purposes of Mont. Code Ann. § 7-7-2101(1) or (2) and therefore does not require voter approval.

June 5, 2007

Mr. Kenneth L. Oster
Valley County Attorney
501 Court Square, #20
Glasgow, MT 59230

Dear Mr. Oster:

You have requested an Attorney General Opinion interpreting Montana law governing limitations on county indebtedness. I have rephrased your question as follows:

Does a Lease-Purchase Agreement which includes a non-appropriation clause and allows for termination without penalty to

the County constitute indebtedness for the purposes of Mont. Code Ann. § 7-7-2101(1) or (2)?

You provided the following background information. Valley County proposes to enter into a Lease-Purchase Agreement for the establishment of a detention center. The agreement would be a long-term lease with an option to purchase. The Lease-Purchase Agreement would include a non-appropriation clause. The clause would provide for termination of the Lease-Purchase Agreement in the event the County did not appropriate funds to cover the rental payments due under the agreement in any given fiscal year. Termination of the Lease-Purchase Agreement would be without penalty or liability to the County. In the event the Lease-Purchase Agreement was terminated, the Lessor would have the right to repossess the leased property.

County indebtedness is governed by Mont. Code Ann. § 7-7-2101. As amended by the 2007 legislative session, 2007 Mont. Laws, ch. 187 (effective July 1, 2007), it provides:

Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402 and 7-21-3413, a county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.

Thus, a county may not incur indebtedness that would, together with the county's other outstanding indebtedness, exceed 2.5% of the total taxable value of property in the county. A county is also prohibited, except as provided in Mont. Code Ann. §§ 7-7-2402 and 7-21-3413, from incurring indebtedness for a single purpose in an amount exceeding \$500,000 without first obtaining approval from the electors. Central to both subsection (1) and (2) is a determination of what constitutes "indebtedness" or "liability."

In your letter you note that two Attorneys General have previously considered whether similar lease-purchase agreements constituted indebtedness. The first concluded that even though the annual payments of an installment purchase contract did not exceed the debt limit and the county had an option to cancel the contract at any time, the contract still constituted indebtedness for a single purpose pursuant to Mont. Code Ann. § 7-7-2101(2) and must therefore be approved by a majority of the county electorate. 38 Mont. Atty. Gen. No. 56 (1979).

Subsequently, I issued an Opinion interpreting the statutes governing debt limitations of municipal governments and concluded that a long term lease with an option to purchase, which contained a non-appropriation clause and which could be terminated without penalty to the city, did not constitute indebtedness pursuant to Mont. Code Ann. § 7-7-4201. 49 Mont. Atty. Gen. No. 3 (2001).

In reaching that conclusion, I noted, "[t]he basis for the various debt limitation statutes appears to be an aversion to the practice of obligating future legislative bodies to appropriate funds for current projects." The Opinion concluded that a lease-purchase agreement would not create a "debt" subject to the limitations found in section 7-7-4201.

The payments under the lease purchase contract would be made from currently available City revenue. Nothing in the contract as you have described it would obligate the City to make a payment in any future budget year. On the contrary, the City would remain free to decide in any budget year not to make the lease purchase payment. Under the contract the lessee would have no right to sue the City for specific performance of an obligation to pay under these circumstances.

As I noted above, the question raised in your opinion request centers around whether Valley County's proposed Lease-Purchase Agreement constitutes an indebtedness or liability for the purposes of section 7-7-2101(1) or (2).

I find that my 2001 analysis regarding the creation of a debt applies to the Lease-Purchase Agreement you have described. Like the agreement contemplated in that earlier opinion, payments under the Lease-Purchase Agreement proposed by Valley County would be made from currently available county revenue. Under the terms of the agreement the County would not be obligated to make any payments in future budget years. Continuation of the agreement would be contingent on the County government appropriating funds to continue to make the lease purchase payments in any given budget years. If the sitting county government chose not to continue payments and terminated the Lease-Purchase Agreement, the County would incur no penalty or liability. The leased property would simply revert to the lessor. Previous payments made under the Agreement would be equivalent to payment of rent for the leased property and improvements.

This conclusion is consistent with the Montana Supreme Court's case law addressing the issue of what constitutes a debt or liability. The leading case is State ex rel. Rankin v. State Bd. of Examiners, 59 Mont. 557, 197 P. 988 (1921). There, the Court construed a provision of the 1889 Constitution that generally required voter approval of a debt or liability of the State in excess of \$100,000. The State proposed to issue treasury notes in the aggregate principal amount of \$1,000,000, an amount that, with interest on the notes to maturity, did not exceed the total taxes levied by the State in the fiscal year for general state purposes. The Court held that the notes were not a debt or liability of the State, since the amount required for the payment

thereof did not exceed available cash on hand or budgeted appropriations in the current biennium:

In our opinion, the debt or liability intended to be prohibited by section 2 of article 13 of our Constitution is such as is in excess of revenues available or provided for the appropriation years--that is, for the two years intervening between sessions of the legislative assembly--and not current obligations of the state arising during such period of time for which revenues are actually available or provided. The constitutional limitation has reference to such a liability as singly or in the aggregate will obligate the state to an amount in excess of \$100,000 over and above cash on hand and revenues having a potential existence by virtue of existing revenue laws.

Rankin, 59 Mont. at 568, 197 P. at 992.

The Court has followed Rankin on this issue in other cases: e.g., State ex rel. Diederichs v. Board of Trustees, 91 Mont. 300, 307, 7 P.2d 543, 546 (1932) (expenditure by county of insurance proceeds on hand to rebuild county high school did not create a debt or liability) ("The county does not create a debt or liability within the meaning of this constitutional limit where the payment is to be made from funds already provided."); Graham v. Board of Examiners, 116 Mont. 584, 155 P.2d 956 (1945) (expenditure of cash surplus in State general fund); and Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974) (expenditure by county of federal revenue-sharing funds on fairgrounds multi-use facility).

On the basis of Rankin and its progeny, I conclude that a long-term non-appropriation lease-purchase agreement does not constitute indebtedness or liability pursuant to section 7-7-2101(1) or (2), because the governmental lessee has no obligation to make rental payments unless and until it has appropriated funds in its budget for the current fiscal year.

In my 2001 opinion I declined to reconsider Attorney General Greely's opinion in 38 Op. Att'y Gen. No. 56 (1979) because the municipality debt limitation statute, section 7-7-4201, did not deal with the limit on the incurrence of "indebtedness or liability for any single purpose" found in section 7-7-2101. Your request, however, deals with the same provision at issue in Attorney Greely's earlier opinion. Because I have concluded that Montana law does not support the conclusion reached in 38 Op. Att'y Gen. No. 56 (1979), it is overruled in its entirety.

For the foregoing reasons, the proposed lease purchase arrangement outlined in your opinion request would not create indebtedness or liability under Mont. Code Ann. § 7-7-2101(1) or (2) and would not require voter approval. I express no opinion as to the legality of the proposal under any other state or federal law.

THEREFORE, IT IS MY OPINION:

A Lease-Purchase Agreement which includes a non-appropriation clause and which allows for termination without penalty to the County does not constitute indebtedness or liability for the purposes of Mont. Code Ann. § 7-7-2101(1) or (2) and therefore does not require voter approval.

Very truly yours,

/s/ Mike McGrath
MIKE MCGRATH
Attorney General

mm/anb/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

Montana Administrative Register (MAR 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 March 31, 2007. This table includes those rules adopted during the period April 1 through June 30, 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 March 31, 2007, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2006 and 2007 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the 2007 Montana Administrative Register,
p. 2820, 3112

ADMINISTRATION, Department of, Title 2

I Retention of Credit Union Records, p. 1759, 3068
2.4.401 and other rule - Single Audit Act, p. 552
2.21.3702 and other rules - Recruitment and Selection Policy, p. 1482, 2901, 33
2.21.6606 and other rules - Employee Record Keeping Policy, p. 165, 612
2.59.111 Retention of Bank Records, p. 1762, 3066, 183
2.59.1501 and other rules - Definitions - Application Procedure Required to
Engage in Deposit Lending - Reports - Schedule of Charges -
Employees' Character and Fitness - Electronic Deductions - Income
Verification, p. 375, 614, 1373, 184
2.59.1705 and other rule - Licensing Examination and Continuing Education
Provider Requirements - Records to be Maintained, p. 1498, 2104,
186

(Public Employees' Retirement Board)

2.43.1002 and other rule - Investment Policy Statement for the Defined
Contribution Retirement Plan - Investment Policy Statement for the
457 Deferred Compensation Plan, p. 320, 677

(State Compensation Insurance Fund)

2.55.320 and other rule - Classifications of Employments - Individual Loss Sensitive Dividend Plans, p. 2440, 3065

AGRICULTURE, Department of, Title 4

4.12.3013 Seed Civil Penalties Matrix, p. 2996, 187

4.17.102 Organic Certification Program, p. 71, 295

STATE AUDITOR, Title 6

(Classification Review Committee)

6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 400

COMMERCE, Department of, Title 8

I Administration of the 2007-2008 Federal Community Development Block Grant (CDBG) Program, p. 2999, 501
8.99.803 (Grant Review Committee) Submission and Review of Applications for Workforce Training Grants, p. 740
8.99.901 and other rules - Award of Grants and Loans under the Big Sky Economic Development Program, p. 1, 346
8.119.101 Tourism Advisory Council, p. 323, 617

EDUCATION, Title 10

(Superintendent of Public Instruction)

10.7.106 and other rules - General Fund: Quality Educator Payments - At Risk Student Payments - Indian Education for All Payments - American Indian Achievement Gap Payments - School Finance, p. 2728, 3070
10.16.3007 and other rules - Access to Instructional Materials - Procedural Safeguards - Special Education Data Collection and Reporting - Resolution Process - Expedited Due Process Hearing Resolution Process - Response to Scientific, Research Based Intervention in Learning Disability Identification - Severe Discrepancy in Learning Disability Identification - Documentation Requirements in Learning Disability Identification - Extended School Year Services - Special Education, p. 220, 678

(Board of Public Education)

I Assignment of Persons Providing Instruction to Braille Students, p. 2869, 188
10.55.602 and other rules - Accreditation Standards, p. 169, 692
10.55.716 Substitute Teachers, p. 173, 504
10.58.102 and other rules - Educator Preparation Programs, p. 2198, 190

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12.6.1601 and other rules - Game Bird Farms - Possession of Captive-Reared Game Birds - Field Trial Permits, p. 743

(Fish, Wildlife, and Parks Commission)

12.3.185 Adding Three New Species to the Annual Lottery of Hunting Licenses, p. 565

12.6.2203 and other rules - Exotic Species, p. 560, 632

12.8.211 and other rules - Commercial Use of Lands under the Control of the Department, p. 1779, 88

12.9.1105 Hunting Season Extensions, p. 750

12.11.3205 No Wake Zone at White Sandy Recreation Area on Hauser Lake, p. 326, 776

ENVIRONMENTAL QUALITY, Department of, Title 17

17.50.213 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 2444, 2961

17.53.105 Hazardous Waste - Incorporation by Reference of Current Federal Regulations into the Hazardous Waste Program, p. 2288, 3074

17.74.350 and other rules - Asbestos Control - Incorporation by Reference of Current Federal Regulations into the Asbestos Control Program - Definitions - Asbestos Project Control Measures, and Clearing Asbestos Projects, p. 2291, 2962

17.74.502 and other rules - Methamphetamine Cleanup Program - Incorporation by Reference of Current Federal Regulations into the Methamphetamine Cleanup Rules and Clearance Sampling, p. 2285, 2963

17.85.101 and other rules - Alternative Energy Revolving Loan Program, p. 1678, 3075, 34

(Board of Environmental Review)

17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328

17.30.630 Water Quality - Temporary Water Quality Standards, p. 1981, 3072

17.30.1303 and other rule - Water Quality - Incorporations by Reference - Concentrated Animal Feeding Operations, p. 3002, 201

CORRECTIONS, Department of, Title 20

I-XIX Regional Correctional Facilities, p. 2872, 36

JUSTICE, Department of, Title 23

23.4.201 and other rules - Definitions - Field Certification-Breath Analysis Instruments - Lab Certification - Qualification-Breath Analysis Location

- Personnel Qualifications - Recertification-Breath Test Personnel - Blood Sample Collections - Preliminary Alcohol Screening Tests, p. 330, 618
- 23.12.103 and other rules - Responsibility for Costs - Criminal History Records Program, p. 2477, 2959

(Gambling Control Division)

- 23.16.209 and other rules - Display of Antique Illegal Gambling Devices - Dealer License Application Process - Temporary Dealer Licenses - Possession of Dealer License - Card Game Tournament Rules - Card Dealer Restrictions - House Player Restrictions - Rake Restrictions - Casino Night Requirements, p. 567

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I Insurer Reporting Requirements, p. 337, 697
- I Board of Personnel Appeals - Summary Judgment Practice and Procedure, p. 2311, 3077
- I-V Country of Origin Placarding for Beef, Pork, Poultry, and Lamb, p. 2469, 454
- 24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services - Nonconstruction Services, p. 404
- 24.29.1401 and other rules - Allowable Medical Service Billing Rates for Workers' Compensation Claims, p. 2759, 260
- 24.29.1416 and other rule - Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 753
- 24.29.4315 Insurer Reporting Requirements, p. 633
- 24.301.131 and other rules - Building Codes, p. 2319, 112, 300

(Board of Alternative Health Care)

- 24.111.401 and other rules - General Provisions - Certification for Specialty Practice of Naturopathic Childbirth Attendance - Licensing and Scope of Practice for Direct-entry Midwifery - Continuing Education - Unprofessional Conduct - Additional Recommended Screening Procedures - Nonroutine Applications, p. 3006, 263

(Board of Barbers and Cosmetologists)

- 24.121.407 and other rule - Premises and General Requirements - Restrooms, p. 4

(Board of Dentistry)

- 24.138.301 and other rules - General Provisions - Licensing - Renewals and Continuing Education - Unprofessional Conduct - Screening Panel -

Anesthesia - Professional Assistance Program - Reactivation of a Lapsed License - Reactivation of an Expired License - Definition of Nonroutine Application - Fee Abatement - Reinstatement of License for Nonpayment of Renewal Fee - Denturist License Reinstatement - Complaint Procedure, p. 1795, 43

(Board of Hearing Aid Dispensers)

24.150.401 and other rules - Fees - Examination Pass/Fail Point - Traineeship Requirements and Standards - Transactional Document Requirements - Form and Content - Exceptions - Fee Abatement, p. 175, 468

(Board of Medical Examiners)

24.101.413 and other rule - With the Department of Labor and Industry - Renewal Dates and Requirements - Renewals, p. 11, 505

24.156.901 and other rules - Fees - Applications - Approval of Schools - Reciprocity Licenses - Renewals Pertaining to Osteopathic Physicians, p. 8, 506

24.156.2701 and other rule - Definitions - Scope of Practice - Emergency Medical Technicians, p. 180, 507

(Board of Occupational Therapy Practice)

24.165.404 and other rules - Applications - Supervision - Instruction - Training - Modalities - Unprofessional Conduct, p. 757

(Board of Optometry)

24.168.301 and other rules - Definitions - General Provisions - Diagnostic Permissible Drugs - Therapeutic Pharmaceutical Agents - Continuing Education - Screening Panel - Fee Abatement - Examinations - Approved Courses and Examinations - New Licensees - Applicants for Licensure - Therapeutic Pharmaceutical Agents-Complaint Procedure, p. 2450, 296

(Board of Outfitters)

24.171.401 and other rules - Fees - Inactive License - Transfer of River-use Days - Unprofessional Conduct and Misconduct - Guide Logs, p. 2769, 298, 347

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Internship - Fee Schedules - Examination - Transfer - Vaccines - Collaborative Practice - Preceptor Requirements - General Licensure - Ownership - Ambulatory Facilities - Wholesale Licensing - Pharmacy Closure - Change in Location - Change in Ownership - Medical Gas - Foreign Interns - Technicians - Centralized Prescription and Drug Orders - Central Filling by Hub Pharmacies, p. 636

(Board of Plumbers)

- 24.180.401 Fee Schedule, p. 498
- 24.180.401 and other rules - General Provisions - Licensing and Scope of Practice - Reciprocity Licensure - Temporary Exemptions - Reciprocity, p. 2892, 471

(Board of Professional Engineers and Professional Land Surveyors)

- 24.101.413 and other rules - Renewal Dates - Fees - Applications - Application Disposal - Examination Procedures - Grant and Issue Licenses - Inactive Status - Teaching Engineering Subjects - Certificate of Authorization, p. 762

(Board of Psychologists)

- 24.189.301 and other rules - Definitions - Fee Schedule - Use of Title - Required Supervised Experience, p. 2461, 348
- 24.189.401 and other rule - Fees - Minimum Standards, p. 771

(Board of Radiologic Technologists)

- 24.204.401 and other rules - Fee Schedule - Limited Permit Holder Fees - Continuing Education - Unprofessional Conduct, p. 2314, 202

(Board of Real Estate Appraisers)

- 24.207.401 and other rules - Fees - Adoption of USPAP by Reference - Appraisal Review - Mentor Requirements, p. 3022, 203
- 24.207.506 and other rules - Qualifying Education Requirements for Residential Certification - Qualifying Experience - Trainee Requirements - Continuing Education - Scope of Practice, p. 75, 472

(Board of Realty Regulation)

- 24.101.413 and other rules - Renewal Dates and Requirements - Definitions - General Provisions - Brokers and Salespersons - Property Management - Inactive Status - Continuing Education - Application of Rules - Investigations Committee - Application for Examination - Nonresident License - Application for Examination, p. 407
- 24.210.602 Examination, p. 1824, 46

(Board of Respiratory Care Practitioners)

- 24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Application for Licensure - Renewals - Inactive Status - Continuing Education Requirements - Traditional Education by Nonsponsored Organizations - Waiver of Continuing Education Requirement - Temporary Permit, p. 574

LIVESTOCK, Department of, Title 32

- 32.3.104 and other rules - Disease Control, p. 2775, 204

(Board of Horse Racing)

I-VII Match Bronc Rides Under the Parimutuel System, p. 340, 620

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 Reinstatement of Municipal Use Definition per Court Order, p. 508
36.12.101 and other rule - Definitions - Reservoir Standards, p. 456, 774

(Board of Oil and Gas Conservation)

36.22.1308 and other rule - Plugging and Restoration Bond - Financial Responsibility, p. 82, 350

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Determining Unenforceable Case Status in Child Support Cases, p. 2898, 118
37.5.103 and other rules - Fair Hearing Procedures and Temporary Assistance for Needy Families (TANF), p. 2784, 47
37.5.125 and other rules - Older Blind Program, p. 1987, 48, 475
37.12.401 Laboratory Testing Fees, p. 581
37.30.102 Vocational Rehabilitation IPE Care Requirements, p. 18, 474
37.30.404 and other rule - Vocational Rehabilitation Program Financial Need Standards and Payment for Services, p. 458
37.62.101 and other rules - Child Support Guidelines, p. 2476, 117
37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 584
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 597
37.78.102 and other rule - Temporary Assistance for Needy Families (TANF) Incorporation of Policy Manuals, p. 3026, 301
37.80.101 and other rules - Child Care Assistance Program, p. 1555, 2964
37.82.101 and other rules - Medicaid Assistance, p. 21, 302
37.85.212 Resource Based Relative Value Scale (RBRVS), p. 462
37.85.406 and other rules - Medicaid Reimbursement of Hospitals, Provider Based Entities, and Birthing Centers, p. 2793, 3078, 206
37.86.3701 and other rules - Case Management Services for Youth With Serious Emotional Disturbance, p. 660
37.86.5201 and other rules - Disease Management Program, p. 656
37.108.507 Components of Quality Assessment Activities, p. 14, 303
37.112.101 and other rules - Tattooing and Body Piercing, p. 2339, 351

PUBLIC SERVICE REGULATION, Department of, Title 38

38.5.2202 and other rules - Pipeline Safety - National Electrical Safety Code, p. 2372, 2966
38.5.3301 and other rules - Telecommunications Service Standards, p. 1844, 2967

REVENUE, Department of, Title 42

- I Tax Benefit Rule - Individual Income Taxes, p. 257, 485
- I & II Hospital Utilization Fee for Inpatient Bed Days, p. 2562, 3109
- 42.2.621 and other rule - Final Agency Decisions, p. 254, 477
- 42.3.101 and other rules - Waiver of Penalties and Interest, p. 3051, 509
- 42.11.104 and other rules - Liquor Vendors, Purchasing, and Distribution, p. 3031, 478
- 42.13.101 and other rules - Regulations of Liquor Licensees, p. 3044, 483, 512
- 42.18.107 and other rules - General Provisions and Certification Requirements for Appraising Property, p. 2520, 3101
- 42.19.401 and other rules - Low Income Property - Disabled Veterans Tax Exemptions - Energy Related Tax Incentives - New Industrial Property, p. 2555, 3102
- 42.20.101 and other rules - Valuation of Real Property - Classification of Nonproductive Patented Mining Claims, Agricultural Land, and Forest Land, p. 2533, 3103, 56, 119
- 42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 2375, 2979
- 42.21.116 and other rules - Personal Property, p. 2529, 3108, 122
- 42.31.102 and other rules - Tobacco Products and Cigarettes, p. 1943, 124

SECRETARY OF STATE, Title 44

- 1.2.419 Scheduled Dates for the 2007 Montana Administrative Register, p. 2820, 3112

(Commissioner of Political Practices)

- 44.12.204 Payment Threshold--Inflation Adjustment for Lobbyists, p. 2400, 2982

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in May 2007 appear. Vacancies scheduled to appear from July 1, 2007, through September 30, 2007, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 1, 2007.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration)			
Mr. Richard Brumley Lewistown Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Ms. Kim Burdick Fort Benton Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Mr. Joe Calnan Montana City Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Mr. Fred Leistiko Kalispell Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Sheriff Cheryl Liedle Helena Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Mr. Corey Livesay Helena Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Mr. Gary MacDonald Wolf Point Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration) cont.			
Mr. Kevin Myhre Lewistown Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Mr. Kerry O'Connell Big Timber Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Mr. Chuck Winn Bozeman Qualifications (if required): none specified	Director	not listed	5/1/2007 5/1/2009
Board of Optometry (Labor and Industry)			
Ms. Delores Hill Mosby Qualifications (if required): public member	Governor	reappointed	5/23/2007 4/3/2011
Mr. Douglas Kimball Bozeman Qualifications (if required): registered optometrist	Governor	Obie	5/23/2007 4/3/2011
Board of Pardons and Parole (Corrections)			
Mr. Michael McKee Helena Qualifications (if required): having education or experience in criminology	Governor	Hargrove	5/1/2007 1/1/2011

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Plumbers (Labor and Industry)			
Mr. Steve Carey Frenchtown Qualifications (if required): journeyman plumber	Governor	reappointed	5/1/2007 5/4/2011
Ms. Debi Friede Havre Qualifications (if required): public representative	Governor	reappointed	5/1/2007 5/4/2011
Mr. Marcus J. Golz Helena Qualifications (if required): representative of the Department of Environmental Quality	Governor	reappointed	5/1/2007 5/4/2011
Mr. Scott Lemert Livingston Qualifications (if required): master plumber	Governor	reappointed	5/1/2007 5/4/2011
Mr. David Lindeen Huntley Qualifications (if required): public representative	Governor	reappointed	5/1/2007 5/4/2011
Board of Real Estate Appraisers (Labor and Industry)			
Mr. Dennis Hoeger Bozeman Qualifications (if required): real estate appraiser	Governor	Moore	5/24/2007 5/1/2010

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Real Estate Appraisers (Labor and Industry) cont.			
Ms. Jennifer McGinnis Polson Qualifications (if required): real estate appraiser	Governor	O'Reilly	5/24/2007 5/1/2010
Ms. Marilyn Rose Great Falls Qualifications (if required): public representative	Governor	Seitz	5/24/2007 5/1/2010
Board of Realty Regulation (Labor and Industry)			
Mr. C.E. Abramson Missoula Qualifications (if required): real estate salesperson and identifies himself as a Democrat	Governor	Basile	5/24/2007 5/9/2011
Ms. Shirley McDermott Laurel Qualifications (if required): public representative and identifies herself as a Republican	Governor	Beebe	5/24/2007 5/9/2011
Children's Trust Fund (Public Health and Human Services)			
Rep. Rosalie Buzzas Missoula Qualifications (if required): public representative	Governor	Shea	5/7/2007 1/1/2010
Ms. JoAnn Eder Red Lodge Qualifications (if required): public representative	Governor	Randall	5/7/2007 1/1/2010

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Children's Trust Fund (Public Health and Human Services) cont.			
Ms. Betty Hidalgo Great Falls Qualifications (if required): public representative	Governor	reappointed	5/7/2007 1/1/2010
Ms. Tara Jensen Helena Qualifications (if required): agency representative	Governor	reappointed	5/7/2007 1/1/2010
Ms. Nancy Wikle Helena Qualifications (if required): agency representative	Governor	Brown	5/7/2007 1/1/2010
Montana Cherry Commodity Advisory Committee (Agriculture)			
Mr. Oliver Dupuis Polson Qualifications (if required): none specified	Director	reappointed	5/3/2007 5/3/2010
Mr. Barry Hansen Polson Qualifications (if required): none specified	Director	reappointed	5/3/2007 5/3/2010
Montana Council on Homelessness (Public Health and Human Services)			
Ms. Mary Berg Butte Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Homelessness (Public Health and Human Services) cont.			
Mr. Eric Berger Great Falls Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Mr. Robert Buzzas Bozeman Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Ms. Trish Flynn Billings Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Ms. Mary Guokas Helena Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Mr. Lafe Haugen Lame Deer Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Mr. Thomas Huddleston Helena Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Ms. Carol Mason Helena Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Homelessness (Public Health and Human Services) cont.			
Ms. Gloria O'Rourke Anaconda Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Mr. Doug Overman Kalispell Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Mr. Eric Sells Missoula Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Ms. Judy Stewart Billings Qualifications (if required): public representative	Governor	not listed	5/2/2007 12/21/2008
Public Defender Commission (Administration)			
Commissioner Vic Miller Harlem Qualifications (if required): public representative nominated by Senate President Mike Cooney	Governor	Kaercher	5/23/2007 7/1/2009
Small Business Health Insurance Pool Board (State Auditor)			
Ms. Betty Beverly Helena Qualifications (if required): consumer	Governor	Mackay	5/24/2007 1/1/2010

BOARD AND COUNCIL APPOINTEES FROM MAY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Small Business Health Insurance Pool Board (State Auditor) cont.			
Ms. Gail Briese-Zimmer Helena	Governor	reappointed	5/24/2007 1/1/2010
Qualifications (if required): management level individual with knowledge of medicaid services			
Ms. Anna Whiting-Sorrell Helena	Governor	Lipp Sirota	5/24/2007 0/0/0
Qualifications (if required): Governor's representative			
State Compensation Mutual Insurance Fund Board (Administration)			
Mr. Benny Bee Kalispell	Governor	Zanto	5/25/2007 4/28/2009
Qualifications (if required): policy holder and in private enterprise			
Mr. Joe Dwyer Billings	Governor	reappointed	5/25/2007 4/28/2011
Qualifications (if required): policy holder			
Mr. Boyd Taylor Butte	Governor	Henrich	5/25/2007 4/28/2011
Qualifications (if required): policy holder and in private enterprise			
Mr. Wally Yovetich Billings	Governor	Madsen	5/25/2007 4/28/2011
Qualifications (if required): private enterprise			

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Aging Advisory Council (Governor) Ms. Chuckie Cramer, Helena Qualifications (if required): public member</p>	Governor	7/18/2007
<p>Alternative Health Care Board (Labor and Industry) Dr. Michael Bergkamp, Helena Qualifications (if required): naturopath</p>	Governor	9/1/2007
<p>Dr. Kathleen Stevens, Billings Qualifications (if required): physician</p>	Governor	9/1/2007
<p>Board of Funeral Service (Labor and Industry) Ms. Jean Ruppert, Butte Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mr. Niles Nelson, Libby Qualifications (if required): licensed mortician</p>	Governor	7/1/2007
<p>Mr. Jered Scherer, Billings Qualifications (if required): cemetarian</p>	Governor	7/1/2007
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Steve Wilson, Helena Qualifications (if required): hearing aid dispenser with no masters</p>	Governor	7/1/2007
<p>Dr. Paula Petersen, Belgrade Qualifications (if required): hearing aid dispenser with national certification in audiology and a master's degree</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Medical Examiners (Governor) Dr. Daniel Alzheimer, Helena Qualifications (if required): doctor of medicine	Governor	9/1/2007
Dr. James D. Upchurch, Crow Agency Qualifications (if required): doctor of medicine	Governor	9/1/2007
Board of Nursing (Labor and Industry) Ms. Sharon L. Dschaak, Wolf Point Qualifications (if required): licensed practical nurse	Governor	7/1/2007
Ms. Anna Lythgoe, Clancy Qualifications (if required): registered nurse	Governor	7/1/2007
Ms. Roberta Threet, Clancy Qualifications (if required): licensed practical nurse	Governor	7/1/2007
Board of Pharmacy (Labor and Industry) Ms. Ann H. Pasha, Highwood Qualifications (if required): public member	Governor	7/1/2007
Board of Professional Engineers and Professional Land Surveyors (Labor and Industry) Ms. Paulette Ferguson, Missoula Qualifications (if required): public member	Governor	7/1/2007
Mr. James Hahn, Billings Qualifications (if required): professional surveyor	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Professional Engineers and Professional Land Surveyors (Labor and Industry) cont. Mr. Vic Cundy, Bozeman Qualifications (if required): professional engineer involved in teaching engineering	Governor	7/1/2007
Mr. David Gates, Butte Qualifications (if required): professional engineer	Governor	7/1/2007
Mr. Casey E. Johnston, Butte Qualifications (if required): licensed electrical engineer	Governor	7/1/2007
Board of Psychologists (Labor and Industry) Ms. Pat Colberg, Billings Qualifications (if required): public member	Governor	9/1/2007
Board of Public Accountants (Labor and Industry) Mr. Gary Kasper, Fairfield Qualifications (if required): licensed public accountant	Governor	7/1/2007
Ms. Kathleen M. Burch, Lakeside Qualifications (if required): public member	Governor	7/1/2007
Board of Radiologic Technologists (Labor and Industry) Ms. Anne Delaney, Missoula Qualifications (if required): radiologic technologist	Governor	7/1/2007
Board of Veterinary Medicine (Labor and Industry) Dr. Jean Allbright, Billings Qualifications (if required): licensed veterinarian	Governor	7/31/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)		
Ms. Chris Huth, Helena Qualifications (if required): nondisabled businessperson	Governor	7/1/2007
Community Service Commission (Labor and Industry)		
Director Keith Kelly, Helena Qualifications (if required): representative of the Department of Labor and Industry	Governor	7/1/2007
Mr. Tracy King, Harlem Qualifications (if required): Tribal government member	Governor	7/1/2007
Dr. Johnel Barcus, Browning Qualifications (if required): representative of the private sector	Governor	7/1/2007
Mr. Cedric Jacobson, Missoula Qualifications (if required): youth representative	Governor	7/1/2007
Corrections Advisory Council (Corrections)		
Rep. Dorothy Bradley, Bozeman Qualifications (if required): public representative	Governor	9/8/2007
Sen. Mike Cooney, Helena Qualifications (if required): public representative	Governor	9/8/2007
Judge Joe L. Hegel, Forsyth Qualifications (if required): public representative	Governor	9/8/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Corrections Advisory Council (Corrections) cont. Rep. William T. "Red" Menahan, Anaconda Qualifications (if required): public representative	Governor	9/8/2007
Sen. Jim Shockley, Victor Qualifications (if required): public representative	Governor	9/8/2007
Lt. Governor John Bohlinger, Helena Qualifications (if required): public representative	Governor	9/8/2007
Sen. Trudi Schmidt, Great Falls Qualifications (if required): public representative	Governor	9/8/2007
Ms. Valarie Weber-Rasch, Billings Qualifications (if required): public representative	Governor	9/8/2007
Rep. Gail Gutsche, Missoula Qualifications (if required): public representative	Governor	9/8/2007
Sen. Steve Gallus, Butte Qualifications (if required): public representative	Governor	9/8/2007
Sen. Larry Jent, Bozeman Qualifications (if required): public representative	Governor	9/8/2007
Rep. Tim Callahan, Great Falls Qualifications (if required): public representative	Governor	9/8/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Corrections Advisory Council (Corrections) cont. Ms. Gloria Edwards, Bozeman Qualifications (if required): public representative	Governor	9/8/2007
Rep. Veronica Small-Eastman, Lodge Grass Qualifications (if required): public representative	Governor	9/8/2007
Mr. Allan Underdal, Shelby Qualifications (if required): public representative	Governor	9/8/2007
Mr. Robert Ross, Billings Qualifications (if required): public representative	Governor	9/8/2007
Ms. Mikie Baker-Hajek, Great Falls Qualifications (if required): victims' advocate	Governor	9/8/2007
Ms. Emily Matt Salois, Missoula Qualifications (if required): public representative	Governor	9/8/2007
Mr. Dave Castle, Great Falls Qualifications (if required): public representative	Governor	9/8/2007
County Attorney George Corn, Hamilton Qualifications (if required): public representative	Governor	9/8/2007
Chief William Dial, Whitefish Qualifications (if required): public representative	Governor	9/8/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Corrections Advisory Council (Corrections) cont. Commissioner Adam Gartner, Glendive Qualifications (if required): public representative	Governor	9/8/2007
Mr. Emery Jones, Missoula Qualifications (if required): public representative	Governor	9/8/2007
Mr. Carl Venne, Crow Agency Qualifications (if required): public representative	Governor	9/8/2007
Ms. Penny Kipp, Pablo Qualifications (if required): having competency in addressing problems facing youth	Governor	9/8/2007
Economic Development Advisory Council (Commerce) Mr. Jim Smitham, Butte Qualifications (if required): public representative	Governor	7/23/2007
Mr. Evan Barrett, Butte Qualifications (if required): public member	Governor	7/23/2007
Mr. Tony Rudbach, Missoula Qualifications (if required): public member	Governor	7/23/2007
Ms. Corlene Martin, Choteau Qualifications (if required): public representative	Governor	7/23/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Family Education Savings Oversight Committee (Commissioner of Higher Education) Ms. Sarah Kelly, Helena Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Judicial Standards Commission (Justice) Ms. Patty Jo Henthorn, Big Timber Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mental Disabilities Board of Visitors (Governor) Ms. Gay Moddrell, Kalispell Qualifications (if required): consumer of developmental disability services</p>	Governor	7/1/2007
<p>Ms. Suzanne Hopkins, Lewistown Qualifications (if required): consumer of mental health services</p>	Governor	7/1/2007
<p>Ms. Teresa Lewis, Harlem Qualifications (if required): consumer of mental health services</p>	Governor	7/1/2007
<p>Montana Consensus Council (Administration) Mr. LeRoy Not Afraid, Crow Agency Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Mr. Van Wolverton, Alberton Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Ms. Eleanor Yellowrobe, Havre Qualifications (if required): public representative</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Consensus Council (Administration) cont. Mr. Nick Murnion, Jordan Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Montana Historical Society Board of Trustees (Historical Society) Mr. Don Wetzal, Bozeman Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mr. Steve Browning, Helena Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Ms. Mary Murphy, Bozeman Qualifications (if required): historian</p>	Governor	7/1/2007
<p>Mr. Steve Lozar, Polson Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Ms. Katherine Lee, Glendive Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mr. Kent Kleinkopf, Missoula Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Montana Noxious Weed Summit Advisory Council (Agriculture) Mr. Kevin Chappell, Helena Qualifications (if required): State agency representative</p>	Governor	7/26/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Summit Advisory Council (Agriculture) cont.		
Mr. Jerry Marks, Missoula Qualifications (if required): MSU Extension Agency representative	Governor	7/26/2007
Director Nancy K. Peterson, Helena Qualifications (if required): Governor representative	Governor	7/26/2007
Mr. Scott Bockness, Billings Qualifications (if required): Montana Weed Control representative	Governor	7/26/2007
Mr. Jim Ghekiere, Chester Qualifications (if required): County Weed District representative	Governor	7/26/2007
Mr. Dave Burch, Helena Qualifications (if required): Montana Department of Agriculture representative	Governor	7/26/2007
Mr. Jim Olivarez, Missoula Qualifications (if required): Federal agency representative	Governor	7/26/2007
Mr. Dave Schulz, Virginia City Qualifications (if required): Montana Association of County Officials representative	Governor	7/26/2007
Mr. Jon Wraith, Bozeman Qualifications (if required): MSU Agricultural Experiment Station representative	Governor	7/26/2007
Mr. Darrel Briese, Havre Qualifications (if required): Irrigation District representative	Governor	7/26/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Summit Advisory Council (Agriculture) cont. Mr. Bert Corcoran, Box Elder Qualifications (if required): Tribal representative	Governor	7/26/2007
Ms. Sandi Birch, Dutton Qualifications (if required): Crop Protection Product Industry representative	Governor	7/26/2007
Montana Wheat and Barley Committee (Agriculture) Ms. Janice Mattson, Chester Qualifications (if required): representative of District 3 and a Democrat	Governor	8/20/2007
Mr. Donald L. Fast, Glasgow Qualifications (if required): representative of District 2 and a Republican	Governor	8/20/2007
Motorcycle Safety Advisory Committee (Board of Regents) Mr. Dal Smilie, Helena Qualifications (if required): representative of a motorcycle riding group	Governor	7/1/2007
Mr. Ladd Paulson, Billings Qualifications (if required): peace officer	Governor	7/1/2007
Public Defender Commission (Administration) Mr. Mike Sherwood, Missoula Qualifications (if required): attorney nominated by the Montana Supreme Court	Governor	7/1/2007
Ms. Betty Bichsel, Edgar Qualifications (if required): employee of an organization providing addictive behavior counseling	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Defender Commission (Administration) cont.		
Ms. Wendy Holton, Helena Qualifications (if required): attorney nominated by the Montana State Bar	Governor	7/1/2007
Ms. Tara Veazey, Helena Qualifications (if required): member of an organization advocating on behalf of indigent persons	Governor	7/1/2007
Rail Service Competition Council (Governor)		
Mayor Larry J. Bonderud, Shelby Qualifications (if required): knowledge of the trucking industry	Governor	7/1/2007
Mr. William Fogarty, Anaconda Qualifications (if required): having knowledge of class I railroads	Governor	7/1/2007
Ms. Carla Allen, Denton Qualifications (if required): having knowledge of class II railroads	Governor	7/1/2007
Mr. Michael O'Hara, Fort Benton Qualifications (if required): farm commodity producer knowledgeable about transportation of farm commodities	Governor	7/1/2007
Mr. Doug Miller, Troy Qualifications (if required): knowledge of transportation for the mineral industry	Governor	7/1/2007
Mr. Russell Hobbs, Columbia Falls Qualifications (if required): knowledge of transportation for the wood products industry	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Research and Commercialization Board (Commerce) Mr. Jim Davison, Anaconda Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>State Electrical Board (Labor and Industry) Rep. Linda L. Holden, Valier Qualifications (if required): public member</p>	Governor	7/1/2007
<p>State Poet Laureate (Montana Arts Council) Ms. Sandra Alcosser, Florence Qualifications (if required): Montana poet</p>	Governor	7/13/2007
<p>State Workforce Investment Board (Labor and Industry) Mr. Mike McGinley, Dillon Qualifications (if required): county commissioner</p>	Governor	7/1/2007
<p>Teachers' Retirement Board (Administration) Ms. Kari Peiffer, Kalispell Qualifications (if required): active teacher</p>	Governor	7/1/2007
<p>Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services) Ms. Amber Lang, Kalispell Qualifications (if required): having a hearing disability</p>	Governor	7/1/2007
<p>Tourism Advisory Council (Commerce) Ms. Vicki Hucke, Helena Qualifications (if required): having experience in the private sector travel industry</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Tourism Advisory Council (Commerce) cont. Ms. Rhonda Fitzgerald, Whitefish Qualifications (if required): public member from Glacier Country</p>	Governor	7/1/2007
<p>Mr. Stan Ozark, Glasgow Qualifications (if required): public member from Missouri River Country</p>	Governor	7/1/2007
<p>Workforce Investment Board (Labor and Industry) Mr. John Prinkki, Red Lodge Qualifications (if required): county commissioner</p>	Governor	7/1/2007
<p>Youth Justice Council (Justice) Mr. Dennis Dronen, Great Falls Qualifications (if required): juvenile probation officer</p>	Governor	8/15/2007
<p>Judge Pedro Hernandez, Billings Qualifications (if required): representative of the local court system</p>	Governor	8/15/2007
<p>Mr. Ted Lechner, Billings Qualifications (if required): volunteer who works with delinquents or potential delinquents</p>	Governor	8/15/2007
<p>Ms. Cathy Kendall, Helena Qualifications (if required): ex-officio member</p>	Governor	8/15/2007
<p>Ms. Katie Yother, Bozeman Qualifications (if required): youth representative</p>	Governor	8/15/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Beth McLaughlin, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Mr. Steve Gibson, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Mr. Rick Robinson, Lame Deer Qualifications (if required): having competency in addressing problems facing youth	Governor	8/15/2007
Ms. Karin Billings, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Ms. Bonnie Wallem, Kalispell Qualifications (if required): representative of a nonprofit organization with special emphasis on youth development	Governor	8/15/2007
Ms. Jennifer Kistler, Helena Qualifications (if required): youth representative	Governor	8/15/2007
Mr. Dale Four Bear, Poplar Qualifications (if required): involved with programs that are alternatives to incarceration	Governor	8/15/2007
Mayor Pam Kennedy, Kalispell Qualifications (if required): local elected official	Governor	8/15/2007
Father Jerry Lowney, Helena Qualifications (if required): having competency in addressing problems facing youth	Governor	8/15/2007

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2007 through SEPTEMBER 30, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont.		
Ms. Emily Matt Salois, Missoula Qualifications (if required): having competency in addressing problems facing youth	Governor	8/15/2007
Mr. Wayne Stanford, Stevensville Qualifications (if required): having competency in addressing problems facing youth	Governor	8/15/2007
Ms. Teri Young, Great Falls Qualifications (if required): juvenile parole officer	Governor	8/15/2007
Ms. Penny Kipp, Pablo Qualifications (if required): having competency in addressing problems facing youth	Governor	8/15/2007
Ms. Donnalyn Strangeowl, Ashland Qualifications (if required): youth representative	Governor	8/15/2007
Ms. Sarah Royston, Helena Qualifications (if required): youth representative	Governor	8/15/2007