

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 15

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of )  
New Rules I through III pertaining to )  
the low income housing tax credit )  
program )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 30, 2007, at 10:00 a.m., the Board of Housing will hold a public hearing in Room 226 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Housing no later than 5:00 p.m., August 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2840; TDD (406) 841-2702; fax (406) 841-2841; or e-mail dihall@mt.gov.

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

NEW RULE I PURPOSE OF REGULATIONS (1) These rules are enacted by the Board of Housing to provide explanation and guidance for the allocation of low income housing tax credits under Section 42 of the Internal Revenue Code of the United States (26 U.S.C. 42). The board has been designated as the agency to perform the tax credit allocation functions for the State of Montana pursuant to 26 U.S.C. 42 by Executive Order No. 2-87 dated May 1, 1987.

AUTH: 90-6-106, MCA  
IMP: 90-6-104, MCA

NEW RULE II DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

- (1) "Board" means the Montana Board of Housing created by 2-15-1814, MCA.
- (2) "Project" means the low income residential rental building, or buildings, that are the subject of an application for low income housing tax credits.
- (3) "QAP" means the "Low Income Housing Qualified Allocation Plan–2008 Amended" and the "Low Income Housing Qualified Allocation Plan–2009", which set forth the selection criteria used by the board for determining housing priorities and the allocation of tax credits for calendar years 2008 and 2009, respectively, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box

200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site [www.housing.mt.gov](http://www.housing.mt.gov).

(4) "Tax credit" is a federal income tax credit for owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements pursuant to 26 U.S.C. 42.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

NEW RULE III TAX CREDIT ALLOCATION PROCEDURE (1) Applications for tax credits shall be prepared in conformance with the criteria contained in the QAP.

(2) Applications shall be submitted to the board for the first and second rounds of allocations on the dates specified in the QAP.

(3) Following submittal of all applications for allocation of tax credits for each calendar year, board staff will evaluate each project for conformance with the criteria in the QAP, using the point system provided for therein. The points awarded to each project are for the purpose of establishing that the projects meet the criteria set forth in the QAP, and not for purposes of ranking projects for allocation of tax credits. Following their evaluation, board staff will provide recommendations to the board for allocation of tax credits to qualifying projects.

(4) Copies of all applications submitted to the board are available to other applicants for tax credit projects and members of the public under the provisions contained in the QAP.

(5) At its regularly scheduled board meeting in the month of April or May of each year, the board will hold a hearing to consider the allocation of tax credits to those projects the applications for which meet the minimum criteria of the QAP. The hearing is not a contested case hearing under Title 2, chapter 4, part 6, MCA.

(6) All applicants for projects meeting the minimum criteria in the QAP will be given the opportunity at the hearing to further explain the benefits of and the need for their respective project.

(7) The awarding of points to projects pursuant to the QAP is for the purpose of determining that the projects meet the requirements of the QAP and to provide guidance to the board, but do not control the allocation of tax credits. The board will allocate tax credits to the projects that it determines best meet the needs of low income people within the state of Montana regardless of the score awarded to each of the several projects or staff recommendations. The board may consider the following factors in allocating tax credits to qualifying projects:

- (a) the geographical distribution of tax credit projects;
- (b) the rural or urban location of the qualifying projects;
- (c) the overall income levels targeted by the projects;
- (d) rehabilitation of existing low income housing stock;
- (e) sustainable energy savings initiatives;
- (f) financial and operational ability of the applicant to fund, complete, and maintain the project through the extended use period;
- (g) past performance of an applicant in initiating and completing tax credit projects; and

(h) cost of construction, land, and utilities.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

4. REASONABLE NECESSITY STATEMENT: The Board of Housing is proposing the new rules to provide guidance to applicants for low income housing tax credits available under Section 42 of the Internal Revenue Code of the United States of America (26 U.S.C. 42). Currently there is a Qualified Allocation Plan adopted by the board and signed by the Governor, annually, that outlines the procedures and rules for the application process to receive tax credits under the above mentioned IRS program. These rules serve to provide additional information in the allocation of those credits and outline the board's criteria for the allocation.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Mathew Rude, Multifamily Program Manager, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail [mrude@mt.gov](mailto:mrude@mt.gov), and must be received no later than 5:00 p.m., September 10, 2007.

6. Mathew Rude, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [lgregg@mt.gov](mailto:lgregg@mt.gov), or by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

MONTANA BOARD OF HOUSING  
J. P. Crowley, Chair

/s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State July 30, 2007.

BEFORE THE MONTANA STATE LIBRARY  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
10.102.8101 and 10.102.8102	)	
pertaining to depository procedures	)	NO PUBLIC HEARING
for state documents	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 8, 2007, the Montana State Library proposes to repeal the above-stated rules.

2. The Montana State Library will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., August 30, 2007, to advise us of the nature of the accommodation that you need. Please contact Julie Stewart, Montana State Library, 1515 E. Sixth Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; or e-mail [jstewart2@mt.gov](mailto:jstewart2@mt.gov).

3. The department proposes to repeal the following rules:

10.102.8101 DEPOSITORY PROCEDURES FOR STATE DOCUMENTS  
found at page 10-1291 of the Administrative Rules of Montana.

AUTH: 22-1-212, MCA  
IMP: 22-1-212, MCA

10.102.8102 POLICIES AND GUIDELINES FOR DEPOSITORY LIBRARIES  
found at page 10-1291 of the Administrative Rules of Montana.

AUTH: 22-1-212, MCA  
IMP: 22-1-212, MCA

REASON: It is reasonable and necessary to repeal these rules because they contain requirements and define procedures not consistent with current library practices and not consistent with the current Montana Code Annotated governing state publications.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Julie Stewart, Montana State Library, 1515 E. Sixth Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; or e-mail [jstewart2@mt.gov](mailto:jstewart2@mt.gov), and must be received no later than 5:00 p.m., September 6, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Julie Stewart at the above address no later than 5:00 p.m., September 6, 2007.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 18 based on approximately 150 state agency staff responsible for depositing state publications, six Montana State Library staff responsible for distribution of state publications, and 20 staff of depository libraries responsible for receiving and processing state publications, for a total of approximately 176 directly affected.

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

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Darlene Staffeldt  
Darlene Staffeldt  
Rule Reviewer

/s/ Darlene Staffeldt  
Darlene Staffeldt  
Montana State Librarian  
Montana State Library

Certified to the Secretary of State July 30, 2007.



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.38.101 and 17.38.106 pertaining to )	PROPOSED AMENDMENT
plans for public water supply or )	
wastewater system and fees )	(PUBLIC WATER AND SEWAGE
)	SYSTEMS)

TO: All Concerned Persons

1. On August 30, 2007, at 10:00 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., August 20, 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:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) "Applicant" means a person who submits plans and specifications for approval pursuant to this rule:

(b) "Main" means any line providing water or sewer to multiple service connections:

(c) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for a period of at least any 60 or more days in a calendar year. Public sewage systems are further categorized as follows:

(i) "Community sewage system" means a public sewage system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents: or

(ii) "Non-community sewage system" means any public sewage system which is not a community sewage system:

(d) "Service connection" means a line that provides water or sewer service to one building or living unit:

(e) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point:

(f) "Subsurface sewage treatment system" means the method of sewage treatment in which the effluent is applied below the soil surface;

(g) "Wastewater" means sewage, industrial waste, other wastes, or any combination thereof;

(h) "Wastewater system" means a public sewage system or other system that collects, transports, treats, or disposes of industrial wastes;

(i) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA; and

(j) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year. Public water supply systems are further categorized as follows:

(i) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents; or

(ii) "Non-community water system" means a public water supply system that is not a community water system.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or wastewater system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) the design report, plans, and specifications for community water systems must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in department Circular DEQ-1, "Montana Department of Environmental Quality Standards for Water Works;"

(b) the design report, plans, and specifications for non-community water systems must be prepared in accordance with the format and criteria set forth in department Circular DEQ-3, "Montana Department of Environmental Quality Standards for Small Water Systems." The department or a delegated division of local government may require the plans and specifications for such a system to be prepared by a professional engineer when the complexity of the proposed system warrants such engineering (e.g., systems using gravity storage, pressure booster/reduction stations). The department or a delegated division of local government will require the plans and specifications for such a system to be prepared by a professional engineer when treatment processes and equipment, subject to review under department Circular DEQ-1, "Montana Department of Environmental Quality Standards for Water Works," ~~is~~ are proposed. The

department or a delegated division of local government may allow standard plans and specifications previously approved by the department to be used for such a system in place of those prepared by a professional engineer on a case-by-case basis;

(c) the design report, plans, and specifications for all wastewater systems, except public subsurface sewage treatment systems, must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in department Circular DEQ-2, "Montana Department of Environmental Quality Design Standards for Wastewater Facilities," 1999 edition. The design report, plans, and specifications for a wastewater system must also be designed to protect public health and ensure compliance with the Montana Water Quality Act, Title 75, chapter 5, MCA, and rules adopted under the Act, including ARM Title 17, chapter 30, subchapter 7;

(d) the board adopts and incorporates by reference ARM 17.36.320 through 17.36.325, and 17.36.327, and 17.36.345. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325, and 17.36.327, and 17.36.345 and in accordance with the format and criteria set forth in department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems;"

(e) the design report, plans, and specifications for water extensions or replacements ~~which~~ that meet the criteria in "Water Main Certified Checklist" may be submitted under that abbreviated process;

(f) the design report, plans, and specifications for sewer extensions or replacements ~~which~~ that meet the criteria in "Sewer Main Certified Checklist" may be submitted under that abbreviated process;

~~(g) The department may grant a deviation from the standards referenced in (4)(a) through (f) when the applicant has demonstrated to the satisfaction of the department that strict adherence to the standards of this rule is not necessary to protect public health and the quality of state waters. Deviations from the standards may only be granted by the department. the design report, plans, and specifications for new community water supply wells that meet the criteria specified in the "Community Water Supply Well Expedited Review checklist" may be submitted under that abbreviated process;~~

~~(h) The applicant must identify to the satisfaction of the department or a delegated division of local government that a legal entity exists that is responsible for the ownership, maintenance, operation and perpetuation of the public water supply system or wastewater system. If a change of ownership occurs, the new owner of the public water supply system shall notify the department, in writing, within 30 days after the change of ownership occurs. the design report, plans, and specifications for new non-community water supply wells that meet the criteria specified in the "Non-community Water Supply Well Expedited Review Checklist" may be submitted under that abbreviated process; and~~

~~(i) the department may grant a deviation from the standards referenced in (4)(a) through (f) when the applicant has demonstrated to the satisfaction of the department that strict adherence to the standards of this rule is not necessary to protect public health and the quality of state waters. Deviations from the standards may be granted only by the department.~~

(5) through (7) remain the same.

(8) The department or a delegated division of local government shall issue written approval for a public water supply system or wastewater system if it determines that the design report, plans, and specifications are complete and the applicant has complied with all provisions of this rule. The approval may be conditional as follows:

(a) the department's approval of a public water supply system may set forth conditions of approval which may include, but shall not be limited to, those specifying limits on quantities available for irrigation and fire flows, limited storage, standby power sources, and peak flows; or

(b) the department's approval of a wastewater system may set forth conditions of approval which may include, but shall not be limited to, expected performance characteristics and performance limitations such as operations, staffing, financing, wastewater loads, standby power, and access.

(9) through (15) remain the same.

(16) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (d) remain the same.

(e) Department of Environmental Quality Water Main Certified Checklist, ~~2006~~ 2007 edition, which sets forth minimum criteria and design standards for water main extensions and replacements;

(f) Department of Environmental Quality Sewer Main Certified Checklist, ~~2006~~ 2007 edition, which sets forth minimum criteria and design standards for sewer main extensions and replacements; ~~and~~

~~(g) 40 CFR 141.5, which sets forth siting requirements for public water supply components.~~ Department of Environmental Quality Community Water Supply Well Expedited Review Checklist, 2007 edition, which sets forth minimum criteria and design standards for new community water supply wells;

(h) Department of Environmental Quality Non-community Water Supply Well Expedited Review Checklist, 2007 edition, which sets forth minimum criteria and design standards for new non-community water supply wells; and

(i) 40 CFR 141.5, which sets forth siting requirements for public water supply components.

(17) remains the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The department is proposing these amendments to update existing rules regarding public water supplies by making the rules consistent with the Montana Public Water Supply laws, 75-6-101, et seq., MCA, by modifying existing rules for clarification purposes, and by adopting new fees or modifying existing fees. These proposed amendments are necessary to allow the department to meet legislative intent, streamline department processes, and to clarify the rules of compliance for the regulated community. The amendments to the punctuation in ARM 17.38.101 are proposed to make the rule conform to format standards of the

Secretary of State's office.

The proposed amendment to ARM 17.38.101(3)(c) is necessary for clarification purposes and to conform the definition to 75-6-102(15), MCA. The current definition for a "public sewage system" creates confusion within the regulated community as to what is a public sewage system. Presently, members of the regulated community confuse the term, "... for a period of at least 60 days ..." to mean a period of consecutive days. This language was removed from other definitions in previous rule amendments, but was left in this definition. The proposed amendment is intended to clarify the requirement for the regulated community.

The proposed amendment to ARM 17.38.101(4)(d) will delete an unnecessary reference. The deleted reference is to a rule that adopts various department circulars. These circulars are already adopted in this rule.

The proposed amendments to ARM 17.38.101(4)(g), (h), and proposed new (i) are necessary for clarification of numbering and to adopt a checklist process for the abbreviated review of community and non-community wells. The proposed amendments will allow for a significant reduction in the amount of time for the applicant's completion of engineering plans and specifications. Previous language for (g) is moved and renumbered as new (i). Previous language for (h) is proposed to be deleted because it is inconsistent with the statutory provisions of 75-6-126, MCA.

The proposed amendments to ARM 17.38.101(16)(e) and (f) are necessary to adopt the 2007 edition of the Water Main Certified Checklist and the Sewer Main Certified Checklist, respectively. The 2007 editions remove language that indicates that a complete department review is not being completed and replace the specific dollar amount for review fee with the fee structure found in ARM 17.38.106.

The proposed amendments to ARM 17.38.101(16)(g), (h), and proposed new (i) are necessary for clarification of line item numbering and the adoption by reference of the new expedited checklists for review of community and non-community water supply wells. The proposed amendments to (16) will significantly reduce the amount of time for the applicant's completion of engineering plans and specifications and for the department's review of those plans and specifications. Previous language for (g) is moved and renumbered as new (i).

17.38.106 FEES (1) remains the same.

~~(2) Fees for review of plans and specifications are based on (2)(a) through (e) and (3). Department review will not be initiated until fees calculated under (2)(a) through (e) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full.~~ The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or sub-parts listed in these citations. ~~Department review will not be initiated until fees calculated under this rule have been received by the department.~~

(a) The fee schedule for designs requiring review for compliance with department Circular DEQ-1 is set forth in Schedule I, as follows:

#### SCHEDULE I

##### Policies

ultra violet disinfection .....	\$ 400
point-of-use/point-of-entry treatment .....	\$ 200
Section 1.0 Engineering report .....	\$ 200
Section 3.1 Surface water	
quality and quantity .....	\$ 200
structures .....	\$ 100
Section 3.2 Ground water .....	\$ 600
Section 4.1 Clarification	
standard clarification .....	\$ 500
solid contact units.....	\$ 1,000
Section 4.2 Filtration	
rapid rate.....	\$ 1,250
pressure filtration.....	\$ 950
diatomaceous earth.....	\$ 950
slow sand .....	\$ 950
direct filtration.....	\$ 950
biologically active filtration.....	\$ 950
membrane filtration .....	\$ 600
micro and ultra filtration.....	\$ 600
bag and cartridge filtration.....	\$ 300
Section 4.3 Disinfection .....	\$ 400
Section 4.4 Softening.....	\$ 500
Section 4.5 Aeration	
natural draft.....	\$ 200
forced draft.....	\$ 200
spray/pressure .....	\$ 200
packed tower.....	\$ 500
Section 4.6 Iron and manganese .....	\$ 200
Section 4.7 Fluoridation .....	\$ 300
Section 4.8 Stabilization.....	\$ 300
Section 4.9 Taste and odor control .....	\$ 400
Section 4.10 Microscreening.....	\$ 200
Section 4.11 Ion exchange .....	\$ 500
Section 4.12 Adsorptive media .....	\$ 500
Chapter 5 Chemical application .....	\$ 700
Chapter 6 Pumping facilities .....	\$ 700
Section 7.1 Plant storage.....	\$ 500
Section 7.2 Hydropneumatic tanks .....	\$ 200
Section 7.3 Distribution storage .....	\$ 500
Section 7.4 Cisterns.....	\$ 200
Chapter 8 Distribution system	
< 1320 lineal feet with standard specs .....	\$ 150
< 1320 lineal feet without standard specs .....	\$ 450
> 1320 lineal feet with standard specs .....	\$ 300
> 1320 lineal feet without standard specs .....	\$ 600
Main extension certified checklist.....	\$ 100
per lot fee .....	\$ 30

<u>non-standard specifications</u> .....	\$ 300
<u>transmission distribution (per lineal foot)</u> .....	\$ 0.10
Chapter 9 Waste disposal .....	\$ 250
Appendix A	
new systems .....	\$ 200
modifications .....	\$ 100

(b) The fee schedule for designs requiring review for compliance with department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans,	
engineering reports (minor) .....	\$ 300 <del>200</del>
comprehensive facility plan (major) .....	\$ 1,000
Chapter 30 Design of sewers	
< 1320 lineal feet with standard specs .....	\$ 150
< 1320 lineal feet without standard specs .....	\$ 450
> 1320 lineal feet with standard specs .....	\$ 300
> 1320 lineal feet without standard specs .....	\$ 600
Sewer extension certified checklist .....	\$ 100
<u>per lot fee</u> .....	\$ 30
<u>non-standard specifications</u> .....	\$ 300
<u>collection system (per lineal foot)</u> .....	\$ 0.10
Chapter 40 Sewage pumping station	
<u>force mains (per lineal foot)</u> .....	\$ 0.10
1000 gpm or less .....	\$ 400
greater than 1000 gpm .....	\$ 800
Chapter 60 Screening grit removal	
screening devices and comminutors .....	\$ 300
grit removal .....	\$ 300
flow equalization .....	\$ 500
Chapter 70 Settling .....	\$ 800
Chapter 80 Sludge handling .....	\$ 1,600
Chapter 90 Biological treatment .....	\$ 2,400
nonaerated treatment ponds .....	\$ 800
aerated treatment ponds .....	\$ 1,400
Chapter 100 Disinfection .....	\$ 500
Appendices A, B, C <sub>1</sub> & D (per design) .....	\$ 700

~~(c) The fee schedule for designs requiring review for compliance with department Circular DEQ-4 is as specified in the fee schedule in ARM 17.36.802 for wastewater disposal systems.~~

(d) (c) The fee schedule for designs requiring review for compliance with department Circular DEQ-3 is set forth in Schedule III, as follows:

SCHEDULE III

Section 3.2 Ground water .....	\$ 600
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Chapter 6 Pump facilities .....	\$ 250
Chapter 7 Finished storage/hydropneumatic tanks.....	\$ 200
Chapter 8 Distribution system.....	\$ 300

(d) The fee schedule for designs requiring review for compliance with department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 7 Septic Tanks .....	\$ 100
Chapters 8, 10, 11, 12, 13 Absorption Trenches .....	\$ 100
Chapter 9 Dosing System.....	\$ 100
Chapter 14 Elevated Sand Mounds .....	\$ 100
Chapters 15, 16, 17 Filters.....	\$ 200
Chapters 17, 18 ETA and ET Systems .....	\$ 200
Chapter 20 Aerobic Treatment.....	\$ 200
Chapter 21 Chemical Nutrient-Reduction Systems.....	\$ 50
Chapter 24, 25, 26, 27 Holding Tanks, Pit Privy, Seepage Pits .....	\$ 100
Appendix D .....	\$ 200
Non-degradation Review .....	\$ 200

(e) The fee schedule for the review of plans and specifications not covered by a specific department design standard, but within one of the following categories, is set forth in Schedule IV as follows:

SCHEDULE IV

Spring box and collection lateral .....	\$ 250
-----------------------------------------	--------

(3) Fees for review of plans and specifications not covered under (2), are established by the department based on a charge of ~~\$50~~ 60 per hour multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications will be determined by the review engineer and documented with time sheets. ~~The maximum fee for the review of plans and specifications specified under this section is \$500.~~

(4) The fee for review of plans and specifications previously denied, for staff time over two hours, is ~~\$50~~ 60 per hour, assessed in half-hour increments, multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications must be determined by the review engineer and documented with time sheets. ~~The maximum fee for each review of denied plans and specifications is \$500.~~

(5) The fee for review of deviations is ~~\$100~~ 200 per deviation.

(6) and (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The Legislature requires that the department collect fees for engineering review that are commensurate with the costs of those reviews. Section



75-6-108(1), MCA. In 2005, the board modified the review fees to address legislative audits that found that fees were not recovering review costs. However, in 2007 the department incurred a shortage of approximately \$150,000 based on approximately 420 applications. The fee changes proposed in these rules would allow the department to collect approximately \$150,000 more in fees for 420 applications in a year. Although the department cannot predict the number of applications that it will receive next year, the proposed fees are intended to correct the discrepancy between review fees and review costs.

The proposed amendment to ARM 17.38.106(2) is necessary to clarify that all applicable engineering review fees must be paid before a final approval will be issued. This clarification will ensure that the department collects fees for all review work done.

The proposed amendments to ARM 17.38.106(2)(a) and (b) are necessary to adjust the fee table so that the department is able to collect fees commensurate with the costs of those engineering reviews. The amendments include removal of existing fees and line items, addition of new fees for new line items, and modification of existing line item fees.

The proposed amendments to ARM 17.38.106(2)(c) and the new (d) are necessary to clarify review fees and to add new line items charged under DEQ-4. These proposed amendments are intended to adjust the required fees to more closely match the actual costs associated with engineering review work.

The proposed amendments to ARM 17.38.106(3) and (4) are necessary in order to recover costs associated with engineering review. The present language allowing a "maximum" fee is contrary to the legislative requirement to recover commensurate costs.

The proposed amendment to ARM 17.38.106(5) is necessary to collect fees commensurate with the cost of engineering review for deviations.

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., September 6, 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/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

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

Certified to the Secretary of State, July 30, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed adoption ) NOTICE OF PUBLIC HEARING  
of NEW RULES I, II, and III, all related to ) ON PROPOSED ADOPTION  
the medical benefits payable by )  
the uninsured employers fund )

TO: All Concerned Persons

1. On August 31, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (Room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, MT to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 24, 2007, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Cathy Brown, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-7720; fax (406) 444-3465; TDD (406) 444-5549; or e-mail cabrown@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I LIMITATION ON EXPENDITURES FOR MEDICAL BENEFITS PAYABLE BY THE UEF -- APPLICABILITY (1) Pursuant to 39-71-503 and 39-71-510, MCA, the maximum aggregate expenditure for medical benefits per claim payable by the UEF is \$100,000. The \$100,000 limitation is based on the amount actually paid by the UEF, after applying the fee schedules adopted pursuant to 39-71-704 and 39-71-727, MCA, to the medical services.

(2) The limitation applies to primary medical services and to those secondary medical services approved by the UEF.

(3) To the extent practicable, the UEF will reimburse providers for services provided at the earliest date or time before reimbursing for services provided at a later date or time. In the event of a catastrophic injury, however, it may not be feasible to identify the exact timing of the provision of services, and multiple providers may be simultaneously rendering services to the injured worker. The UEF reserves the right to make reasonable judgments regarding which services will be reimbursed first.

(4) The term "medical benefits", as used in this rule, includes:

(a) provider fees, whether for charges for direct services or for facility-related fees;

(b) prescription medications;

(c) allowed medical supplies; and

- (d) durable medical equipment.
- (5) This rule applies to claims arising on or after July 1, 2007.

AUTH: 39-71-203, MCA

IMP: 39-71-503, 39-71-510, 39-71-704, 39-71-727, MCA

Reason: There is reasonable necessity to adopt NEW RULE I in order to implement and clarify certain provisions contained in Chapter 48, Laws of 2007 (House Bill 65). For example, it is reasonably necessary to clarify that the Workers' Compensation Act medical and prescription drug fee schedules apply to a claim paid by the UEF until the \$100,000 limit is reached.

NEW RULE II RIGHTS OF THIRD-PARTY PROVIDERS AFTER THE UEF REACHES \$100,000 MEDICAL BENEFIT EXPENDITURE LIMITATION --

APPLICABILITY (1) Providers of medical services, referred to in 39-71-508, MCA, as "third-party providers", who are directly affected by the UEF's invocation of the \$100,000 aggregate expenditure limit for medical benefits have a right to bring a legal action against the uninsured employer for unpaid charges for medical services furnished to the injured worker as follows:

(a) The UEF's payment of the amount allowed by the fee schedule constitutes payment in full for the charges for a given medical service. After the UEF has reimbursed all services that fall within its aggregate expenditure limit, a medical provider may pursue the uninsured employer for the full amount of reasonable and customary charges incurred for services rendered that were not reimbursed. The UEF will notify a provider to which services a given reimbursement applies.

(b) The uninsured employer has liability only for medical services directly related to those conditions arising out of the industrial injury or occupational disease which the UEF accepted as a claim.

(2) Pursuant to 39-71-508 and 39-71-743, MCA, the injured worker is not liable to the provider of medical services for the difference between the amount payable to the provider pursuant to the fee schedules and the charges billed by the provider or for the services provided that are not reimbursed after the \$100,000 expenditure limit is reached.

(3) This rule applies to claims arising on or after July 1, 2007.

AUTH: 39-71-203, MCA

IMP: 39-71-503, 39-71-508, 39-71-510, 39-71-704, 39-71-727, 39-71-743, MCA

Reason: There is reasonable necessity to adopt NEW RULE II in order to implement and clarify certain provisions contained in Chapter 48, Laws of 2007 (House Bill 65). For example, it is reasonably necessary to clarify that third-party providers as used in the statute are providers of primary medical services. It is also necessary to clarify that although services reimbursed by the UEF are subject to the Workers' Compensation Act fee schedules, services provided that fall above the \$100,000 limit are not subject to the fee schedules.

NEW RULE III RIGHTS OF THIRD-PARTY PROVIDERS UPON THE UEF'S PROPORTIONATE REDUCTION IN BENEFIT PAYMENTS -- APPLICABILITY

(1) In addition to the provisions of [NEW RULE II], providers of medical services who are subject to a proportionate reduction in reimbursement payments from the UEF pursuant to 39-71-510, MCA, have a right to bring legal action against the uninsured employer for unpaid charges for medical services furnished to the injured worker as follows:

(a) If the UEF does not pay the fee schedule amount due to a proportionate reduction, a medical provider may pursue the uninsured employer for the unpaid portion of the fee schedule amount. The UEF will notify a provider to which services a proportionate reduction was applied.

(b) The uninsured employer has liability for primary medical services and secondary medical services approved by the UEF which are directly related to those conditions arising out of the industrial injury or occupational disease which the UEF accepted as a claim up to the \$100,000 expenditure limit.

(2) Pursuant to 39-71-508 and 39-71-743, MCA, the injured worker is not liable to the provider of medical services for the difference between the amount paid by the UEF and the fee schedule.

(3) This rule applies to claims arising on or after July 1, 2007.

AUTH: 39-71-203, MCA

IMP: 39-71-503, 39-71-508, 39-71-510, 39-71-704, 39-71-727, 39-71-743, MCA

Reason: There is reasonable necessity to adopt NEW RULE III in order to implement and clarify certain provisions contained in Chapter 48, Laws of 2007 (House Bill 65). For example, it is reasonably necessary to clarify that even if a claim is subject to the proportion reduction allowed by 39-71-510, MCA, the fee schedules still apply until the \$100,000 expenditure limit is reached.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Keith Messmer, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to [kmessmer@mt.gov](mailto:kmessmer@mt.gov), and must be received no later than 5:00 p.m., September 7, 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](mailto: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, apply and have been fulfilled. The primary sponsor of House Bill 65 was notified on April 3, 2007, by regular mail.

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 to the Secretary of State July 30, 2007

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.156.2701 definitions, 24.156.2705 ) ON PROPOSED AMENDMENT  
unprofessional conduct, 24.156.2713 EMT )  
license application, 24.156.2715 equivalent )  
education, 24.156.2717 EMT license renewal, )  
24.156.2731 fees, 24.156.2741 EMT training )  
program/course application and approval, )  
24.156.2745 examinations, 24.156.2751 EMT )  
levels of licensure, 24.156.2754 EMT course )  
requirements, 24.156.2757 EMT clinical )  
requirements, 24.156.2761 revision of )  
curriculum and statewide protocols, and )  
24.156.2771 scope of practice )

TO: All Concerned Persons

1. On August 30, 2007, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (board) no later than 5:00 p.m., on August 24, 2007, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its Emergency Medical Technician (EMT) rules, the board is proposing a substantial number of revisions to these rules. The board has determined it is reasonable and necessary to amend the rules throughout to replace out-of-date language for current terminology, delete unnecessary and redundant language, and achieve consistent use of industry terminology within the rules. The board is also amending the rules to comply with ARM punctuation and formatting requirements. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

The board is also amending the rules throughout to clarify that required EMT training consists of two areas including board-approved USDOT National Standard Curriculum with revisions and also statewide protocols, policies, and procedures. The rules are being amended for consistency in terminology usage and to specify

that both training components are applicable to EMT practice in Montana. The board is changing the term "service medical director" to "medical director" throughout to agree with a previous amendment of the term in MAR Notice No. 24-156-67.

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

24.156.2701 DEFINITIONS For purposes of the rules set forth in this subchapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Board" means the Board of Medical Examiners, ~~Department of Labor and Industry.~~

(6) "Clinical experience" means supervised instruction, observation, and practice in a patient care setting.

(7) "Clinical preceptor" means an individual trained to a level greater than the student, who is responsible for supervising and teaching the student in a clinical setting under the supervision of the ~~service~~ medical director or lead instructor in the case of an EMT-basic course.

(8) "Curriculum" means the combination of instructor lesson plans, course guides, and student study guides prepared by the United States Department of Transportation (USDOT) and commonly known as the ~~"1999 curriculum".~~ "National Standard Curriculum" (NCS).

(9) "Emergency medical service" or "EMS" means ~~prehospital~~ out of hospital care and transportation furnished by a combination of persons licensed by the board and resources that are licensed by the Department of Public Health and Human Services pursuant to Title 50, chapter 6, MCA.

(10) "Emergency medical technician" or "EMT" means any ~~prehospital~~ out of hospital emergency care personnel licensed by the board.

(11) "Emergency medical technician - basic" or "EMT-B" means an individual who ~~has successfully completed an approved EMT-B course and~~ is licensed by the board as an EMT-B.

(12) "Emergency medical technician - first responder" or "EMT-F" means an individual who ~~has successfully completed an approved EMT-F course and~~ is licensed by the board as an EMT-F.

(13) "Emergency medical technician - intermediate" or "EMT-I" means an individual who ~~has successfully completed an approved EMT-I course and~~ is licensed by the board as an EMT-I.

(14) "Emergency medical technician - paramedic" or "EMT-P" means an individual who ~~has successfully completed an approved EMT-paramedic course and~~ is licensed by the board as an EMT-P.

(15) "Lead instructor" means a person who is licensed by the board and authorized to offer and conduct EMT courses. The lead instructor is under the supervision of the ~~service~~ medical director.

(16) through (18) remain the same.



(19) "On-line medical direction" means real-time interactive medical direction, advice, or orders to EMTs from an unrestricted Montana licensed physician or physician assistant who is supervised by the medical director providing patient care.

~~(20) "On-line medical director" is the individual who provides on-line medical direction and who is supervised by the service medical director.~~

(21) remains the same but is renumbered (20).

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board determined it is reasonable and necessary to amend this rule and update definitions for clarification and to align with national changes and trends. Although observation in patient care settings has always been a part of the EMT clinical experience, the board is amending the definition to address confusion. The board is amending the definition of "clinical preceptor" to clarify that either the lead instructor or medical director can supervise preceptors, since EMT-basic courses may not have a medical director. It is necessary to correct the name of the USDOT's curriculum and change the term "prehospital" to "out of hospital" to conform to national changes. The board is amending the four EMT licensure definitions to clarify that a person must be licensed before qualifying as an EMT and correct any misunderstanding that simply completing an EMT course qualifies an individual as an EMT. The board is deleting the definition of "on-line medical director" and amending the "on-line medical direction" definition to clarify that the medical director is the person responsible for medical oversight. The board concluded that having separate definitions created confusion on overall responsibility and combining the two definitions makes the issue of medical oversight very clear.

24.156.2705 UNPROFESSIONAL CONDUCT (1) and (1)(a) remain the same.

(b) conduct likely to deceive, defraud, or harm the public, including but not limited to practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in activities required of a licensee under this subchapter;

(c) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;

(d) remains the same.

(e) use of a false, fraudulent, or deceptive statement, whether written or verbal, in connection with the activities required of a licensee under this subchapter;

(f) remains the same.

(g) having voluntarily relinquished or surrendered a professional or occupational license, certificate, or registration in this state, or in another state or jurisdiction;

(h) having withdrawn an application for licensure, certification, or registration, while under investigation or prior to a determination of the completed application in this state, or in another state or jurisdiction;

- (i) remains the same.
- (j) failure to practice within adopted statewide and/or local protocols, policies, and procedures established and approved by the board and ~~service~~ medical director;
- (k) remains the same.
- (l) willful disobedience of the provisions of Title 37, chapter 1, MCA, any rule adopted by the board, or any order of the board regarding enforcement of discipline of a licensee;
- (m) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally; this provision does not apply to a licensee who is in compliance with an approved therapeutic regimen as described in 37-3-203, MCA;
- (n) through (r) remain the same.
- (s) commission of any act of sexual abuse, misconduct, or exploitation by the licensee whether or not related to the practice;
- (t) and (u) remain the same.
- (v) falsifying and altering patient records or trip reports, intentionally documenting patient records or trip reports incorrectly, failing to document patient records, or prepare trip reports;
- (w) remains the same.
- (x) failing, as a clinical preceptor or lead instructor, to supervise, manage, or train students practicing under the licensee's supervision, according to:
  - (i) scope of practice, ;
  - (ii) generally accepted standards of patient care, ;
  - (iii) board-approved USDOT curriculum, including revisions; and
  - (iv) ~~board-approved~~ statewide protocols, policies, and procedures. ;
- (y) willfully harassing, abusing, or intimidating a patient, either physically or verbally;
- (z) remains the same.
- (aa) failing to comply with any agreement the licensee has entered into with a program established by the board under 37-3-203(4), MCA; and
- (ab) remains the same.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: It is reasonably necessary to amend this rule to delete the unnecessary phrase "board-approved" because statewide protocols are already defined in rule as board-approved. The board is also deleting an internal reference to a specific MCA section to comply with ARM formatting rules and reduce the incorrect references in rule that must be changed following amendment of the referenced statute.

24.156.2713 EMT LICENSE APPLICATION (1) remains the same.

(2) Incomplete applications will be returned. The applicant may correct any deficiencies, complete any requirements necessary for licensure, and resubmit the application to the board office. Failure to resubmit the deficient application within

one year from the date of the original submission will be treated as a voluntary withdrawal of the application and all fees will be forfeited.

(3) through (5) remain the same.

AUTH: 50-6-203, MCA

IMP: 37-1-104, 37-1-131, 37-3-203, 50-6-203, MCA

#### 24.156.2715 OUT-OF-STATE EMT APPLICANT EQUIVALENT

EDUCATION (1) ~~Out-of-state applicants who qualify under substantially equivalent education and examination requirements as set forth in this chapter and who possess a currently active EMT license or certification to practice in good standing in another state, may apply for an EMT license by reciprocity, at the same or lesser level, without examination. In order for the board to recommend to the NREMT successful course completion, the course for an individual must have been either:~~

(a) an EMT educational program reviewed and approved by the board; or

(b) determined to be "substantially equivalent" as defined by the board. The individual requesting review of their educational program must possess a currently active EMT license or certification to practice in good standing in another state.

~~(2) A qualified out-of-state licensed applicant requesting EMT licensure in Montana shall complete a reciprocity application on a form prescribed by the board and submit the application with the required supporting documentation and appropriate fees to the board.~~

~~(3) Out-of-state applicants licensed in other states shall cause all states and jurisdictions in which the applicant holds or has ever held a license to submit verification of licensure directly to the board on behalf of the applicant.~~

~~(4) Out-of-state applicants shall obtain a NPDB self-query and submit the self-query with the application to the board.~~

~~(5) If the applicant has possessed a professional or occupational license in another healthcare field, the applicant shall disclose the information to the board in the application for licensure.~~

~~(6)~~(2) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" as approved training in accordance with board-approved USDOT curriculum standards, including revisions and statewide protocols, policies, and procedures, and passage of the NREMT written and practical examination or, in the opinion of the board, completed training, experience, and passage of an examination equivalent to current board standards. Work experience obtained in the profession will not be considered as the sole basis of the applicant's qualifications.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 37-1-304, 37-3-203, 50-6-203, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to clarify the board's licensure process for out-of-state applicants. Out-of-state applicants have always been required to have National Registry of Emergency Medical Technicians (NREMT) certification for Montana licensure. When EMT licensure was transferred to the board, sample rule language from another board was used as a template, even though a reciprocity process was never in place nor

used. The amendment clarifies that the board will review courses submitted by out-of-state applicants not having NREMT and if determined substantially equivalent to board-approved USDOT curriculum standards and statewide protocols, policies, and procedures, will notify NREMT of course completion and allow administration of examinations.

24.156.2717 EMT LICENSE RENEWAL (1) through (4) remain the same.

~~(5) The board will not renew first responder or first responder ambulance licenses on or after December 31, 2006. Renewal licenses issued after that date will be issued as EMT-F licenses.~~

(6) and (7) remain the same but are renumbered (5) and (6).

AUTH: 37-1-141, 50-6-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 50-6-203, MCA

REASON: It is reasonably necessary to amend this rule to delete (5) as no longer necessary. First responder or first responder ambulance license renewals are no longer issued as they have been replaced by the EMT-F license.

24.156.2731 FEES (1) through (1)(d) remain the same.

(e) license endorsement application fee

10

(f) through (3) remain the same.

AUTH: 37-1-134, 37-1-141, 50-6-203, MCA

IMP: 37-1-134, 37-1-141, 50-6-203, MCA

REASON: It is reasonably necessary to amend this rule to clarify for applicants that the endorsement fee is an application fee and not a license fee. The fee amount is not changing and the amendment results in no fiscal impact.

24.156.2741 EMT TRAINING PROGRAM/COURSE APPLICATION AND APPROVAL (1) An individual, corporation, partnership, or any other organization may not initiate or conduct any initial ~~and/or refresher~~ courses for EMT instruction without prior approval of the board or its designee.

(2) Program or course approval applications must be submitted on a form prescribed by the board with appropriate fees. The application must designate a ~~the~~ ~~service~~ medical director and lead instructor.

(3) Completed applications will be reviewed for compliance with board statutes, rules, board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures. The board or its designee may request such additional information or clarification of information provided in the application as it deems reasonably necessary.

(4) Incomplete applications will be returned. The ~~service~~ medical director and/or lead instructor may correct any deficiencies, complete any requirements necessary for course approval at the level applied for, and resubmit the application to the board. Failure to resubmit the application within one year will be treated as a voluntary withdrawal of the application and all fees will be forfeited.

(5) The ~~service~~ medical director and/or lead instructor may voluntarily withdraw the course approval application prior to the one-year deadline provided in (4), by writing to the board. All fees submitted will be forfeited.

(6) remains the same.

(7) The board or its designee shall approve EMT training courses that comply with current board-approved USDOT curriculum, including revisions, ~~board-approved~~ and statewide protocols, policies, and procedures.

(a) and (b) remain the same.

(8) The board shall not approve an EMT training course which does not comply with current board-approved USDOT curriculum, including revisions, ~~board-approved~~ and statewide protocols, policies, and procedures.

(a) remains the same.

(b) The board may cancel approval of training courses for failure to comply with any of the requirements of this ~~chapter~~ subchapter, providing false information, or failure to provide the board or its designee access to the course and/or other information necessary to assure compliance with board statutes and rules.

(9) In the event the board's designee disapproves an EMT training course, the application will be considered by the board during the next regularly scheduled board meeting or the lead instructor and/or ~~service~~ medical director may request in writing an alternate regularly scheduled board meeting.

(10) A lead instructor may conduct required EMT refresher courses without preapproval from the board. The lead instructor must maintain all course records, demonstrating that NSC had been utilized and student performance is documented. All course records shall be made available for auditing purposes.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board determined it is reasonable and necessary to amend this rule and delete the requirement for board approval of refresher courses. The board has determined that prior approval of refresher courses delays the process without ensuring a quality program, thus the board will instead audit refresher courses for quality and consistency. The board is deleting the unnecessary phrase "board-approved" because statewide protocols are already defined in rule as board-approved. The reference to chapter is being amended to subchapter to correctly identify the location of material applicable to EMTs. This rule is also being amended to clarify that the lead instructor is responsible for conducting refresher programs and must maintain course records for audit purposes.

24.156.2745 EXAMINATIONS (1) ~~Effective January 1, 2004, All practical examinations for all EMT licensure levels and endorsements conducted on behalf of the board~~ must be conducted in accordance with the policies and procedures established by the board.

(2) ~~An EMS~~ A medical director shall be responsible for the conduct of all locally administered examinations and shall assure that all board policies and procedures are followed. ~~EMS medical~~ Medical directors may delegate duties where appropriate, ~~except in the case of first responder and basic EMT levels.~~ The EMS

medical director may not delegate the administration of the NREMT written examination for the ~~EMT-F or EMT-B~~ levels.

(3) ~~Examination~~ Practical examination materials must be requested from the board by the ~~EMS medical director~~ on forms prescribed by the board no later than 30 days prior to offering an examination. Examination materials will be sent to the ~~medical director~~ requestor from the board office within seven working days prior to the scheduled examination date of the request. ~~EMS medical directors~~ The post examination materials shall be returned return the completed examination material within seven working days after following the examination has been given.

(4) ~~When conducting NREMT EMT-I and EMT-P examinations, the board shall designate the national registry representative. The EMS medical director shall request a NREMT representative on a form prescribed by the board not less than 90 days prior to the EMT-I or EMT-P examinations.~~

(4) The board or its designee may attend and audit all exams requested and offered.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board determined that reasonable necessity exists to amend this rule to comply with current National Registry of Emergency Medical Technicians (NREMT) examination processes. The NREMT has upgraded to computer based testing and this rule is being amended to align board rules with the changed processes. The board is also amending this rule to allow for board auditing of the NREMT examinations for consistency and fairness.

#### 24.156.2751 LEVELS OF EMT LICENSURE INCLUDING ENDORSEMENTS

(1) and (1)(a) remain the same.

(i) EMT-F/immobilization (~~EMT-F 1~~);

(ii) EMT-F/monitoring (~~EMT-F 2~~); and

(iii) EMT-F/ambulance (~~EMT-F 3~~).

(b) remains the same.

(i) EMT-B/airway (~~EMT-B 1~~);

(ii) EMT-B/monitoring (~~EMT-B 2~~);

(iii) EMT-B/IV and IO (intervenous infusion and interosseous infusion) initiation (~~EMT-B 3~~);

(iv) EMT-B/IV and IO maintenance (~~EMT-B 4~~);

(v) EMT-B/endotracheal intubation, for patients more than eight years old (~~EMT-B 5~~); and

(vi) EMT-B/medication (~~EMT-B 6~~).

(c) remains the same.

(i) EMT-I/needle decompression/surgical airway (~~EMT-I 1~~);

(ii) EMT-I/immunizations (~~EMT-I 2~~);

(iii) EMT-I/drips and pumps (~~EMT-I 3~~); and

(iv) EMT-I/12 lead transmit (~~EMT-I 4~~).

(d) remains the same.

(i) EMT-P/12 lead interpretation (~~EMT-P 1~~);

- (ii) EMT-P/medications (~~EMT-P 2~~);
- (iii) EMT-P/fibrinolytic with 12 lead interpretation (~~EMT-P 3~~); and
- (iv) EMT-P/critical care transport (~~EMT-P 4~~).

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: It is reasonably necessary to amend this rule to clarify the correct EMT licensure labels and avoid confusion. Various entities have started using the abbreviated notations instead of the correct names and this was never the intent of the board.

24.156.2754 INITIAL EMT COURSE REQUIREMENTS (1) All courses for EMT licensure levels and endorsements must be conducted in accordance with the policies and procedures established by the board.

(2) An EMT-F course shall be managed by a lead instructor. The lead instructor shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor shall:

(a) conduct the EMT-F courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) through (d) remain the same.

~~(2)~~(3) An EMT-B course shall be managed by a lead instructor. The lead instructor shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor shall:

(a) conduct the EMT-B courses in accordance with current board-approved USDOT curriculum, including revisions, and statewide protocols, policies, and procedures;

(b) and (c) remain the same.

(d) provide at least one instructor per six students when practical skills are taught; ~~and~~

(e) provide a minimum of ten hours of clinical experience with an EMS or in a local hospital emergency room, patient care setting; and

(f) have a medical director involved in either the course development, presentation, or evaluation.

~~(3)~~(4) An EMT-I or EMT-P course shall be managed by a lead instructor under the supervision of a ~~service~~ medical director. The lead instructor and ~~service~~ medical director shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor and medical director shall:

(a) conduct the EMT-I and EMT-P courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) remains the same.

(c) provide clinical experience as specified in the approved curriculum and in accordance with this ~~chapter~~ subchapter; and

(d) and (i) remain the same.

(ii) the EMT-P course, within 24 months from the starting date of course; .

- (e) through (g)(ii) remain the same.
- (iii) an EMS ~~licensed at or above the EMT advanced level~~ operating at a level equal to or greater than the EMT-I level; and
- (h) provide for the EMT-P course clinical facilities that include, but are not limited to:
  - (i) through (ix) remain the same.
  - (x) an EMS ~~licensed at or above the EMT advanced level~~ operating at a level equal to the EMT-P level.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule to more specifically delineate the role of the medical director in an EMT-basic course in compliance with the National Standard Curriculum. It has previously been assumed that the medical director must teach a portion of the course. The board determined that this is not a necessary requirement in all circumstances and is amending the rule to clarify a medical director's involvement in EMT-basic courses. Amendments also clarify that the medical director and lead instructor are responsible for the EMT-I and EMT-P course and change the term "chapter" to "subchapter" to correctly identify the location of material applicable to EMTs.

The board determined it is reasonably necessary to amend this rule to align the requirements for EMT-I and EMT-P course clinical facilities with current EMS licensure rules. The Department of Public Health and Human Services (DPHHS) previously licensed EMS of specific types and at specific levels. Following a rule change in December of 2005, DPHHS now licenses EMS at advanced life support level only if the EMS can provide such service 24 hours a day, seven days a week. This change limits the availability of clinical experiences for EMT-I and EMT-P courses and the board is amending this rule to allow provision of clinical experiences by services operating at a level equal to the course level.

24.156.2757 EMT CLINICAL REQUIREMENTS (1) Clinical opportunities for students must be coordinated with the course/program and the clinical facility. There must be a written contractual agreement in place between the course/program and the clinical facility prior to the student being allowed to function in the clinical facility.

(2) EMT-B programs must assure that the student completes, ~~as a minimum,~~ of ten hours of observational time with an EMS, or in an emergency room. An alternative patient care setting may be used if an EMS is not readily available. During this time the student shall complete and document:

(a) ~~have~~ at least ~~two~~ five patient contacts during which the student can observe patient care; and

(b) ~~have~~ at least ~~two~~ five patient contacts in which the student conducts a patient assessment.

~~(2)~~(3) EMT-I and EMT-P programs must assure that the student completes and documents, as a minimum, the clinical contact requirements identified in the



board-approved USDOT curriculum; including revisions and statewide protocols, policies, and procedures.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: It is reasonably necessary to amend the rule to coordinate the minimum requirements for EMT-Basic patient contact during the clinical portion of the course with the National Standard Curriculum and board protocols, policies, and procedures. The board has always required the advanced life support programs to provide a copy of the contract between the clinical facility and training program, but this requirement was not previously delineated in rule.

24.156.2761 PROCEDURES FOR REVISION OF BOARD-APPROVED EMT CURRICULUM AND STATEWIDE PROTOCOLS (1) At the regularly scheduled ~~January and July board meetings or no less than twice per year, an individual, EMS or any other organization~~ a medical director may initiate a petition for revisions to the board-approved EMT curriculum and/or statewide protocols, policies, and procedures.

(2) remains the same.

(a) a written recommendation and/or position statement for revision to the board-approved curriculum and/or statewide protocols, policies, and procedures; and

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

(b) the board will accept public comment to gather information and take testimony regarding the proposed recommendations for revision of the USDOT curriculum and/or statewide protocols, policies, and procedures; and

(c) and (4) remain the same.

(a) when it is demonstrated to the satisfaction of the board that granting the petitioner's request for revision of the board-approved curriculum and/or statewide protocols, policies, and procedures is necessary to provide appropriate standards of medical care;

(b) where, in the case of an individual service approval, the board finds that the public's interest in granting the revision clearly outweighs the interest of maintaining uniform board-approved USDOT curriculum; including revisions and/or statewide protocols, policies, and procedures; and

(c) where, in the opinion of the board, the revisions will provide adequate public health, safety, and welfare protection.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to require that the medical director request any changes to the board-approved EMT curriculum and/or statewide protocols, policies, and procedures. In the past, the board has received change requests from other individuals without the support of the

applicable medical director. The board concluded that requiring the medical director make the request would save time and better facilitates the revision process.

24.156.2771 SCOPE OF PRACTICE (1) remains the same.

- (a) operating within the most current version of the Montana statewide EMT protocols; ~~or~~
- (b) and (c) remain the same.
- (2) An EMT licensed or endorsed at the ALS level ~~and with the oversight of a medical director~~ may perform any acts allowed within the EMT's licensure level or endorsement level when:
  - (a) under medical oversight from a medical director who is taking responsibility for the EMT; ~~or~~
  - (b) operating on a Montana licensed EMS ~~service~~ with a medical director; or
  - (c) through (4) remain the same.
  - (5) An EMT currently licensed and in good standing in another state may function during a state and/or federally managed incident under the Montana statewide protocols, policies, and procedures ~~basic life support protocols adopted by the board~~, but shall comply with all of the following:
    - (a) remains the same.
    - (b) practice within the geographic area, whether on federal, state, or private land, designated as being within the state and/or federally managed incident;
    - (c) practice at the basic level, even if the EMT is licensed at a higher level in another state, unless the individual is licensed at an EMT-I or EMT-P level, and the federally managed incident has medical control provided by a Montana licensed physician, and the physician authorizes the individual to function beyond the basic level; ~~and~~
    - (d) provide proof of current licensure and good standing in another state; ~~;~~  
and
    - (e) submit the appropriate form to the board.
  - (6) remains the same.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: It is reasonably necessary to amend the scope of practice for an ALS level EMT operating on a Montana EMS to specify that the EMS must have medical director oversight to adequately ensure protection of the public. Moving the requirement within the rule makes this requirement much clearer for licensees. The rule is also amended to allow out-of-state EMT-I or EMT-P licensees to function at their level of licensure at state and/or federally managed incidents in accordance with board protocols, policies, and procedures. The current rule limits these licensees to basic level practice. The board concluded that allowing the higher level practice under medical control of a Montana licensed physician addresses a critical need at these incidents and still ensures the public's protection.

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

submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov), and must be received no later than 5:00 p.m., September 7, 2007.

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

7. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiner's administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov), or 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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS  
ARTHUR FINK, D.O., PRESIDENT

/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 July 30, 2007

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

In the matter of the adoption of a	)	
temporary emergency rule closing the	)	NOTICE OF ADOPTION OF A
Missouri River from American Bar	)	TEMPORARY EMERGENCY RULE
Gulch to Beartooth Landing, Lewis	)	
and Clark County, MT	)	

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) believes the following reasons justify the adoption of a temporary emergency rule:

(a) There is an immediate need for a source of water for aircraft dropping water on fires along and adjacent to the Missouri River in the Gates of the Mountains and Upper Holter Lake. The use of the aircraft is part of Northern Rockies interagency fire management.

(b) The aircraft scoop water with a large bucket while hovering over the surface of the Missouri River and Upper Holter Lake.

(c) Persons on the Missouri River recreating while aircraft are loading water would be subjected to immediate and extreme danger. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver narrow passageways and high cliff walls to avoid recreationists.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission intends to adopt the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 15 of the 2007 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov).

3. The temporary emergency rule is effective July 26, 2007.

4. The text of the temporary emergency rule provides as follows:

RULE I MISSOURI RIVER TEMPORARY EMERGENCY CLOSURE

(1) The Missouri River northeast of Helena is located in Lewis and Clark County.

(2) The Missouri River from the beginning of Upper Holter Lake at American Bar Gulch to the Beartooth Landing is closed to all boating, floating, and swimming and any other public occupation of the river.

(3) This rule is effective as long as this portion of the Missouri River is needed as a source of water for fighting wildfires. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when the Missouri River is again safe for boating, floating, and swimming and any other occupation of the river.

AUTH: 2-4-303, 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the river is again safe for boating, floating, and swimming and any other occupation of the river. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the river will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Michael Korn, Law Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2456; fax (406) 444-7894; or e-mail mkorn@mt.gov. Any comments must be received no later than August 23, 2007.

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

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

/s/ Larry G. Peterman  
Larry G. Peterman,  
Chief of Field Operations  
Department of Fish, Wildlife and Parks  
Acting Secretary  
Fish, Wildlife and Parks Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State July 26, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

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

TO: All Concerned Persons

1. On June 21, 2007, the Department of Labor and Industry (department) published MAR Notice No. 24-30-220, regarding the public hearing on the proposed amendment of the above-stated rule at page 823 of the 2007 Montana Administrative Register, issue no. 12.

2. On July 20, 2007, the department held a public hearing to consider the proposed amendment of the above-stated rule. No public comments or testimony were received by the closing date of July 27, 2007.

3. The department has amended the above-stated rule as proposed.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State July 30, 2007

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM        )       NOTICE OF AMENDMENT  
36.12.101, definitions and ARM                )  
36.12.113, reservoir standards                )

To:    All Concerned Persons

1. On April 12, 2007, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-118 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 456 of the 2007 Montana Administrative Register, Issue No. 7. On June 7, 2007, the department published MAR Notice No. 36-22-120 regarding a notice of extension of comment period on the proposed amendment at page 774 of the 2007 Montana Administrative Register, Issue No. 11.

2. The department has amended ARM 36.12.113 exactly as proposed.

3. The department has amended 36.12.101 as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

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

(1) through (38) remain as proposed.

(39) through (78) remain as proposed, but are renumbered (40) through (79).

4. The numbering of ARM 36.12.101 was changed to reflect the adoption of MAR Notice No. 36-22-119 on April 26, 2007, at page 508 of the 2007 Montana Administrative Register, Issue No. 8.

5. The following comment was received and appears with the agency's response:

COMMENT 1: Commenter states support for better documentation of the amount of water being put to use. Further, commenter believes that cumulative effects of many small water diversion will impact existing water rights and that the proposal being considered, which asks current users to file for changes for storage of any additional water larger than 0.10 acre feet, allows neighbors who have existing water rights to protest the proposed new development is appropriate.

RESPONSE: The department acknowledges the time and effort put forth by the commenter and appreciates their interest.



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

/s/ Anne Yates  
ANNE YATES  
Rule Reviewer

Certified to the Secretary of State July 30, 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 AMENDMENT

TO: All Interested Persons

1. On June 21, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-408 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 826 of the 2007 Montana Administrative Register, issue number 12.

2. The department has amended ARM 37.40.307, 37.40.330, and 37.40.361 as proposed.

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

COMMENT #1: A commentator supported the proposed rule notice which implemented the increases appropriated by the 2007 Legislature, including the increases designated for direct care workers.

RESPONSE: The department thanks the commentator for the support.

/s/ Russell Cater  
Rule Reviewer

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

Certified to the Secretary of State July 30, 2007.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I (42.20.802) and II (42.20.803) )  
relating to Taxpayer Qualifications for )  
the 2006 Property Tax Refund )

TO: All Concerned Persons

1. On June 21, 2007, the department published MAR Notice No. 42-2-775 regarding the proposed adoption of the above-stated rules at page 845 of the 2007 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 12, 2007, to consider the proposed adoption. No oral or written testimony was received. Dave Hunter, Deputy Director for the department explained that since the publication of the rules, a question of what constitutes "seven months" has been asked. This question involves two issues: 1) given that there is not the same amount of days per month, two taxpayers owning property for the same number of days may be treated differently unless the measure of seven months is standardized for all taxpayers, and 2) rounding is a common practice in taxation and given that the statute does not define the term "seven months," is rounding permitted to arrive at a seven month period? Is rounding, in fact, already implicit in the proposed New Rule I (42.20.802) that allows taxpayers switching principal residences within Montana during 2006, especially in June or July, to claim the credit?

3. As a result of the discussion mentioned above, the department believes it is necessary to define the term "seven months" which is contained in the statute and the rules. In defining seven months, the department standardizes at the average days per month of 30.4 days and allows rounding to the nearest month to arrive at the total of seven months. As noted, rounding is not only a common practice, but is consistent with and already implicit in the proposed New Rule I (42.20.802) concerning taxpayers switching principal Montana residences during 2006. The average number of days in a month is 30.4 and a taxpayer must have owned, paid taxes, and occupied their principal residence a minimum of 198 days: for six months (182 days) plus 16 additional days. Therefore, the department adopts ARM 42.20.801 as shown below to clarify this issue and amends New Rule I (42.20.802) and II (42.20.803) to correct the internal citation references to comply with the format established by the Legislative Services Division as follows:

42.20.801 DEFINITIONS The following definitions apply to rules contained in this subchapter:

(1) "Seven months" means a minimum of 198 days.

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

IMP: Ch. 6. Sp. Laws May 2007, 15-1-201, 15-30-140, MCA

NEW RULE I (42.20.802) 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) Ch. 6. Sp. Laws May 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) Ch. 6. Sp. Laws May 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) Ch. 6. Sp. Laws May 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) Ch. 6. Sp. Laws May 2007,~~ 15-1-201, 15-30-140, MCA

NEW RULE II (42.20.803) PROPERTY TAX REFUND FOR ENTITIES OWNING A RESIDENCE (1) remains as proposed.

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

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State July 30, 2007

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

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

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

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

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

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

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

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

- Department of Public Health and Human Services.

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

- Department of Corrections; and
- Department of Justice.

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

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

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

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

**Environmental Quality Council:**

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

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

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

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

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

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

### Use of the Administrative Rules of Montana (ARM):

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



## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through 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.

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