

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO.9

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption 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 DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to department approval of loan agreement form, and the amendment of ARM 2.59.1505 pertaining to examination of deferred deposit lenders)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT
	)	NO PUBLIC HEARING
	)	CONTEMPLATED
)	

TO: All Concerned Persons

1. On June 13, 2011, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration 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 of Administration no later than 5:00 p.m. on June 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I DEPARTMENT APPROVAL OF LOAN AGREEMENT FORM

(1) For purposes of 31-1-721(2), MCA, department approval of a deferred deposit loan agreement form submitted for review by a licensee or license applicant means the department has verified that the form contains the provisions required under 31-1-721(2) and 31-1-715(5), MCA, and that it does not contain the provisions prohibited under 31-1-723(20), MCA. Department approval of a loan agreement form does not preclude the department from bringing an administrative action against a licensee for an alleged violation of 31-1-723(7), MCA, based in whole or in part on other terms of the loan agreement form. Department approval of a loan agreement form does not constitute a legal opinion concerning the enforceability of the loan agreement in any legal action between the parties to the agreement.

AUTH: 31-1-702, MCA

IMP: 31-1-715, 31-1-721, 31-1-723, MCA

STATEMENT OF REASONABLE NECESSITY: Section 31-1-721(2), MCA, requires that the deferred deposit loan agreement form used by a licensee in its business be one that the department has specified or approved. The department has not specified a single comprehensive loan agreement form that must be used by all licensees because licensees' business models and preferred contract terms will

necessarily vary. The department, however, believes it is important to clarify for licensees and consumers the meaning and effect of its approval of a deferred deposit loan agreement form, and so proposes this rule for that purpose. If this approach were not taken, confusion will likely exist regarding the effect of the department's approval of a loan agreement form. Section 31-1-723(7), MCA, prohibits a licensee from engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan. An alleged violation of 31-1-723(7), MCA, will be fact-specific and may be based in whole or in part on loan agreement terms that are not expressly prohibited under 31-1-723(20), MCA, but may nonetheless be unfair, deceptive, or fraudulent.

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

2.59.1505 EXAMINATION OF DEFERRED DEPOSIT LENDERS

~~(1) The department shall annually conduct an examination of each deferred deposit loan licensee's lending operations to ensure compliance with both statute and administrative rule.~~

(2)(1) The An examination of a licensee's lending operations conducted by the department to verify compliance with Title 31, chapter 1, part 7, MCA, and these rules, shall must consist of a comprehensive review of the records, operations, and affairs of the licensee. The review shall must include inquiry into:

- (a) remains the same.
- (b) records of the borrower's's' files including:
 - (i) evidence of required disclosures; and
 - (ii) use of a department-approved loan agreement form; and
 - (c)(iii) assurance of continued capital adequacy and bonding.

AUTH: 31-1-702, MCA

IMP: ~~31-1-701~~, 31-1-711, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) because it conflicts with 31-1-711(1) and (2)(b), MCA. The statutory requirement for annual examinations was amended from 31-1-711, MCA, by the Legislature in 2007 (SB 165). The continued reference to annual examinations in this rule was recently brought to the department's attention by the legislative auditor's office. The proposed amendment is also needed for housekeeping purposes to insert a serial comma in (2), to correct the form of the plural possessive in (2)(b), and to hyphenate "department-approved" and clarify that the agreement form is approved in (2)(b)(ii). The subsections are renumbered due to the deletion of (1) and because (2)(b)(iii) should be numbered (2)(c). Evidence of continued capital adequacy and bonding in (2)(b)(iii) would not be contained in borrowers' files. Section 31-1-701, MCA, is being deleted from the implementation citations because the rule does not implement 31-1-701, MCA. Finally, to maintain consistency with the rules of statutory drafting, the word "shall" is being replaced with the word "must."

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to lschneider@mt.gov; and must be received no later than 5:00 p.m., June 10, 2011.

6. 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 the person listed in 5 above at the above address no later than 5:00 p.m., June 10, 2011.

7. If the Division of Banking and Financial Institutions 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 three persons based on the number of licensed deferred deposit lenders, which is currently 33 as of the publication of this notice.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists 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 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State May 2, 2011.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
4.13.1001A relating to State Grain Lab)
Pricing)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 1, 2011, at 9:00 a.m., the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on May 25, 2011, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: cojensen@mt.gov.

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

4.13.1001A GRAIN FEE SCHEDULE (1) The effective date of this rule is ~~July 7, 2006~~ July 1, 2011.

(2) General provisions applying to all sections of this rule are as follows:

(a) Normal office hours are 8 a.m. to 5 p.m., Monday through Friday. All other hours and holidays will be considered overtime.

(i) Sampling hours are ~~6 a.m. to 8 p.m.~~ 8 a.m. to 5 p.m. Monday through ~~Saturday~~ Friday. Sampling hours will need to be scheduled the day before if required outside the normal office hours. All other hours and holidays will be considered overtime.

(b) and (c) remain the same.

(d) Holidays are as adopted in 1-1-216, MCA- (e.g., New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, ~~and~~ Christmas Day, and Election Day).

(e) through (g) remain the same.

(h) Actual postage or delivery service charges will be added to sampling and other fees.

(i) The priority service fee shall be \$2.50 per submitted sample in addition to the fees set forth in this rule. Submitted priority samples shall be done within 48 hours or less, on a first arrival basis. Priority service includes ~~telephone report~~ electronic report. Priority service will be automatically suspended if backlog of

regular samples exceeds two weeks. If priority service is suspended, all submitted sample fees will be assessed at the appropriate rate.

(j) remains the same.

(3) Fees for official services provided under the United States Grain Standards Act (USGSA) – includes federal grain inspection services (FGIS) supervision fees.

(a) through (h) remain the same.

(i) additional statements, factors, or results as requested by the applicant, per statement..... \$2.50

(j) through (l) remain the same.

(4) Fees for official services provided under the Agricultural Marketing Act of 1946 (AMA) as amended – beans, peas, and lentils.

(a) through (d) remain the same.

(e) falling numbers only determination..... \$11.00

~~(e)~~ (f) additional statements, factors, or results as requested by the applicant, per statement..... \$2.50

(5) Fees for laboratory services not performed under the USGSA or AMA:

(a) through (i) remain the same.

(j) malting barley:

(i) germination, ~~48~~ 72 hour hydrogen peroxide, ~~48-hour blotter,~~ or 72 hour blotter, per determination \$7.00

(k) vomitoxin (DON) per quantitative analysis test \$23.50

~~(k)~~ (l) falling numbers only determination, per determination..... \$11.00

~~(l) oil, per determination~~ \$11.00

(m) DHV, HVAC or factor only determination, per factor \$2.50

~~(n) additional statements, factors, or results as requested by the applicant, per statement.....~~ \$2.50

AUTH: 80-4-403, MCA

IMP: 80-4-721, MCA

REASON: Changing the hours of service will align the service hours to the normal business hours of the State Grain Lab. This alignment eliminates the disparity between the hourly wage for the sampler and the fees charged to the applicant during overtime period. For example under the current fee schedule, if the sampling occurs on a Saturday, the State Grain Lab is typically paying overtime to employees and billing straight time to the applicant. This disparity results in a potential financial loss to the State Grain Lab. This change will affect relatively few producers and businesses as very few sampling service requests fall outside the proposed service hours.

With the change in our certification system to the online certificates, the telephone report is obsolete. In current practice the telephone report is rarely used. The State Grain Lab currently discourages reporting results over the phone because of potential miscommunication and the lack of a permanent record.

The term "statements" has been confusing to certain customers. This term has been interpreted as meaning additional printouts of certificates and/or additional billing statements, when in reality the term is intended to mean additional factors that

are determined and reported on the original certificate. The term "statement" is used in the FGIS certification handbook with specific examples of information. When this change is approved, the accounting software will be updated to reflect this clarification.

Modifying the fee schedule for falling number determination is necessary as it is a critical factor for determining the potential milling quality of wheat exported from Montana. On average, the State Grain Lab performs 2500 falling number evaluations annually, during Harvest Year 2010 that number will exceed 10,000 evaluations. This test is currently conducted under the "Montana Standards" and therefore is under limited supervision by FGIS.

The State Grain Lab is moving to FGIS official falling numbers program. This will provide a high level of service to our customers and give them a higher level of confidence with our results. The results from this test will be reported under the AMA, so statement of the fees for falling numbers needs to be listed under this section of our fee schedule.

The 48-hour blotter test was never performed. This item was a typographical error from the previous version. The correct number is and was supposed to be 72-hour. The State Grain Lab does not have the proper safety systems in place to perform the eliminated oil test.

These changes will have no cost impact on producers and businesses. The changes are anticipated not to increase or decrease revenue to the lab.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on June 9, 2011.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to

keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, May 2, 2011.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 6.6.4601 and 6.6.4602, and	)	PROPOSED AMENDMENT AND
the adoption of NEW RULE I	)	ADOPTION
pertaining to Montana Life and)	
Health Insurance Guaranty)	
Association Act and Notice)	
Concerning Coverage Limitations)	
and Exclusions)	

TO: All Concerned Persons

1. On June 2, 2011, at 10:00 a.m., the Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, will hold a public hearing in the 2nd floor conference room, at the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, 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., May 27, 2011, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.4601 APPROVAL ADOPTION OF NOTICE (1) ~~The commissioner hereby adopts, by reference, the form of the notices that must be provided pursuant to 33-10-210(3) and 33-10-210(5), MCA. Copies of such notices may be obtained from either the Commissioner of Insurance, State of Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604-4009 or the Montana Life and Health Insurance Guaranty Association, P.O. Box 541, Helena, Montana 59624. The Commissioner adopts the form and content of the summary notice and disclosure document regarding the protection provided by the Montana Life and Health Insurance Guaranty Association as set out in Appendix A in [New Rule I].~~

(2) The summary notice and disclosure document set out in Appendix A are substantially similar to the National Association of Insurance Commissioners' Notice of Protection Provided by [State] Life and Health Insurance Guaranty Association, Guideline #1525, adopted April, 2010.

AUTH: 33-1-313, 33-10-210, MCA
IMP: 33-10-210, MCA

6.6.4602 POLICY NOTICE DELIVERY OF NOTICE (1) The notices adopted in this subchapter shall be delivered where appropriate to the policy, certificate, or contract holder.

AUTH: 33-1-313, 3-10-210, MCA
IMP: 33-10-210, MCA

4. The new rule proposed to be adopted provides as follows:

NEW RULE I APPENDIX "A" - FORM AND CONTENT OF NOTICE (1) The form and content of the summary notice and disclosure document adopted in ARM 6.6.4601, and referred to as "Appendix A" are as follows:

(a) **NOTICE OF
PROTECTION PROVIDED BY
MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

This notice provides a **brief summary** of the Montana Life and Health Insurance Guaranty Association (the Association) and the protection it provides for policyholders. This safety net was created under Montana law, which determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that your life, annuity or health insurance company becomes financially unable to meet its obligations and is taken over by its Insurance Department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Montana law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Association are:

Life Insurance

- \$300,000 in death benefits
- \$100,000 in cash surrender or withdrawal values
- Health Insurance
 - \$500,000 in hospital, medical and surgical insurance benefits
 - \$300,000 in disability income insurance benefits
 - \$300,000 in long-term care insurance benefits
 - \$100,000 in other types of health insurance benefits
- Annuities
 - \$250,000 in withdrawal and cash values

The maximum amount of protection is \$300,000 in benefits with respect to any one life regardless of the number of policies or contracts, except with respect to hospital, medical, and surgical insurance benefits.

Note: Certain policies and contracts may not be covered or fully covered.

For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Montana law.

To learn more about the above protections, as well as protections relating to group contracts or retirement plans, please visit the Association's web site at www.mtlifega.org or contact:

Montana Life and Health Insurance Guaranty Association PO Box 951 Oconomowoc, WI 53066-0951 877-678-1048 or administrator@mtlifega.org	Montana Department of Insurance State Auditor's Office 840 Helena Ave. Helena, MT 59601 406-444-2040
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Insurance companies and agents are not allowed by Montana law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage.

If there is any inconsistency between this notice and Montana law, then Montana law will control.

AUTH: 33-1-313, 33-10-210, MCA
IMP: 33-10-210, MCA

5. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance - Office of the State Auditor, Monica J. Lindeen, (Commissioner) is the statewide elected official responsible for administering the Montana Insurance Department and regulating insurers. The Commissioner is a member of the National Association of Insurance Commissioners (NAIC). The NAIC is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate.

The Montana Life and Health Insurance Guaranty Association (Association) is a nonprofit entity created under 33-10-203, MCA, of the Montana Life and Health Insurance Guaranty Association Act, 33-10-201, MCA, et seq. (Act). In accordance with the Act, the Association is comprised of member insurers and provides limited protection to covered policyowners or contract owners in the event a member insurer becomes financially impaired or insolvent.

Under 33-10-210, MCA, the Association is required to prepare a summary notice and disclosure document (notice) regarding the Association and the limited protection to policyowners or contract owners provided by the Association. The

Association must submit the notice to the Commissioner for review and approval. Under 33-10-210, MCA, the Commissioner is required to promulgate a rule regarding the form and content of the notice.

The Commissioner is proposing to amend existing rules regarding the form and content of the notice provided to policyowners or contract owners regarding the Association and the limited protection provided by the Association. The existing rules were adopted in 1995. The Commissioner is also proposing to adopt [New Rule I] setting out the form and content of the notice.

The Association submitted a proposed "Notice of Protection Provided by Montana Life and Health Insurance Guaranty Association" (proposed notice) to the Commissioner on April 14, 2011. The Association's proposed notice is based on the NAIC's "Notice of Protection Provided by [State] Life and Health Insurance Guaranty Association," Guideline #1525, adopted April, 2010.

The Commissioner plans to adopt the Association's proposed notice with some revisions for clarity. The Commissioner's revisions are: specifying that "disability income insurance benefits" are protected up to \$300,000; and rephrasing the paragraph after the protected dollar amounts listed to clarify that the \$300,000 limit does not apply to hospital, medical, and surgical benefits. The proposed paragraph, specifying a \$300,000 limit, seemed inconsistent with the \$500,000 limit on hospital, medical, and surgical benefits set out above.

The amendments to ARM 6.6.4601, and addition of [New Rule I] are reasonably necessary to adopt the Association's proposed notice as revised (proposed notice as revised). The proposed notice as revised includes the information required by 33-10-210, MCA, and the increased dollar amounts of protection provided by the Association in accordance with SB 78 (2011) revising the Act. The proposed notice as revised is easier to read than the current notice because the dollar amounts of protection are clearly identified. Moreover it is likely that other jurisdictions will adopt the NAIC's standard notice form, which is substantially similar to the proposed notice as revised, and therefore will result in more uniformity for insurers and guaranty associations across jurisdictions.

Although the form and content of the notice could be adopted by reference under 2-4-307, MCA, the Commissioner elected to propose [New Rule I] setting out the form and content of the notice for clarity.

The amendments to ARM 6.6.4602 are reasonably necessary to reference the notice adopted in the subchapter as the document to be delivered where appropriate to the policy, certificate, or contract holder.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jennifer L. Massman, Staff Attorney, Office of the Commissioner of Securities and Insurance, State Auditor,

Monica Lindeen, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail jmassman@mt.gov, and must be received no later than 5:00 p.m., June 10, 2011.

7. Jennifer L. Massman, Staff Attorney, has been designated to preside over and conduct this hearing.

8. The department maintains a list of concerned 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 Darla Sautter, Office of the Commissioner of Securities and Insurance, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3499; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

9. 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for SB 78 (2011), Senator Ripley, was notified by regular mail on April 26, 2011, at his home address.

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State May 2, 2011.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 6.6.3504 pertaining to Annual	)	AMENDMENT
Audited Reports and Establishing)	
Accounting Practices and Procedures	)	NO PUBLIC HEARING
to Be Used in Annual Statements	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 5, 2011, the Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, proposes to amend the above-stated rule.

2. The Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, 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. on June 6, 2011, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.3504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

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

(i) These notes shall be those required by the appropriate ~~2009~~ 2010 NAIC Annual Statement Instructions and the March ~~2009~~ 2010 NAIC Accounting Practices and Procedures Manual, which are adopted and incorporated by reference, and may be obtained by writing to the NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. The notes shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 33-2-701, 33-4-313, 33-7-118, 33-30-107, 33-31-211, MCA, with a written description of the nature of these differences.

(3) remains the same.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

4. STATEMENT OF REASONABLE NECESSITY: The contents of the annual audited financial report are set out in ARM 6.6.3504. It is reasonably necessary to amend ARM 6.6.3504 to reference and require compliance with the current NAIC Annual Statement Instructions, and the effective NAIC Accounting Practices and Procedures Manual by insurers completing annual audited financial

reports. The current rule references and requires compliance with the 2009 versions.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Steve Matthews, Bureau Chief, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail smatthews@mt.gov, and must be received no later than 5:00 p.m., June 13, 2011.

6. 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 Steve Matthews at the above address no later than 5:00 p.m., June 13, 2011.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent 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 32 persons based on the number of people on the Interested Parties list.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Darla Sautter using the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the department.

9. 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 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 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.

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

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State May 2, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration) PROPOSED ADOPTION
of the 2013 Biennium Quality Schools)
Grant Program – Planning Grants)

TO: All Concerned Persons

1. On June 1, 2011, at 3:00 p.m., the Department of Commerce will hold a public hearing in Room 504 of the Park Avenue Building at 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce 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 of Commerce no later than 5:00 p.m., May 25, 2011, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2878; or e-mail pclark2@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE
ADMINISTRATION OF THE QUALITY SCHOOLS GRANT PROGRAM –
PLANNING GRANTS

(1) The Department of Commerce adopts and incorporates by reference the 2013 Biennium Guidelines and Administration Manual for Quality Schools Planning Grants as rules for the administration of the 2013 Biennium Quality Schools Grant Program – Planning Grants.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to public school districts.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549, or on the Quality Schools Grant Program web site at <http://commerce.mt.gov/QualitySchools>.

AUTH: 90-6-819, MCA
IMP: 90-6-819, MCA

REASON: It is reasonably necessary to adopt this new rule governing the department's administration of the planning grants component of the Quality Schools Grant Program, 90-6-801, et seq., MCA. Public school districts must have these guidelines available before the entities may apply to the department for 2013 biennium planning grants from the Quality Schools Grant Program. The guidelines

describe the requirements with which public school districts must comply in order to apply for, receive, and administer Quality School planning grant funds.

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 Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2878; or e-mail pclark2@mt.gov, and must be received no later than 5:00 p.m., June 9, 2011.

5. Kelly A. Casillas, Deputy Chief Legal Counsel, Department of Commerce, has been designated to preside over and conduct this hearing.

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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. 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.

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

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State May 2, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.94.3727 pertaining to the	)	AMENDMENT
administration of the 2011-2012)	
Federal Community Development	)	NO PUBLIC HEARING
Block Grant (CDBG) Program	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 13, 2011, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce 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 Department of Commerce no later than 5:00 p.m. on June 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Jennifer Olson, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2773; fax (406) 841-2777; TDD (406) 841-2702; or e-mail JeOlson@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2010-2011 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY 2011 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2011 Application Guidelines for Planning Projects; the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); the Montana Community Development Block Grant Program and Neighborhood Stabilization Program (NSP) FFY 2011 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Public Facilities Projects and the FFY 2012 Application Guidelines for Housing and Neighborhood Renewal Projects.

- (2) The rules incorporated by reference in (1) relate to the following:
 - (a) policies governing the program;
 - (b) requirements for applicants;
 - (c) procedures for evaluating applications;
 - (d) procedures for local project start up;
 - (e) environmental review of project activities;

- (f) procurement of goods and services;
 - (g) financial management;
 - (h) protection of civil rights;
 - (i) fair labor standards;
 - (j) acquisition of property and relocation of persons displaced thereby;
 - (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
 - (l) project audits;
 - (m) public relations;
 - (n) project monitoring; and
 - (o) planning assistance.
- (3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at: http://comdev.mt.gov/CDD_cdbg.asp, or http://businessresources.mt.gov/BRD_CDBG.asp, <http://commerce.mt.gov/default.aspx> or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2011 Community Development Block Grant Neighborhood Stabilization Program (CDBG NSP) and 90-1-103, MCA, require the department to adopt rules to implement the program. Local governments must have these application guidelines in order to apply for CDBG NSP funds.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Jennifer Olson, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2773; fax (406) 841-2777; or e-mail JeOlson@mt.gov, and must be received no later than 5:00 p.m., June 9, 2011.

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 Jennifer Olson at the above address no later than 5:00 p.m., June 9, 2011.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent 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 three persons based on the amount of preliminary forms listed in the department's amendment to action plan submitted to HUD on February 28, 2011.

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, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 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 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 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 contact requirements of 2-4-302, MCA, do not apply.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State May 2, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.99.504, 8.99.505, 8.99.507,	)	AMENDMENT
and 8.99.511 pertaining to)	
microbusiness loans	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 13, 2011, the Department of Commerce proposes to amend the above-stated rules.

2. The Department of Commerce 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 Department of Commerce no later than 5:00 p.m. on June 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Janice Wannebo, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana, 59620-0505; telephone (406) 841-2751; fax (406) 841-2731; TDD (406) 841-2702; or e-mail jwannebo@mt.gov.

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

8.99.504 DEVELOPMENT LOAN - TERMS (1) through (6) remain the same.

(7) On a quarterly basis, all MBDCs shall report, in writing, the total revolving loan fund microbusiness loan receivables and the resulting loan out rate to the department. If the reported loan out rate falls below the 60 percent loan out rate standard for a 12 month period, the MBDC shall return the excess funds to the department, except for any MBDC that has an outstanding development loan principal balance that is less than \$250,000. The dollar amount of development loan funds equivalent to the difference between the actual percentage of development loan funds loaned out and the 60 percent loan out rate standard is referred to as "excess funds". If excess funds are returned by the MBDC to the department, a certified MBDC may apply for additional development loan funds in the future, provided that the certified MBDC meets the requirements established in ARM 8.99.502.

(8) remains the same.

(9) The portion of the revolving loan fund that consists of development loan funds shall only be used for making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that consists of MBDC matching loan funds shall only be used for securing the development loan and/or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to

microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that includes revolving loan fund income may be used for development loan debt service, reasonable revolving loan fund administrative costs approved by the department, funded loan loss reserves, or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq.

~~(10) The MBDC shall submit a budget to the department which forecasts revolving loan fund income and expenses. The amount withdrawn from the revolving loan fund bank account shall not exceed the amount in the MBDC's budget that is approved by the department. Revolving loan fund income may be used to create and maintain a funded loan loss reserve.~~

(11) remains the same, but is renumbered (10).

(a) the MBDC shall maintain a separate accounting ledger for the revolving loan fund; and

(b) each MBDC shall provide the department with a copy of an annual organization wide audit that is prepared by an independent certified public accountant that is licensed by the state of Montana; and

~~(c) the department shall procure the services and direct the activities of an independent certified public accountant that is licensed by the state of Montana to prepare an annual audit of each MBDC, which includes the verification of each MBDC's compliance with all the requirements specific to the microbusiness finance program.~~

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

(e) all revolving loan fund expenses ~~that are approved by the department~~ are paid from the revolving loan fund bank account.

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

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: Based on past experiences, the department believes that the following changes are necessary: The proposed amendment of ARM 8.99.504(7) clarifies that the 60% loan out rate for development loans under \$250,000 would not leave the MBDC with enough funds to adequately provide a loan to a microbusiness if an approved loan is \$100,000, which is the maximum loan amount provided for under state law.

The proposed amendment of ARM 8.99.504(9) eliminates the requirement that the department approve a MBDC's RLF administrative costs.

The proposed repeal of 8.99.504(10) eliminates the requirement that the department approve the MBDC's RLF bank withdrawals. The RLF income used to create and maintain a funded loan loss reserve is allowed in ARM 8.99.504(9); therefore, it does not need to be repeated in this section.

The proposed repeal of 8.99.504(11)(c) eliminates the requirement that the department procure the services and direct a Certified Public Accountant to prepare an audit since the MBDCs already provide audited financial statements. The

verification of compliance with requirements specific to the microbusiness finance program is conducted by the program through annual loan file reviews and quarterly reports submitted by the MBDCs.

The proposed amendment of ARM 8.99.504(12)(e) eliminates the requirement that the department approve a MBDC's RLF expenses.

8.99.505 DEVELOPMENT LOAN – MATCHING CONTRIBUTIONS

(1) through (6) remain the same.

(7) The sum of the outstanding principal balance of the department development loan and the MBDC's matching loan funds is referred to as the "revolving loan fund base". The sum of the revolving loan fund bank account balance and investment bank account balance is referred to as the "revolving loan fund cash balance". The sum of the outstanding principal balance of all performing and delinquent microbusiness loans held by the MBDC in the revolving loan fund is referred to as the "eligible loan receivables balance". Restructured loans will be considered, on a case-by-case basis, in the calculation of the revolving loan fund base. All MBDCs shall report and document the revolving loan fund cash balance and the eligible loan receivables balance. The sum of the revolving loan fund cash balance and the eligible loan receivables balance must equal or exceed the "revolving loan fund base" at all times. If the sum of the revolving loan fund cash balance and the eligible loan receivables balance is less than the revolving loan fund base, this difference is referred to as the "revolving loan fund base deficiency". If a MBDC incurs a "revolving loan fund base deficiency," the MBDC shall deposit additional funds equal to or greater than the "revolving loan fund base deficiency" in the revolving loan fund bank account.

AUTH: 17-6-406, MCA

IMP: 17-6-406, MCA

REASON: The proposed amendment of ARM 8.99.505 clarifies what type of loans are "eligible loan receivables". As stated in this rule, to be allowed in the calculation of the "eligible loan receivables balance" the only loans allowed are "performing" and "delinquent" microbusiness loans which are loans that the borrower has failed to make three or more timely payments of principal and interest, or whose payments of principal and interest are greater than 90 days past due or has otherwise failed to comply with the terms and conditions of the loan agreement. There are too many variables on restructured loans so these loans will be considered on a case-by-case basis by the department.

8.99.507 DEVELOPMENT LOAN - NONRENEWAL (1) Should the department choose not to renew a development loan, the term of the repayment schedule will ~~not extend beyond the term of repayment of the MBDC's longest outstanding microbusiness loan~~ be determined by the department taking into consideration the MBDC's outstanding microbusiness loans .

(2) remains the same.

AUTH: 17-6-406, MCA

IMP: 17-6-406, 17-6-407, MCA

REASON: The proposed amendment of ARM 8.99.507 clarifies the loan repayment term. In some instances, MBDCs have microbusiness loan terms longer than a reasonable term determined by the department for a MBDC to repay their development loan. The department will determine the Development Loan repayment schedule based on, but not limited to, each MBDC's ability to repay and their loan portfolio characteristics.

8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) and (2) remain the same.

~~(3) The dollar value of all All microbusiness loans having repayment terms of more than five ten years may not exceed 15% of the total dollar value of all microbusiness loans made by an MBDC must be approved by the department.~~

~~(4) The interest rate charged to microbusiness borrowers by MBDCs shall be, at a minimum, the highest rate charged by the department to the MBDC for development loans and, at a maximum, the rate allowed by Montana law pursuant to 31-1-107, MCA. MBDCs will report quarterly, in writing to the department, the interest rate(s) charged to borrowers.~~

(5) through (7) remain the same.

AUTH: 17-6-406, MCA

IMP: 17-6-406, 17-6-407, MCA

REASON: The proposed amendment of ARM 8.99.511 clarifies the maximum loan term for a microbusiness loan. The term of a microbusiness loan is generally equal to the useful life of the asset (e.g., equipment) taken as security to collateralize the loan. MCA 31-1-107 section (3) states: "The provisions of this section do not apply to regulated lenders as defined in 31-1-111". In MCA 31-1-111 DEFINITION OF REGULATED LENDER, the term "regulated lender" under section (1) lists development corporation; therefore, MicroBusiness Development Corporations (MBDCs) are not considered regulated lenders and section (4) is not applicable except for the last sentence which is not "struck out" will remain in section (4).

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Janice Wannebo, Business Resources Division, Department of Commerce, 301 South Park Avenue, PO Box 200505, Helena, Montana, 59620-0505; telephone (406) 841-2751; fax (406) 841-2731; or e-mail jwannebo@mt.gov, and must be received no later than 5:00 p.m., June 9, 2011.

5. If persons who are directly affected by the proposed actions 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 Janice Wannebo at the above address no later than 5:00 p.m., June 9, 2011.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent 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 25 persons based upon the five MBDCs and the number of active Certified Public Accountants licensed in Montana.

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, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 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 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 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 contact requirements of 2-4-302, MCA, do not apply.

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State May 2, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.74.301, 17.74.350 through 17.74.357,))
17.74.359, 17.74.360, 17.74.361,)
17.74.364, and 17.74.365; the adoption)
of New Rules I through IV; and the)
repeal of ARM 17.74.303 pertaining to)
incorporation by reference, OSHA)
preclusion, and asbestos project)
management)

NOTICE OF SECOND PUBLIC
HEARING AND EXTENSION OF
COMMENT PERIOD ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

(ASBESTOS)

TO: All Concerned Persons

1. On April 14, 2011, the Department of Environmental Quality published MAR Notice No. 17-317 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 493, 2011 Montana Administrative Register, issue number 7. The department held a public hearing at 1:30 on May 4, 2011, and the initial comment period was scheduled to close on May 12, 2011.

2. On June 1, at 1:30 p.m., the department will hold a second public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules. This second hearing will supplement the hearing held on May 4, 2011.

3. 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 Elois Johnson, Paralegal, no later than 5:00 p.m., May 23, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

4. The department is also extending the time within which to submit written comments. Written data, views, or arguments may be submitted to Elois Johnson at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on June 9, 2011. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

5. A second hearing is being scheduled and the comment period is being extended because the initial proposal notice was not sent to persons on the interested persons list for the department's asbestos rulemaking proceedings within three days of publication of the notice in the Montana Administrative Register, as is

required by 2-4-302, MCA. The second hearing and extended comment period are intended to provide these persons the required advance notice of hearing and the required period of time to prepare and submit comments.

6. The rules proposed to be amended, adopted, and repealed remain the same as published in MAR Notice No. 17-317.

7. Jane Amdahl, attorney for the department, or another attorney for the department, has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, 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 supply; 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: /s/ Richard H. Oppen
RICHARD H. OPPEN
Director

Certified to the Secretary of State, May 2, 2011.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.58.326, 17.58.336, and 17.58.340)
pertaining to operation and management)
of petroleum storage tanks, review and)
determination of claims for)
reimbursement, and third-party damages)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(PETROLEUM TANK RELEASE
COMPENSATION BOARD)

TO: All Concerned Persons

1. On June 1, 2011, at 9:30 a.m., the Petroleum Tank Release Compensation Board will hold a public hearing in Room 122, 1100 North Last Chance Gulch, 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 Elois Johnson, Paralegal, no later than 5:00 p.m., May 9, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS (1) through (1)(f)(vi) remain the same.

~~(2) An owner or operator shall be considered in compliance with the requirements of (1)(f)(i) through (iv), if the owner's underground storage tank, as defined in 75-11-503, MCA, has one of the following permits issued by the department in accordance with 75-11-509, MCA:~~

~~(a) a valid operating permit as provided in 75-11-509(8), MCA; or~~

~~(b) a valid conditional permit, one-time fill, or emergency operating permit as provided in ARM 17.56.310.~~

AUTH: 75-11-318, 75-11-319, MCA

IMP: 75-11-308, MCA

REASON: The board proposes to amend ARM 17.58.326 by deleting (2) of that rule. This amendment is needed to bring ARM 17.58.326 into alignment with statutory changes made by the 2005 Legislature, and changes made by the board to ARM 17.58.336 in 2006.

Section (2) as it currently reads was promulgated by the board in December 2004. At that time, 75-11-308, MCA, provided the sanction of loss of eligibility for an incident of post-release noncompliance. Then, and now, owners and operators were required to comply with certain state rules related to protection of the environment and safe operation of petroleum storage tanks. Those rules, then and now, are listed in ARM 17.58.326. In particular, ARM 17.58.326 specifies that owners and operators must comply with various sections of ARM Title 17, chapter 56, which is where Department of Environmental Quality's (DEQ) rules for underground storage tanks (USTs) are set forth. Those compliance requirements apply at the time of discovery of a release, and also to the period following discovery of a release.

Before 2005, the penalty provided for post-release noncompliance was potentially severe, as the statute in those circumstances rendered ineligible a release which had previously been found eligible by the board. To avoid the extreme sanction of loss of eligibility for relatively minor violations, the board amended ARM 17.58.326 by adding (2). Section (2) provides that when an owner has a current and valid operating permit issued by DEQ pursuant to 75-11-509, MCA, that owner is deemed in compliance with several of the DEQ ARM requirements in Title 17, chapter 56, subchapters 1 through 4. The promulgation of (2) ameliorated the sanction of ineligibility for certain post-release noncompliance by deeming an owner of an eligible release compliant even if that owner had violated the DEQ UST rules mentioned above, as long as the owner had a valid operating permit.

The statute governing post-release noncompliance changed significantly in 2005. The board requested and obtained legislation that repealed the subsection of 75-11-308, MCA, which rendered a previously eligible release ineligible if an owner went out of compliance with the rules listed in ARM 17.58.326. After the 2005 legislative session, the eligibility statute, 75-11-308, MCA, no longer addressed post-release noncompliance at all. In its stead, 75-11-309, MCA, was amended during the same legislative session by the addition of current (2) and (3)(b)(ii). Those provisions allow the board to sanction an owner of a release that was previously determined to be eligible and who then became noncompliant after the release occurred by adjusting the rate and amount the owner could be reimbursed for corrective action costs. After the 2005 legislative changes, the harsher sanction of deeming a previously eligible release ineligible was no longer applicable.

In response to the 2005 legislative changes, the board in 2006 promulgated amendments to ARM 17.58.336 which provided a procedure for sanctioning reimbursement payments to an owner who became noncompliant after a release was determined to be eligible, depending principally on the length of time the owner was out of compliance. For such owners and operators, the 2006 amendments provided for a downward adjustment of the rate of reimbursement, depending on the circumstances attending the noncompliance.

In summary, after the 2005 legislative changes and the 2006 rule changes, the threat of losing eligibility after the board initially has determined a release to be eligible no longer exists. Pursuant to those changes, eligibility is now a one-time decision, which is made based on circumstances at the time of the release. Once an owner's release is determined eligible it maintains that status permanently, regardless of post-release noncompliance. If an owner becomes noncompliant after

a release is determined to be eligible, the sanction applied is the one provided by the sliding scale set forth in ARM 17.58.336(7), which results in diminution of the reimbursement rate based on specific circumstances, rather than changing an eligible release to an ineligible one.

Although the sanction of ineligibility for post-release noncompliance was eliminated by these changes in 2005 and 2006, ARM 17.58.326(2) was inadvertently left in place. It is no longer needed because the board and owners and operators now have a much more nuanced process to deal with post-release noncompliance, and owners and operators no longer face the extreme sanction of loss of eligibility for post-release violations of DEQ's UST rules.

It is important to change ARM 17.58.326 by repealing (2) because as that rule now applies, an owner with an eligible release in noncompliance with the DEQ UST rules mentioned above escapes any sanction and must be reimbursed for eligible corrective action costs. Under the current rule, the Petroleum Tank Release Cleanup Fund could be subject to major liability for significant release events caused by egregious post-release noncompliance. This jeopardy is unwarranted and (2) is inconsistent with the intent of the 2005 legislative changes and the rule changes that followed in 2006. Owners and operators should be required to follow the DEQ's UST rules, and if there is post-release noncompliance, a sanction against the rate of reimbursement can be fairly determined under the procedure in ARM 17.58.336(7). For these reasons (2) should be deleted.

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) through (4) remain the same.

(5) The recommendations of the board staff must be mailed to each board member at least seven days ~~prior to a~~ before the date of the board meeting ~~that at which the claim~~ is scheduled to be considered ~~the claim~~.

(6) through (8) remain the same.

AUTH: 75-11-318, MCA

IMP: 75-11-309, MCA

REASON: The wording of the current rule could be read as suggesting that claims are considered by "board meetings" rather than by the board. The proposed amendment clarifies the language of this section and makes clear that the timing of the mailing to board members is dependent on the date of the board meeting upon which a particular claim will be considered by the board.

17.58.340 THIRD-PARTY DAMAGES: REIMBURSEMENT DOCUMENTATION (1) For cases in which the board received notice as required in ARM 17.58.337, an owner or operator's claim for reimbursement of payments for third-party damages pursuant to a judgment entered in a court shall include copies of the notice of entry of judgment, abstract of costs, and a declaration:

(a) that the case has been concluded, including appeal, if any; and

(b) of the fees paid by the owner or operator to each attorney who appeared in the proceeding.

(2) For cases in which the board received notice as required in ARM 17.58.337, an owner or operator's claim for reimbursement of payments for third-party damages made by agreement in settlement of litigation or a claim shall include copies of the fully executed settlement agreement and such supporting documents as may be required under ARM 17.58.337.

(3) The board shall require a listing of amounts attributed to compensation for property damage, bodily injury, fees, costs, and any other aspect of damage paid to a third party pursuant to a settlement or judgment described in (1) or (2).

AUTH: 75-11-318, MCA

IMP: 75-11-309, MCA

REASON: The proposed amendment is needed to correct a typographical error.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., June 9, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Johnson, attorney, has been designated to preside over and conduct the hearing.

6. The board maintains electronic mail list-service system lists 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 electronic mail list-service system list may subscribe to one or more of the board interested parties lists using the link [PETROstep1.mcp](#)x and following the instructions. If electronic mail is unavailable, persons who wish to receive notices by U.S. Postal Service mail shall make a written request that includes the name and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or e-mailed to Terry Wadsworth at twadsworth@mt.gov or may be made by completing a request form at any rules hearing held by the board. Further information concerning the electronic mail list-service system can be found at [http://deq.mt.gov/pet/OldNews/February 2008News.mcp](http://deq.mt.gov/pet/OldNews/February%202008News.mcp)x.

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

Reviewed by:

PETROLEUM TANK RELEASE
COMPENSATION BOARD

/s/ James M. Madden
JAMES M. MADDEN

BY: /s/ Roger Noble
ROGER NOBLE, Presiding Officer

Certified to the Secretary of State, May 2, 2011.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.17.127, related to prevailing)
wage rates for public works projects -)
nonconstruction services)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 3, 2011, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 27, 2011, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MikeSmith@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(f) The current nonconstruction services rates are contained in the 2011, Revised [effective date of amendment], version of "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) through (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to correct the prevailing wage rates in a specific occupational category. On April 18, 2011, the Commissioner of Labor and Industry (the commissioner) announced that he had determined that errors had been made in the calculation of the wage and fringe benefit rates for the nonconstruction services occupation of security guard (unarmed) that affected all districts in Montana. The commissioner determined that the calculation errors were of sufficient magnitude that there was reasonable necessity to correct those errors via the rulemaking process, rather than allow the previously adopted 2010 rates for that occupation to remain in effect until new 2012

rates that are expected to be adopted in December 2011 or early January 2012. ARM 24.17.121(6) provides that if the commissioner determines that incorrect rates are adopted, the rates revert to the last published rates that had been adopted until such time as revised rates are adopted via the administrative rulemaking process. In addition, the commissioner has determined that there is additional data for the occupation that is now available which will improve the accuracy of the rate calculations.

The proposed corrected hourly wage and fringe benefits rates for the nonconstruction services occupation of security guard (unarmed) are shown as follows, stricken material interlined, new material underlined, and with the reverted 2010 rates also shown for comparison purposes:

Security guard (unarmed)	2011 wage	2011 fringe	2010 wage	2010 fringe
District 1	\$10.85	\$ 4.54 <u>1.38</u>	\$ 9.25	\$ 3.24
District 2	\$11.34 <u>11.66</u>	\$ 5.24 <u>1.60</u>	\$ 9.51	\$ 3.24
District 3	\$11.77 <u>9.38</u>	\$ 5.59 <u>4.05</u>	\$ 9.66	\$ 3.24
District 4	\$11.19 <u>11.40</u>	\$ 2.24 <u>4.05</u>	\$ 8.78	\$ 3.24
District 5	\$11.77 <u>10.25</u>	\$ 6.03 <u>4.05</u>	\$ 9.54	\$ 3.24
District 6	\$13.63 <u>9.25</u>	\$ 9.73 <u>.50</u>	\$ 9.50	\$ 0.46
District 7	\$11.66 <u>10.63</u>	\$ 9.73 <u>1.07</u>	\$ 9.91	\$ 0.46
District 8	\$10.41 <u>11.12</u>	\$ 9.73 <u>.50</u>	\$10.20	\$ 0.46
District 9	\$10.83 <u>11.35</u>	\$ 6.03 <u>2.61</u>	\$ 9.95	\$ 0.46
District 10	\$10.41 <u>11.12</u>	\$ 6.03 <u>2.36</u>	\$10.19	\$ 0.46

4. A copy of the proposed 2011 revised publication, identified as "preliminary revised nonconstruction rates", is available and can be accessed on-line via the internet at: www.mtwagehourbopa.com.

5. A printed version of the proposed 2011 revised publication, or of an erratum sheet showing only the proposed revised rates, is also available by contacting Mike Smith, at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to MikeSmith@mt.gov, and must be received no later than 5:00 p.m., June 10, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the

notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 East Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State May 2, 2011

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I through V, and the	)	PROPOSED ADOPTION AND
amendment of ARM 24.29.1401A,	)	AMENDMENT
24.29.1402, 24.29.1406, 24.29.1407,)	
24.29.1501, 24.29.1517, 24.29.1519,)	
24.29.1526, 24.29.1574, 24.29.1575,)	
24.29.1585, 24.29.1586, 24.29.2002,)	
and 24.29.2003, regarding the)	
implementation of utilization and)	
treatment guidelines and medical)	
services rules for workers')	
compensation matters)	

TO: All Concerned Persons

1. On June 6, 2011, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 31, 2011, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Bruce Chamberlain, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-7732; fax (406) 444-7710; TDD (406) 444-5549; or e-mail bchamberlain1@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt rules to implement the utilization and treatment (U&T) guideline provisions of Chapter 167, Section 10, Laws of 2011 (House Bill 334). Chapter 167 amended the original U&T guideline statutory language that was put in place by Chapter 330, Section 1, Laws of 2007 (House Bill 738) and Chapter 117, Section 6, Laws of 2007 (Senate Bill 108). The Montana Department of Labor and Industry had begun the process of implementing the previous two bills in proposed administrative MAR Notice number 24-29-249, published on September 23, 2010. A hearing was held on October 15, 2010. Based in part on comments received, the department decided to issue a new notice proposing the utilization and treatment guidelines. Before a new notice was issued, the 2011 Legislature, through Chapter 167, amended 39-71-704, MCA. The department delayed issuing a new notice until the legislative changes became final. As a result, this proposed rule notice addresses both the changes to 39-71-704, MCA, and the comments received from

the previous notice. The following statement describes the process the department followed in developing this proposal.

After the U&T guideline legislation was first put into place in 2007, a group was formed in the Employment Relations Division under the project name "Utilization and Treatment Guidelines." The U&T project team implemented a project charter, with the purpose to engage the various stakeholders in the process in order to identify and evaluate different U&T guidelines and choose and implement the most appropriate U&T guideline. Under the U&T project charter, the department established a stakeholder committee of treatment providers from around Montana called the "Medical Provider Group." This group was assigned to evaluate and make a recommendation to the department on what U&T guidelines would be appropriate for injured workers in Montana. The following proposed administrative rules identify the recommended and selected U&T guidelines and set forth an implementation process for the selected U&T guidelines.

The Medical Provider Group met seven times in open meetings from August 2009 through February 2010 and reviewed four U&T guidelines: Washington State Treatment Guidelines, Colorado State Treatment Guidelines, Work-loss Data Institute Occupational Disability Guidelines (ODG) and American College of Occupational and Environmental Medicine (ACOEM) guidelines. The Medical Provider Group was to make a recommendation concerning the U&T guidelines that would meet the following objectives: improve outcomes of medical benefits to injured workers; improve speed of access to medical benefits; have a positive or neutral effect on the cost of workers' compensation medical benefits for injured workers; be evidenced-based, peer-reviewed, and recognized standards of care; and promote standardization of utilization management.

In its review of the four U&T guidelines, the Medical Provider Group rated each guideline on both ease of use and content. After extensive review, discussion, and presentations concerning the four U&T guidelines, the Medical Provider Group voted and recommended that the State of Montana have guidelines which incorporate the State of Colorado's Medical Treatment Guidelines (Colorado Guidelines) as the primary source of guidelines for treating injured workers in Montana. The Medical Provider Group then voted and recommended that the department adopt either ODG or ACOEM for those areas not covered by the Colorado Guidelines.

Based on the recommendation the Medical Provider Group made to the department, the U&T project team prepared and conducted a Request for Proposal (RFP) process through the Department of Administration's Procurement Office. The purpose of the RFP was to find vendors that would develop a content delivery system for implementing U&T guidelines in Montana, with Colorado Treatment Guidelines as the primary source and either ODG or ACOEM as the secondary source. Through the RFP process, the successful vendor was ACOEM. The department is contracting with ACOEM to build and host a content delivery system for implementation of the U&T guidelines and for the license to use portions of

ACOEM for those areas not covered in the Colorado Guidelines. The department intends for the online product to be the "Montana Guidelines" and be a user friendly online system of seamless integration between Colorado Treatment Guidelines and ACOEM guidelines. The Montana Guidelines are available to all users at <http://www.mtguidelines.com>. The Department will make a hardcopy of the Montana Guidelines available upon request, which may be obtained for the cost of reproduction.

This notice proposes to both adopt new rules and amend existing rules to implement the U&T guidelines. Proposed New Rule I, "Utilization and Treatment Guidelines," adopts the specific U&T guidelines as the Montana Guidelines. As now provided by 39-71-704, MCA, there is a rebuttable presumption that the U&T guidelines adopted by the department establish compensable medical treatment for primary and secondary medical services for an injured worker. Since the U&T guidelines are presumed compensable, proposed New Rule II for "Prior Authorization" outlines a process for those requested treatment(s) or procedure(s) not addressed, not recommended, or procedures requiring prior authorization by the Montana Guidelines, for treatments or procedures sought after maximum medical healing and for those treatments exceeding duration or frequency limits in the Guidelines. Section 39-71-704, MCA, also allows the department to adopt an independent medical review process for when treatment is denied. Proposed New Rule III sets out an "Independent Medical Review Process" by a designated Medical Director. If a treatment or procedure is denied, injured workers, providers, or insurers may utilize this process for dispute resolution in an effort to provide prompt and appropriate care. Proposed New Rule IV explains that the U&T guidelines are applicable to managed care organizations and preferred provider organizations that contract with workers' compensation insurers and self-insured employers to provide medical care to injured workers. Because the presumption of compensable treatment provided for in 39-71-704, MCA, only applies to injuries that occur on or after July 1, 2007, proposed New Rule V notes that the U&T guidelines establish reasonable care for injuries before that date. In other words, the U&T guidelines proposed for adoption by the department are applicable for all treatment services, both primary and secondary, including chiropractic services and occupational and physical therapy services, provided to the injured worker under the Montana Workers' Compensation Act, regardless of the date of injury.

There is reasonable necessity to amend a number of existing administrative rules under ARM Title 24, chapter 29, subchapter 14, "General Medical Rules and Facility Service Rules", and ARM Title 24, chapter 29, subchapter 15, "Nonfacility Service Rules and Utilization Rules" to coordinate with the proposed new rules and ensure that otherwise inconsistent provisions are removed.

Any updates to these rules must be undertaken by the department according to the requirements of the Montana Administrative Procedure Act. As part of the responsibilities of the position, the medical director will monitor new procedures and technologies that should be addressed in any updates. The person in this position will, in consultation with health care providers with relevant experience and

education, provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.

The department proposes to make the proposed adoptions and amendments effective as of July 1, 2011. The department reserves the right to make the adoptions and amendments effective at a later date, or not at all. The department reserves the right to adopt or amend only some of the rules identified in this notice. This general statement of reasonable necessity applies to all of the rules proposed for adoption and amendment and will be supplemented as necessary for any given rule.

4. The proposed new rules provide as follows:

NEW RULE I UTILIZATION AND TREATMENT GUIDELINES (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. The utilization and treatment guidelines are titled the "Montana Utilization and Treatment Guidelines, 1st edition, 2011" (the Montana Guidelines or guidelines), are found on-line via the internet at <http://www.mtguidelines.com>, and are incorporated herein by reference. The Montana Guidelines adopted by reference in (1) may be obtained from the Montana Department of Labor and Industry as follows:

(a) an electronic copy is available at the web site:
<http://www.mtguidelines.com>; or

(b) a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-7732; fax (406) 444-7710; TDD (406) 444-5549.

(2) The guidelines include the following nine chapters and General Guideline Principles which are included at the beginning of each chapter:

- (a) Low Back Pain;
- (b) Shoulder Injury;
- (c) Upper Extremity;
- (d) Lower Extremity;
- (e) Chronic Regional Pain Syndrome;
- (f) Cervical Spine Injury;
- (g) Chronic Pain Disorder;
- (h) Traumatic Brain Injury; and
- (i) Eye Injury.

(3) When providing treatment for primary and secondary medical services to an injured worker, all health care providers shall use the Montana Guidelines adopted by reference in (1).

(a) In cases where treatment(s) or procedure(s) are recommended by the Montana Guidelines, prior authorization is unnecessary unless the Montana Guidelines specify otherwise.

(b) The department recognizes that medical treatment may include deviations from the Montana Guidelines as individual cases dictate. The provider or interested party shall follow the procedure for prior authorization under [New Rule II] for cases in which treatments or procedures are requested that is:

(i) not specifically addressed or recommended by the Montana Guidelines for a body part that is covered by a guideline;

(ii) after maximum medical improvement; or

(iii) beyond the duration and frequency limits set out in the guidelines.

(c) An insurer is not responsible or liable for treatment(s) or procedure(s) as set out in (3)(b) unless:

(i) prior authorization is obtained from the insurer pursuant to 39-71-704, MCA, and in accordance with [New Rule II]; or

(ii) the treatment(s) or procedure(s) were provided in a medical emergency.

(d) For those body parts not included in one of the guideline chapters, providers must apply and follow the general guideline principles that are found at the beginning of each chapter, and an insurer is liable for reasonable medical treatment.

(4) All insurers shall routinely and regularly review claims to ensure that care is consistent with the Montana Guidelines adopted by reference in (1).

(5) The provisions of this rule and the Montana Guidelines incorporated by reference in (1) apply to medical services provided on or after July 1, 2011.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt New Rule I to implement the Legislature's direction to the department to implement U&T guidelines for workers' compensation patients. Under the proposed rule, if a treatment is recommended in the guidelines, that treatment is considered preauthorized, regardless of the level of the evidence used to describe it, such as "generally well accepted," "generally accepted," or other description. Those procedures considered inappropriate, unreasonable, or unnecessary are designated in the guideline as "not recommended." If the guidelines explicitly require prior authorization for a treatment, prior authorization must be obtained by following the procedures in New Rule II.

U&T guidelines are reasonable and necessary because medical costs comprise a greater percentage of the benefits paid in Montana than in most other states. Studies show that utilization and treatment guidelines are a reasonable alternative to address overutilization.

NEW RULE II PRIOR AUTHORIZATION (1) Prior authorization must be obtained in cases where treatment(s) or procedure(s) are requested that:

(a) are not specifically addressed or recommended by the Montana Guidelines for a body part that is covered by a guideline;

(b) are after maximum medical improvement;

(c) are beyond the duration and frequency limits set out in the guidelines; or

(d) the guidelines require prior authorization before proceeding with the treatment.

(2) For those body parts not covered by a guideline, the rule for prior authorization set out at ARM 24.29.1517 applies.

(3) When the guidelines explicitly require prior authorization for a treatment or modality, documentation need only include the clinical indications outlined in the guidelines to support that the treatment or modality is appropriate for the injured worker.

(4) When prior authorization is required because an interested party wishes to rebut the presumption of the guidelines, the interested party must submit to the insurer documentation to support the request and justification that the medical treatment(s) or procedure(s) are reasonable and necessary care for the injured worker. Documentation must consist of a preponderance of credible medical evidenced-based material and medical reasons to rebut the Montana Guidelines. Documentation submitted to rebut the guidelines may include any information from the following list. However, nothing in this list is intended to imply that any given information is sufficient to rebut the guidelines. Rather, whether the presumption of the guidelines is rebutted can only be determined on a case-by-case basis. Submitted information may include:

(a) an explanation or documentation of how the patient's medical condition is different from the medical indications used in the Montana Guidelines that may have resulted in a negative recommendation or exclusion;

(b) an explanation or documentation of objective findings and functional improvements that would be the expected result of the treatment(s) or procedure(s), either from past experience or from an explanation about the mechanism of injury and the effect of the treatment(s) or procedure(s), and where improvement can be measured;

(c) an explanation or documentation of objective signs of functional restoration for treatment conducted thus far;

(d) an explanation or documentation of measurable goals and progress points expected from additional treatment;

(e) a statement of how the request will benefit both a short-term and long-term treatment plan; or

(f) any additional evidence-based utilization and treatment guidelines or studies that support the interested party's case.

(5) All prior authorization requests, whether in written, telephone, e-mail, or facsimile (fax) form, must be made at least 14 days prior to the date the service is scheduled to be performed. If the prior authorization request was made by telephone, the burden of proof for showing that the request was made rests with the interested party who made the request.

(a) Authorization is presumed to be given by the insurer if there is no written denial sent by the insurer to the interested party within 14 days of either the date the verbal prior authorization request was made or the date the written prior authorization request was mailed.

(b) An insurer may notify the interested party of authorization by written confirmation, telephone, e-mail, or facsimile (fax). If an insurer provides authorization by telephone, the burden of proof for showing that authorization was granted rests with the interested party. The interested party shall promptly send the insurer written confirmation of any verbal authorization made by the insurer. Such

written confirmation shall refer to the name of the claimant, the claim number, the treatment(s) or procedure(s) authorized, and the name of the person giving the authorization and the date the authorization was given.

(6) If the insurer denies the prior authorization request, the denial must be in writing and must contain an explanation of the reason(s) for the denial.

(a) The denial must not be based solely on the fact that the medical treatment(s) or procedure(s) are not specifically addressed or recommended by the Montana Guidelines.

(b) If the written denial is five or fewer days before the expiration of the 14-day response period, the insurer must also notify the interested party of the denial by e-mail or facsimile (fax).

(7) When an insurer denies liability for an injury or occupational disease, and the insurer then later assumes liability for a particular condition, the insurer may not deny payment for the medical services provided for that condition during the period of denial based solely on failure to obtain prior authorization.

(8) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASON: Because 39-71-704, MCA, provides that the Montana Guidelines establish a rebuttable presumption, there is reasonable necessity to define the level and type of evidence needed to rebut the guidelines. The proposed rule establishes that in order to rebut the guidelines, documentation must amount to a preponderance of credible medical evidence. The rule also provides that the evidence must include, at a minimum, a written explanation of the medical basis for varying from the guidelines. The rule also proposes additional types of evidence that may be provided. Because 39-71-704, MCA, provides for treatment variations from the guidelines through the mechanism of prior authorization from an insurer, the rule also provides that denials must explain the reason for the denial. To deny requests for prior authorization based solely on the argument that the treatment is not in the guidelines, is a contradiction to the purpose of allowing prior authorization in the first place.

NEW RULE III INDEPENDENT MEDICAL REVIEW PROCESS (1) An interested party who has requested and been denied authorization by the insurer for treatment, or an insurer, may request an independent medical review by the medical director designated by the department prior to mediation under 39-71-2401, MCA. A request for medical review is not mandatory in order to proceed to mediation.

(2) The interested party or insurer must submit its request for review to the department and must notify the other party of its request for review. Upon notice of a request for review, the insurer must submit a copy of the request for prior authorization, the denial, and any other relevant medical information to the department. The interested party and the insurer may also submit additional information to the department, if the information falls within the categories outlined in

[New Rule II]. Any new information submitted to the department must also be submitted to the other party.

(3) The medical director will review the medical records of the injured worker and other information relevant to the denial and issue a recommendation. For purposes of this rule, the medical director is the specific individual designated by the department to serve as the medical director with respect to a given set of disputed treatments or procedures. The medical director may seek consultation from other providers with specialties as would typically manage the medical condition at issue. If a consultation is sought and received, that provider's recommendation is also subject to the provisions of this rule.

(4) The medical director shall, within five days of receipt of the request for review, issue a written recommendation to the interested party and the insurer by mail, facsimile, or e-mail, or issue a notice that additional information or time is required to tender a recommendation along with an approximate date the recommendation will be issued, not to exceed 14 days from the date of receipt of the review request. If the medical director does not issue a recommendation within 14 days, the request for review is deemed denied and the parties may proceed to mediation.

(5) The medical director's review and recommendation is an informal alternative dispute resolution process without administrative or judicial authority and is not binding on the parties.

(a) The medical director's files and records are closed to all persons but the parties.

(b) The medical director may not be called to testify in any proceeding concerning the issues discussed in the independent medical review process.

(c) The medical director's recommendation and any information contained in the recommendation that is solely from the medical director are not admissible as evidence in any action subsequently brought in any court of law.

(d) The medical director's recommendation, including information contained in the recommendation, may be considered in mediation conducted under 39-71-2401, MCA.

(6) The insurer shall, within five days of receipt of the recommendation, notify the interested party if the previously denied treatment(s) or procedure(s) is authorized based on the medical director's recommendation.

(7) If the insurer does not authorize treatment after issuance of the medical director's recommendation, the interested party may file for mediation with the department pursuant to 39-71-2401, MCA.

(8) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-224, 39-71-704, 39-71-2401, MCA

REASON: There is reasonable necessity to propose New Rule III to set out a process for an independent medical review because Chapter 167, L. of 2011, provides for such review. The department believes this procedure will streamline disputes over medical treatment, by providing for independent medical input on

disputed care. Because this medical review process is similar to mediation and because the medical director's recommendation is advisory, the records of the mediation are closed. Further, to allow the medical director to testify would essentially create a situation where the medical director is in court all the time, acting as an expert for one side or the other. This process is instead intended to allow for medical discussions to find reasonable expedited resolution where possible.

NEW RULE IV APPLICABILITY OF UTILIZATION AND TREATMENT GUIDELINES FOR MANAGED CARE ORGANIZATIONS OR PREFERRED PROVIDER ORGANIZATIONS

(1) Managed care organizations or preferred provider organizations providing any treatment for primary and secondary medical services to an injured worker shall use the Montana Guidelines. This rule does not alter or change how managed care organizations or preferred provider organizations are paid pursuant to 39-71-704, MCA.

(2) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to propose New Rule IV to specify that the utilization and treatment guidelines adopted by the department must be used by managed care organizations (MCOs) and preferred provider organizations (PPOs) but do not affect payment and reimbursement agreements made between MCOs and PPOs and insurers.

NEW RULE V APPLICABILITY OF UTILIZATION AND TREATMENT RULES

(1) The following rules are subject to the applicability provisions of this rule:

- (a) [NEW RULE I];
- (b) [NEW RULE II];
- (c) [NEW RULE III]; and
- (d) [NEW RULE IV].

(2) The rules identified in (1) apply to:

- (a) injuries that occurred on or before June 30, 2007, for any treatment rendered on or after July 1, 2011, except that the provisions of (3) apply; and
- (b) injuries that occurred on or after July 1, 2007, for any treatment rendered on or after July 1, 2011.

(3) The presumption of compensability in the Montana utilization and treatment guidelines adopted by [NEW RULE I] does not apply to injuries occurring on or before June 30, 2007. However, treatment for these injuries made in accordance with the guidelines constitutes reasonable primary or secondary medical treatment, pursuant to 39-71-704, MCA, for any condition or diagnosis identified in the guidelines. Therefore, prior authorization is not required for treatment within the guidelines for these injuries unless prior authorization would otherwise be required under these rules.

(4) As used in this rule, the term "injuries" includes occupational diseases which were diagnosed as an occupational disease, or should have been diagnosed as an occupational disease, during the time period specified.

AUTH: 39-71-203, 29-71-704, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE V in conjunction with the Montana utilization and treatment guidelines in order to harmonize to the fullest extent feasible the medical service rules that providers will need to follow when treating persons suffering from a workers' compensation injury or occupational disease. The rule is reasonably necessary to fully implement the provisions of Section 5 of Chapter 330, Laws of 2007 (House Bill 738), an uncodified section of law which provides for the applicability of the presumptively compensable utilization and treatment standards to injuries occurring on or after July 1, 2007. The department believes that there is reasonable necessity to distinguish between those claims with dates of injuries on or after July 1, 2007, where the Montana Guidelines establish presumptively compensable treatment, and those cases with dates of injuries prior to July 1, 2007, where the Montana Guidelines provide evidence of what treatment course constitutes reasonable medical care. In both classes of claims, a party is still free to dispute the appropriateness of the Montana Guidelines as applied to any given individual's medical condition. This rule is proposed to apply the guidelines to all injuries, regardless of the date of injury, so that medical providers may use the guidelines for treatment of all workers' compensation cases and do not have to change their treatment based on the date of injury.

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

24.29.1401A DEFINITIONS As used in subchapters 14 and 15, the following definitions apply:

(1) through (8) remain the same.

(9) "Department" means the Montana Department of Labor and Industry.

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

(12) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).

(11) through (16) remain the same but are renumbered (13) through (18).

(19) "Insurer" has the same meaning as provided by 39-71-116, MCA.

(20) "Interested party" means:

(a) the "physician" or "provider" as defined by this rule;

(b) the "claimant" or "injured worker"; or

(c) the representative of the injured worker.

(21) "Maintenance care" has the same meaning as provided by 39 -71-116, MCA.

(22) "Medical director" means a person who is an employee of, or contractor to, the department, and who is responsible for the independent medical review of requests for treatment(s) or procedure(s) that are not specifically addressed or recommended by the Montana Guidelines, when those requests are denied, and whose responsibility will also include other areas to be determined by the department. A person serving as a medical director must be a physician licensed by the state of Montana under Title 37, chapter 3, MCA.

(23) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" has the same meaning as provided by 39 -71-116, MCA.

(17) through (20) remain the same but are renumbered (24) through (27).

(28) "Palliative care" has the same meaning as provided by 39 -71-116, MCA.

(21) remains the same but is renumbered (29).

(30) "Primary medical services" has the same meaning as provided by 39 -71-116, MCA.

~~(22)~~(31) "Prior authorization" means:

(a) with respect to services provided on or before June 30, 2011, that for those matters identified by ARM 24.29.1517 the provider receives (either verbally or in writing) authorization from the insurer to perform a specific procedure or series of related procedures, prior to performing that procedure; and

(b) with respect to services provided on or after July 1, 2011, the interested party receives prior authorization (either verbally or in writing) from the insurer to perform treatment for those cases identified by [New Rule II].

(23) and (24) remain the same but are renumbered (32) and (33).

(34) "Rebuttable presumption" means that the Montana Guidelines, as adopted in [New Rule I], are presumed to be compensable medical treatment for an injured worker. The presumption can be rebutted by a preponderance of credible medical evidenced-based material and medical reasons to justify that the medical treatment(s) or procedure(s) that require prior authorization are reasonable and necessary care for the injured worker.

(25) and (26) remain the same but are renumbered (35) and (36).

(37) "Secondary medical services" has the same meaning as provided by 39-71-116, MCA.

(27) through (29) remain the same but are renumbered (38) through (40).

~~(30)~~(41) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint.

(a) With respect to services provided on or before June 30, 2011, the treatment plan must include a diagnosis of the condition, the specific type(s) of treatment, procedure, or modalities that will be employed, a timetable for the implementation and duration of the treatment, and the goal(s) or expected outcome of the treatment. Treatment, as used in this definition, may consist of diagnostic procedures that are reasonably necessary to refine or confirm a diagnosis. The treating physician may indicate that treatment is to be performed by a provider in a different field or specialty, and defer to the professional judgment of that provider in

the selection of the most appropriate method of treatment; however, the treating physician must identify the scope of the referral in the treatment plan and provide guidance to the provider concerning the nature of the injury or occupational disease.

(b) With respect to services provided on or after July 1, 2011, a treatment plan must be made in accordance with the Montana Guidelines adopted in [New Rule I] and made in accordance with any insurer authorized treatments or procedures.

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-704, MCA

REASON: There is reasonable necessity to amend the definitions rule applicable to ARM Title 24, chapter 29, subchapter 14 for General Medical Rules and Facility Service Rules and subchapter 15 for Nonfacility Service Rules and Utilization Rules to define common medical terms used in utilization and treatment guidelines for primary and secondary medical services for the injured worker, such as: "evidence-based"; "maintenance care"; "medical stability", "maximum healing", or "maximum medical healing"; "palliative care"; "primary medical services"; and "secondary medical services". There is reasonable necessity to define the term "medical director" to clarify that this individual is a physician licensed by the state of Montana and to clarify the role of the individual in independent medical review of disputes concerning utilization and treatment guidelines. There is reasonable necessity to define the term: "rebuttable presumption" to clarify the intended meaning of this term as used in the utilization and treatment guidelines adopted by the department. There is also reasonable necessity to amend the definition of "prior authorization" and "treatment plan" due to the implementation of New Rules I and II. Finally, there is reasonable necessity to clarify that various terms have the meaning specified in statute.

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) As required by 39-71-704, MCA, charges submitted by providers must be the usual and customary charge billed for nonworkers' compensation patients. Payment of medical claims must be made in accordance with the schedule of facility and nonfacility medical fees adopted by the department.

(a) For services provided on or after July 1, 2011, payment of medical claims must also be made in accordance with the utilization and treatment guidelines adopted by the department in [New Rule I].

(2) through (7) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: There is reasonable necessity to amend this rule to eliminate confusion by clarifying that medical providers need to bill their usual and customary charges, even though medical claims are paid according to the fee schedule. In other words, (1)(a) means that providers must bill workers' compensation patients the same charges as any other patients for the same service. There is reasonable necessity

to also clarify that payment of medical claims must be made in accordance with the implementation of New Rule I.

24.29.1406 FACILITY BILLS (1) remains the same.

~~(2) To the extent possible, electronic billing must be utilized by both providers and payers in the billing and reimbursement process to facilitate the rapid transmission of data, lessen the opportunity for errors, and lessen system costs.~~
The providers and payers shall use, when possible, electronic billing for the billing and reimbursement process in order to facilitate rapid transmission of data, lessen the opportunity for errors, and lessen system costs.

(3) through (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-105, 39-71-107, 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1406 at the same time as other medical service rules are being amended in order to clarify and emphasize the need to use electronic billing systems.

24.29.1407 PROSTHETIC APPLIANCES (1) remains the same.

(2) For services provided on or after July 1, 2011, claims must be paid in accordance with the utilization and treatment guidelines adopted by the department in [New Rule I].

AUTH: 39-71-203, MCA

IMP: ~~39-71-203~~, 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1407 to clarify that New Rule I applies to services for prosthetics provided on or after July 1, 2011.

24.29.1501 PURPOSE (1) remains the same.

(2) The purpose of evidence-based utilization and treatment guidelines is to assist injured workers in receiving prompt and appropriate care, assist injured workers in stay-at-work/return-to-work options, assist clinicians in making decisions for specific conditions, and help insurers make reimbursement determinations. Although the primary purpose of the guidelines is advisory and educational, the guidelines are enforceable for payment purposes. The department recognizes that acceptable medical practice may include deviations from these guidelines, as individual cases dictate. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1501 to provide a more detailed statement regarding evidence-based utilization and treatment guidelines and to clarify that the guidelines are not absolute because every injured

worker is unique. This section is proposed to clarify that the guidelines are not intended to create a legal standard of care. This proposed rule does not contradict New Rule II and does not create an independent avenue from New Rule II for the introduction of evidence for treatment outside the guidelines. Rather, it is only a general purpose statement as indicated in the title.

24.29.1517 PRIOR AUTHORIZATION FOR CERTAIN SERVICES (1) This rule applies to:

(a) services provided on or before June 30, 2011; and

(b) body parts not covered by the Montana Guidelines, as described in [New Rule II].

(1) through (8) remain the same, but are renumbered (2) through (9).

AUTH: 39-71-203, MCA

IMP: 39-71-704, 39-71-743, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1517 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I and the prior authorization provisions of New Rule II.

24.29.1519 SECOND OPINIONS FOR SERVICES PROVIDED ON OR BEFORE JUNE 30, 2011 (1) With respect to services provided on or before June 30, 2011, the ~~The~~ insurer may request a second opinion from a qualified provider as to whether the following services or procedures are reasonable, necessary, or well-advised:

(a) through (c) remain the same.

(2) and (3) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1519 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I.

24.29.1526 DISALLOWED PROCEDURES (1) and (2) remain the same.

(3) Medical services which are not payable include, but are not limited to, the following:

(a) ~~thermography~~ disc nucleoplasty;

(b) ~~autologous cultured chondrocyte for implantation procedures except when it is performed on the knee~~ extreme lateral interbody fusion (XLIA); and

(c) ~~endoscopic spinal procedure~~ freezeframer;

(d) frequency specific microcurrent;

(e) HEALOS/leopard cage;

(f) inter X therapy;

- (g) kinesis myofascial integration;
- (h) lidoderm patch;
- (i) percutaneous disc nucleoplasty; and
- (j) medical marijuana.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1526 to add disallowed procedures that the Montana Board of Medical Examiners has recommended are not compensable. The amended rule contains updates from 2006 forward. This list supplements any procedure listed in the Montana Guidelines as "not recommended".

24.29.1574 CHIROPRACTIC FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER FROM JANUARY 1, 2008, THROUGH JUNE 30, 2011 (1) This rule applies to services that are provided ~~on or after~~ from January 1, 2008, through June 30, 2011.

(2) through (7) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1574 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I and the prior authorization provisions of New Rule II.

24.29.1575 CHIROPRACTIC -- PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED ON OR AFTER FROM JANUARY 1, 2008, THROUGH JUNE 30, 2011 (1) This rule applies to services that are provided ~~on or after~~ from January 1, 2008, through June 30, 2011.

(2) through (12) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1575 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I and the prior authorization provisions of New Rule II.

24.29.1585 OCCUPATIONAL AND PHYSICAL THERAPY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER FROM JANUARY 1, 2008, THROUGH JUNE 30, 2011 (1) This rule applies to services that are provided ~~on or after~~ from January 1, 2008, through June 30, 2011.

(2) through (7) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1585 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I and the prior authorization provisions of New Rule II.

24.29.1586 OCCUPATIONAL AND PHYSICAL THERAPISTS -- PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED ON OR AFTER FROM JANUARY 1, 2008, THROUGH JUNE 30, 2011 (1) This rule applies to services that are provided ~~on or after~~ from January 1, 2008, through June 30, 2011.

(2) through (11) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1586 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I and the prior authorization provisions of New Rule II.

24.29.2002 STANDARDS FOR DIAGNOSIS FOR SERVICES PROVIDED ON OR BEFORE JUNE 30, 2011 (1) through (4) remain the same.

(5) This rule applies to services provided on or before June 30, 2011.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.2002 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I.

24.29.2003 WORKERS' COMPENSATION DOES PAY FOR CERTAIN SERVICES PROVIDED ON OR BEFORE JUNE 30, 2011 (1) and (2) remain the same.

(3) This rule applies to services provided on or before June 30, 2011.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.2003 to clarify that the rule only applies to services provided on or before June 30, 2011, to avoid any

inconsistencies that may arise from the application of the Montana Guidelines provided in New Rule I.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Diana Ferriter, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011; by facsimile to (406) 444-1574; or by e-mail to diferriter@mt.gov, and must be received no later than 5:00 p.m., June 10, 2011.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The department contacted the primary sponsor of House Bill 334 (2011) by e-mail and by regular mail on April 15, 2011. The department also provided additional notification to the sponsor of Senate Bill 108 (2007) by phone on April 29, 2011, and the sponsor of House Bill 738 (2007) via e-mail on April 29, 2011, supplementing the original contacts to both of those bill sponsors that occurred in November, 2009. The details of that original contact were described with specificity in MAR Notice No. 24-29-249, published on September 23, 2010.

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State May 2, 2011

BEFORE THE STATE AUDITOR AND COMMISSIONER OF SECURITIES OF
THE STATE OF MONTANA

In the matter of the amendment and)
transfer of ARM 6.10.502, pertaining)
to Broker-Dealers and Investment)
Advisers)

CORRECTED NOTICE OF
AMENDMENT AND TRANSFER

TO: All Concerned Persons

1. On August 14, 2008, the Department of Securities published MAR Notice No. 6-180 pertaining to a public hearing on the proposed amendment and transfer of the above-stated rule at page no.1635 of the 2008 Montana Administrative Register, Issue Number 15. On September 25, 2008, the department published the notice of amendment and transfer at page no. 2046 of the 2008 Montana Administrative Register, Issue Number 18.

2. This notice is being submitted to correct a typographical error in the first paragraph. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

6.10.502 CANADIAN BROKER-DEALERS AND SALESPERSONS (1) A Canadian broker-dealer that is resident in Canada, and has no office or other physical presence in the United States, and is not an office of, branch of, or a natural person associated with a broker-dealer otherwise registered in the United States may transact business in this state without registering as a broker-dealer pursuant to ~~30-20-201~~ 30-10-201, MCA, under the following conditions:

(a) through (3) remain the same.

AUTH: 30-10-105, 30-10-107, MCA
IMP: 30-10-201, MCA

3. The replacement page for this corrected notice will be submitted to the Secretary of State on June 30, 2011.

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

/s/ Lynne Egan
Lynne Egan
Deputy Securities Commissioner

Certified to the Secretary of State on May 2, 2011.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On November 26, 2010, the Department of Labor and Industry (Department) published MAR Notice No. 24-17-253 regarding the public hearing on the amendment of the above-stated rules on page 2681 of the 2010 Montana Administrative Register, issue no. 22.

2. On January 27, 2011, the department published a notice of amendment of the above-stated rule on page 102 of the 2011 Montana Administrative Register, issue no. 2.

3. As part of a recent review of the published prevailing wage and fringe benefit rates, which are incorporated by reference in ARM 24.17.127, the department discovered that one set of rates (unarmed security guards) were incorrectly calculated. See MAR Notice No. 24-17-255, published elsewhere in this issue of the Montana Administrative Register. In addition, the department discovered certain typographic errors were included in the 2011 rate publications.

4. The following fringe benefit rate in "The State of Montana Prevailing Wage Rates – Building Construction Services" publication incorporated by reference in ARM 24.17.127 has been corrected as follows, stricken matter interlined, new matter underlined:

Electricians

	Wage	Benefit
District 2	\$26.39	\$4.88 <u>\$9.76</u>

5. The following fringe benefit rates in "The State of Montana Prevailing Wage Rates – Nonconstruction Services" publication incorporated by reference in the rule have been corrected as follows, stricken matter interlined, new matter underlined:

Tree Planters

	Wage	Benefit	
District 1	\$13.65	\$5.80	<u>\$3.35</u>
District 2	\$13.65	\$5.80	<u>\$3.35</u>
District 3	\$13.65	\$5.80	<u>\$3.35</u>
District 4	\$13.65	\$5.80	<u>\$3.35</u>
District 5	\$13.65	\$5.80	<u>\$3.35</u>
District 6	\$13.65	\$5.80	<u>\$3.35</u>
District 7	\$13.65	\$5.80	<u>\$3.35</u>
District 8	\$13.65	\$5.80	<u>\$3.35</u>
District 9	\$13.65	\$5.80	<u>\$3.35</u>
District 10	\$13.65	\$5.80	<u>\$3.35</u>

6. The on-line publications affected by the above-referenced corrections will be corrected on May 13, 2011, the date the corrections become effective.

/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 May 2, 2011

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.216.402 fee schedule,	)	AMENDMENT AND TRANSFER,
24.216.501 applications, 24.216.502	)	AND ADOPTION
minimum licensure standards,)	
24.216.503 examination, 24.216.2102)	
continuing education, amendment)	
and transfer of 24.216.2103)	
sanitarian-in-training, and the)	
adoption of NEW RULE I inactive)	
status licensure)	

TO: All Concerned Persons

1. On March 24, 2011, the Board of Sanitarians (board) published MAR notice no. 24-216-20 regarding the public hearing on the proposed amendment, amendment and transfer, and adoption of the above-stated rules, at page 364 of the 2011 Montana Administrative Register, issue no. 6.

2. On April 14, 2011, a public hearing was held on the proposed amendment, amendment and transfer, and adoption of the above-stated rules in Helena. Several comments were received by the April 22, 2011 comment deadline.

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

COMMENT 1: The board received two comments in support of the proposed rule amendments.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: One commenter stated that it is unclear in ARM 24.216.2103(2) that all sanitarians-in-training must be supervised by licensed sanitarians in accordance with 37-40-101(6), MCA. The commenter suggested that the board amend the rule to clearly provide that sanitarian-in-training applicants who hold the National Environmental Health Association's (NEHA) credential of registered environmental health specialist/registered sanitarian, must name a supervising sanitarian who is currently registered in Montana.

RESPONSE 2: Following consideration of this comment, the board is amending ARM 24.216.2103(2)(b) to remove the language that exempted NEHA credentialed sanitarians-in-training from filing a plan of supervision, so that all sanitarians-in-

training will continue to be required to file a plan of supervision and name a supervisor.

COMMENT 3: One commenter recommended adding "in Montana" following the word "examination" in ARM 24.216.2103(4) to clarify that this requirement applies only to those who have not previously taken the examination and who are taking the examination in Montana.

RESPONSE 3: The board agrees that this addition would clarify the rule and is amending the rule accordingly.

4. The board has amended ARM 24.216.402, 24.216.501, 24.216.502, 24.216.503, and 24.216.2102 exactly as proposed.

5. The board has amended ARM 24.216.2103 and transferred the rule to ARM 24.216.506 with the following changes, stricken matter interlined, new matter underlined:

24.216.506 SANITARIAN-IN-TRAINING (1) through (2)(a)(iii) remain as proposed.

(b) A sanitarian-in-training who satisfies the requirements of ARM 24.216.502(3):

~~(i) shall inform the board regarding his or her participation in a general microbiology course; and~~

~~(ii) is not required to complete a separate plan of supervision if the sanitarian-in-training submits the information required in (2)(b)(i).~~

(3) remains as proposed.

(4) A sanitarian-in-training permit is valid for a period of one year. A sanitarian-in-training who meets all the minimum standards for licensure is eligible to take the examination in Montana. There is no limit to the number of times a sanitarian-in-training may take the examination during the one-year exemption period.

6. The board has adopted NEW RULE I (24.216.2104) exactly as proposed.

BOARD OF SANITARIANS
JIM ZABROCKI, RS, CHAIRPERSON

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

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

Certified to the Secretary of State May 2, 2011

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.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2010. This table includes those rules adopted during the period January 1, 2011, through March 31, 2011, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2010, 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 2011 Montana Administrative Register.

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

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