

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.10.401 relating to	)	AMENDMENT
farm applicator licensing schedule)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 22, 2008, the Montana Department of Agriculture proposes to amend 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 November 6, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.10.401 FARM APPLICATOR CERTIFICATION (1) through (3) remain the same.

(4) Certified farm applicators shall requalify for certification to use restricted use pesticides prior to issuance of a certificate. Requalification may be achieved by passing an examination or by attending six hours of training approved by the department. Each farm applicator qualification period shall conform to the established staggered system set forth in this rule. The qualification period of each district ends December 31 of the year indicated and every five years thereafter. A listing of counties within each district follows:

DISTRICT I ~~2008~~ 2013

Flathead	Missoula
Lake	Ravalli
Lincoln	Sanders
Mineral	

DISTRICT II ~~2004~~ 2009

Beaverhead	Lewis and Clark
Broadwater	Madison
Deer Lodge	Meagher
Gallatin	Park

Granite
Jefferson

Powell
Silver Bow

DISTRICT III ~~2005~~ 2010

Blaine
Cascade
Chouteau
Glacier
Hill

Liberty
Pondera
Teton
Toole

DISTRICT IV ~~2006~~ 2011

Carter
Custer
Daniels
Dawson
Fallon
Garfield
McCone
Phillips
Powder River

Prairie
Richland
Roosevelt
Rosebud
Sheridan
Treasure
Valley
Wibaux

DISTRICT V ~~2007~~ 2012

Big Horn
Carbon
Fergus
Golden Valley
Judith Basin
Musselshell

Petroleum
Stillwater
Sweet Grass
Wheatland
Yellowstone

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-209, MCA

Reason: Farm applicators are on a staggered system for licensing by district every five years. It is now time to update the years that each district is scheduled to renew their farm licenses.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Cort Jensen at the Montana Department of Agriculture, 303 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 November 20, 2008.

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 they have to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or

e-mail: agr@mt.gov. A written request for hearing must be received no later than November 20, 2008.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 700 persons based on farm applicators.

7. 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 and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 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.

8. An electronic copy of this Notice of Proposed Amendment 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.

9. The bill sponsor notice 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, October 14, 2008.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 6.6.3504 and	)	PROPOSED AMENDMENT AND
6.6.3506 pertaining to Annual	)	REPEAL
Audited Reports and Establishing)	
Accounting Practices and)	
Procedures to be Used in Annual)	
Statements, ARM 6.6.6501,)	
6.6.6502, 6.6.6503, 6.6.6504,)	
6.6.6505, 6.6.6508, and 6.6.6509,)	
pertaining to Actuarial Opinion, ARM)	
6.6.6811 pertaining to Annual Audit;)	
and the proposed repeal of ARM)	
6.6.6506, 6.6.6507, and 6.6.6510)	
pertaining to Required Opinions,)	
Statement of Actuarial Opinion Not)	
Including an Asset Adequacy)	
Analysis, and Additional)	
Considerations for Analysis)	

TO: All Concerned Persons

1. On December 1, 2008, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The State Auditor and Commissioner of Insurance 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., November 24, 2008, 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:

6.6.3504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

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

(f) notes to financial statements. These notes shall be those required by the appropriate ~~2004~~2007 NAIC annual statement instructions and the March ~~2004~~2007; 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, and 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, 33-5-413, MCA

IMP: 33-2-1517, 33-5-413, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is changed to reflect the requirement of the NAIC to use current and updated statement instructions and the current and updated NAIC Accounting Practices and Procedures Manual in the preparation of the annual audited financial report required of all insurance companies operating in Montana.

6.6.3506 QUALIFICATIONS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant, or has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as "indemnification") with respect to the audit of the insurer.

(2) remains the same.

(3) Following the effective date of these rules, no partner or other member of a firm responsible for rendering a report may act in that capacity for more than ~~seven~~ five consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of ~~two~~ five consecutive years. This does not preclude other partners or members of any accounting firm from succeeding to the responsibility for rendering reports. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining whether relief should be granted:

(a) through (c) remain the same.

(4) The insurer shall file, with its annual statement filing, the approval for relief from (3) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

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

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

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

IMP: 33-1-701, 33-2-1517, MCA

STATEMENT OF REASONABLE NECESSITY: The additions to this rule bring it into conformity with the NAIC Model Rules. The prohibition on an indemnity clause between an insurance company and a CPA who audits that insurance company in conformance with the requirements of this chapter is an increased protection for consumers/subscribers whose interests might be compromised by an inaccurate or incomplete audit report. Another change to this rule lowers the amount of times that the same accounting firm may be used consecutively to audit an insurance company to provide greater integrity of the audit process. In limited cases, these requirements may be waived and a section has been added to the rule to provide a process for an insurance company to give notice to other states through the NAIC that these requirements have been waived.

6.6.6501 PURPOSE (1) and (1)(a) remain the same.

~~(b) Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from 33-2-521(4)(b), MCA; and~~
~~(c)(b) rules applicable to the appointment of an appointed actuary; and~~
(c) guidance as to the meaning of "adequacy of reserves."

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

6.6.6502 AUTHORITY (1) These rules are issued pursuant to the authority vested in the Commissioner of Insurance of the state of Montana under 33-2-521, MCA. These rules will take effect for annual statements for the year ~~1996~~ 2009.

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

6.6.6503 SCOPE (1) remains the same.

(2) This rule shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

~~(2)(3)~~ These rules shall be applicable to all annual statements filed with the office of the commissioner after the effective date of these rules. ~~Except with respect to companies which are exempted pursuant to ARM 6.6.6506, a~~ statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with ARM 6.6.6508, and a memorandum in support thereof in accordance with ARM 6.6.6509, shall be required each year. ~~Any~~

~~company so exempted must file a statement of actuarial opinion pursuant to ARM 6.6.6507.~~

~~(3) Notwithstanding the foregoing, the commissioner may require any company otherwise exempt pursuant to these rules to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with ARM 6.6.6508 and 6.6.6509 if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.~~

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

6.6.6504 DEFINITIONS (1) "Actuarial opinion" means:

~~(a) With respect to ARM 6.6.6508, 6.6.6509 or 6.6.6510, the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with ARM 6.6.6508 and with applicable presently accepted Actuarial Standards; of Practice.~~

~~(b) With respect to ARM 6.6.6507, the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with ARM 6.6.6507 and with those presently accepted actuarial standards which specifically relate to this opinion.~~

(2) "Actuarial Standards Board" ~~is~~ means the board established by the American Academy of Actuaries to develop and promulgate Actuarial Standards of Actuarial Practice.

(3) and (4) remain the same.

(5) "Asset adequacy analysis" means an analysis that meets the standards and other requirements referred to in ARM 6.6.6505(4). ~~It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.~~

(6) and (7) remain the same.

~~(8) "Non-investment grade bonds" are those designated as classes 3, 4, 5 or 6 by the national association of insurance commissioners (NAIC) securities valuation office.~~

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

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

6.6.6505 GENERAL REQUIREMENTS (1) As to the submission of ~~S~~statement of A~~ctuarial O~~pinion, the following requirements apply:

(a) There is to be included on or attached to page 4 one of the annual statement for each year beginning with the year in which this regulation becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held

in support of policies and contracts, in accordance with ARM 6.6.6508; ~~provided, however, that any company exempted pursuant to ARM 6.6.6506 from submitting a statement of actuarial opinion in accordance with ARM 6.6.6508 shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with ARM 6.6.6507.~~

~~(b) If in the previous year a company provided a statement of actuarial opinion in accordance with ARM 6.6.6507, and in the current year fails the exemption criteria of ARM 6.6.6506(3)(a), (b) or (e) to again provide an actuarial opinion in accordance with ARM 6.6.6507, the statement of actuarial opinion in accordance with ARM 6.6.6508 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with ARM 6.6.6507 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with ARM 6.6.6508.~~

~~(c) In the case of a statement of actuarial opinion re-quired to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.~~

~~(d) remains the same, but is renumbered (b).~~

~~(2) remains the same.~~

~~(a) is a member in good standing of the American Academy of Actuaries; and~~

~~(b) is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and~~

~~(c) is familiar with the valuation requirements applicable to life and disability insurance companies; and~~

~~(d) remains the same.~~

~~(i) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as a qualified actuary; or~~

~~(ii) been found guilty of fraudulent or dishonest practices; or~~

~~(iii) demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or~~

~~(iv) through (2)(e) remain the same.~~

(3) An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by these rules, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in ARM 6.6.6505(2). Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in ARM 6.6.6505(2). If any person

appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(4) remains the same.

(a) shall conform to the Actuarial Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under these rules, which standards are to form the basis of the statement of actuarial opinion in accordance with ~~ARM 6.6.6508~~these rules; and

(b) and (5) remain the same.

(a) under authority of 33-2-521(4), (5), and 33-7-118(2), MCA, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 8, 9, and 10, and claim liabilities in Exhibit 11, Part 1 and equivalent items in the separate account statement or statements.

(b) remains the same.

~~(c) For years ending prior to December 31, 1997, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set upon additional reserve in an amount not less than the following:~~

~~(i) December 31, 1995 The additional reserve divided by three.~~

~~(ii) December 31, 1996 Two times the additional reserve divided by three.~~

~~(d)(c)~~ additional reserves established under (5)(a) or (b) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

6.6.6508 STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS (1) through (1)(e)(i) remain the same.

~~(ii) if the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;~~

~~(iii) if the appointed actuary must disclose reliance upon any portion of the assets supporting the asset valuation reserve (AVR), interest maintenance reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis;~~

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

~~(v)(iii)~~ if the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

(vi) remains the same, but is renumbered (iv).

(2) and (2)(a) remain the same.

(i) For a company actuary, the opening paragraph of the actuarial opinion should read as follows include a statement such as: "I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to

render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability insurance companies."

(ii) remains the same.

(b) The scope paragraph should include a statement such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [year]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

Asset Adequacy Tested Amounts Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves a. (2)	Analysis Method b.	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
Total (Exhibit 8, Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9, Item 2, Page 3)					

Notes:

a. ~~The additional actuarial reserves are the reserves established under ARM 6.6.6505(5)(b) or (c).~~

b. ~~The appointed actuarial should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in ARM 6.6.6505(4), by means of symbols which should be defined in footnotes to the table.~~

Statement Item	Formula Reserves (1)	Additional Actuarial Reserves a. (2)	Analysis Method b.	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 10 1 Premiums and Other Deposit Funds (Column 5, Line 14)					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.21 Guaranteed Interest Contracts (Page 3, Line 10.2)(Column 2, line 14)					
1.32 Other Contract Deposit Funds (Page 3, Line 10.3)(Column 6, Line 14)					
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)and Annuities Certain (Column 3, Line 14)					
3 Dividend and Coupon Accumulations or Refunds (Page 3, Line 5)(Column 4, Line 14)					
Total Exhibit 10 (Column 1, Line 14)					

Notes:

a. ~~The additional actuarial reserves are the reserves established under ARM 6.6.6505(5)(b) or (5)(c).~~

b. ~~The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in ARM 6.6.6505(4), by means of symbols which should be defined in footnotes to the table.~~

Statement Item	Formula Reserves (1)	Additional Actuarial Reserves a. (2)	Analysis Method b.	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 11, Part 1 1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines <u>271, 2, 3.1, 3.2, 3.3</u>)					
TOTAL RESERVES					

IMR (<u>General Account</u> , Page ___ Line __)	
(<u>Separate Accounts</u> , Page ___ Line __)	
AVR (Page__ Line__)	c.
<u>Net Deferred and Uncollected Premium</u>	

Notes:

a. The additional actuarial reserves are the reserves established under ARM 6.6.6505(5)(b) or (5)(c).

b. The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in ARM 6.6.6505(4), by means of symbols which should be defined in footnotes to the table.

c. Allocated amount of Asset Valuation Reserve (AVR)

(c) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following: "I have relied on [name], [title] for [e.g., "anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios" or "certain critical aspects of the analysis performed in conjunction with forming my opinion"], and, as certified in the attached statement, . . .", or "~~I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement.~~" "I have reviewed the information relied upon for reasonableness." Such a A statement of reliance on other experts should be accompanied by a statement by each of ~~such~~ the experts of in the form prescribed by ARM 6.6.6508(5).

(d) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should ~~also include the following a statement such as:~~ "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."

(e) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force and/or asset records) prepared by the company ~~or a third party~~, the reliance paragraph should include a sentence such as: "In forming my opinion on [specify types of reserves], I have relied upon listings and summaries data [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods used and ~~such~~ tests of the actuarial calculations as I considered necessary;" or

~~I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary." Such a~~The section must be accompanied by a statement by each person relied upon of in the form prescribed by ARM 6.6.6508(5).

(f) The opinion paragraph should include ~~the following a statement such as:~~ "In my opinion the reserves and related actuarial values concerning the statement items identified above:

(i) and (ii) remain the same.

(iii) meet the requirements of the insurance law and regulation of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(iv) are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

(v) include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on ~~such~~ the assets, and the considerations anticipated to be received and retained under ~~such~~ the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion; or

~~or~~

The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

Note: Choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary"

Date"

(3) The adoption for new issues or new claims or other new liabilities of an actuarial assumption which that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of ARM 6.6.6508.

(4) remains the same.

~~(5) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following: "I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~-----
Signature of the Officer of the Company
or Accounting Firm~~

~~-----
Address of the Officer of the Company
or Accounting Firm~~

~~-----
Telephone Number of the Officer of the
Company or Accounting Firm"~~

and/or

~~"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~-----
Signature of the Officer of the Company,
Accounting Firm or the Security Analyst~~

~~-----
Address of the Officer of the Company,
Accounting Firm or the Security Analyst~~

~~-----
Telephone Number of the Officer of the
Company, Accounting Firm or~~

~~the Security Analyst"~~

(5) If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

(6) The Standard Valuation Law gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of (2)(f)(iii), the commissioner may make one or more of the following additional approaches available to the opining actuary:

(a) a statement that the reserves "meet the requirements of the insurance laws and regulations of the state of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the [state of domicile]." If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(b) a statement that the reserves "meet the requirements of the insurance laws and regulations of the state of [state of domicile] and I have verified that the company's request to file an opinion based on the law of the [state of domicile] has been approved and that any conditions required by the commissioner for approval of that request have been met." If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the commissioner. The rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(c) a statement that the reserves "meet the requirements of the insurance laws and regulations of the state of [state of domicile] and I have submitted the required comparison as specified by this state."

(i) If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in (6)(c)(ii)) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar

year, and it shall remain in effect until it is revised and revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:

<u>(1) Product Type</u>	<u>(2) Death Benefit or Account Value</u>	<u>(3) Reserves Held</u>	<u>(4) Codification Reserves</u>	<u>(5) Codification Standard</u>

(iii) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(v) The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(d) Notwithstanding the above, the commissioner may reject an opinion based on the laws and regulations of the [state of domicile] and require an opinion based on the laws of Montana. If a company is unable to provide the opinion with 60 days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

6.6.6509 DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS (1)(a) remains the same, but is renumbered (1).

(b) through (d) remain the same, but are renumbered (a) through (c).

(d) In accordance with 33-2-521(4), MCA, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in (3)(a) through (3)(f). The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory

asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) When an actuarial opinion under ARM 6.6.6508 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in ARM 6.6.6505(4) and any additional standards under these rules. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. It shall specify:

(a) through (2)(a)(iv) remain the same.

(v) reinsurance arrangements;

(vi) identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

(vii) documentation of assumptions to test reserves for the following:

(A) lapse rates (both base and excess);

(B) interest crediting rate strategy;

(C) mortality;

(D) policyholder dividend strategy;

(E) competitor or market interest rate;

(F) annuitization rates;

(G) commissions and expenses; and

(H) morbidity.

(b) for assets:

(i) through (iii) remain the same.

(iv) asset valuation bases; and

(v) documentation of assumptions made for the following:

(A) default costs;

(B) bond call function;

(C) mortgage prepayment function;

(D) determining market value for assets sold due to disinvestment strategy;

and

(E) determining yield on assets acquired through the investment strategy.

(c) for the analysis basis:

(i) and (ii) remain the same.

(iii) rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(iv) criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant Actuarial Standards of Practice); and

(v) ~~Effect~~ whether the impact of federal income taxes, reinsurance and other relevant factors was considered and the method of treating reinsurance in the asset adequacy analysis.

(d) summary of material changes in methods, procedures, or assumptions from prior years asset adequacy analysis;

~~(d)~~(e) summary of results; and

~~(e)~~(f) conclusion(s).

(3) The regulatory asset adequacy issues summary shall include:

(a) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) comments on any interim results that may be of significant concern to the appointed actuary;

(e) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

(f) whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(4) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

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

(6) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(7) The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures

followed, the analyses performed, the bases for assumptions, and the results obtained.

AUTH: 33-2-521, MCA

IMP: 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, MCA

STATEMENT OF REASONABLE NECESSITY: These rules have been modified to conform to the NAIC Model Rules for Examinations. This conformity is necessary for Montana to maintain accreditation with the NAIC. If accreditation is allowed to lapse, domestic companies who do actuarial audits under Montana requirements might have to submit and pay for an audit which conforms to the NAIC standards to operate in other states, thus incurring unnecessary expenses. The changes in these rules standardize the requirements for actuarial audits which are submitted to the commissioner, repeal sections which exempted certain insurance companies from audit requirements because of various financial criteria, create identical audit requirements for all insurance companies regardless of various financial criteria, and generally replace all sections to include the identical language of the model rule.

6.6.6811 ANNUAL AUDIT (1) through (3)(e) remain the same.

(4) The annual audit report may be waived by the commissioner for any captive insurance company other than a captive risk retention group, under one or more of the following circumstances:

(a) the company has minimal or no written premium in the audit year;

(b) the company has minimal or no earned premium in the audit year;

(c) the company received its license within six months of the end of the audit year; or

(d) the company has filed a plan of dissolution with the commissioner.

AUTH: 33-28-206, MCA

IMP: 33-28-107, MCA

STATEMENT OF REASONABLE NECESSITY: By implementing exceptions to the general requirement for submission of audited financial reports, passage of this rule amendment will provide cost savings to captive insurance companies that are starting up operations, winding down operations, or not currently writing or earning significant premium volume. Additionally, in cases where the department would grant exceptions/waivers, the department would not consider the lack of an audited financial report to be a detriment to proper regulation of captive companies.

4. The State Auditor proposes to repeal the following rules:

6.6.6506 REQUIRED OPINIONS, found at page 6-1805 of the Administrative Rules of Montana.

AUTH: 33-2-521, MCA

IMP: 33-2-521 through 33-2-537, MCA

6.6.6507 STATEMENT OF ACTUARIAL OPINION NOT INCLUDING AN ASSET ADEQUACY ANALYSIS, found at page 6-1808 of the Administrative Rules of Montana.

AUTH: 33-2-521, MCA

IMP: 33-22-521 through 33-2-537, MCA

6.6.6510 ADDITIONAL CONSIDERATIONS FOR ANALYSIS, found at page 6-1822 of the Administrative Rules of Montana.

AUTH: 33-2-521, MCA

IMP: 33-2-521 through 33-2-537, MCA

STATEMENT OF REASONABLE NECESSITY: Certain rules were repealed as a result of the adoption of the model rules in order to maintain accreditation with the NAIC. ARM 6.6.6506 and 6.6.6507 were repealed because both dealt with specific exceptions and/or exclusions from a requirement of insurance companies to provide an adequacy analysis to the Commissioner of Insurance. With the adoption of the model rules, there are no longer any exceptions and/or exclusions allowed so the two rules are now obsolete. ARM 6.6.6510 contained further requirements regarding the specific format of the analysis report, but under the model rules, a specific format is not longer required so that rule is obsolete as well.

5. 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 Steve Matthews, Examinations Bureau Chief, State Auditor's Office, 840 Helena Ave., 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., December 8, 2008.

6. Christina L. Goe, Chief Legal Counsel, has been designated to preside over and conduct this hearing.

7. 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, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3497; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version

of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Janice S. VanRiper
Janice S. VanRiper
Deputy Insurance Commissioner
State Auditor/Commissioner of Insurance

Certified to the Secretary of State October 14, 2008.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 8.101.201,) PROPOSED AMENDMENT AND
8.101.301, 8.101.302, and 8.101.305,) REPEAL
and repeal of 8.101.303 and)
8.101.311 pertaining to the policies of)
the Montana Coal Board and)
applications for Montana Coal Board)
grant assistance)

TO: All Concerned Persons

1. On November 12, 2008, at 11:00 a.m., a public hearing will be held in Room 226 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed amendment and repeal of 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 the department no later than 5:00 p.m., November 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Ellen Hanpa, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2779; TDD (406) 841-2702; fax (406) 841-2771; or e-mail ehanpa@mt.gov.

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

8.101.201 INCORPORATION OF MODEL RULES (1) The Coal Board adopts and incorporates by reference the Attorney General's Model Rules of Procedure. ~~The model rules are found at as stated in ARM 1.3.104 1.3.201, 1.3.202, and 1.3.211 through 1.3.233,~~ and the Secretary of State's model rules as stated in ARM 1.3.101, 1.3.102, and 1.3.301 through 1.3.313 with the exceptions contained in this subchapter.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The board proposes to amend this rule to correct the reference to the rules recently amended and transferred by the Secretary of State.

8.101.301 POLICY STATEMENT (1) The Coal Board must ~~adopt rules governing its proceedings,~~ prescribe forms for grant applications, receive and

consider applications for grants, and award grants to local governmental units, federally-recognized Indian tribes, school districts, and state agencies to assist local governmental units in meeting the local impact of coal development or decline by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development or decline.

(2) remains the same.

AUTH: 90-6-205, MCA

IMP: 90-6-205, MCA

REASON: The board is proposing amendment of ARM 8.101.301 to remove the requirement that it formally adopt its internal management procedures as administrative rules.

8.101.302 PRE-APPLICATION FORM (LIF 1-75) (1) The purpose of the pre-application form is to evaluate applicants for coal impact assistance and to establish priorities among those who may qualify for grants. Items to be considered include, but are not limited to, are a description of the proposed project, estimated cost, proposed budget, projected completion date, and the projects project's relationship to coal development, the applicant's budget, documentation of past and current local financial effort, current or on-going planning efforts related to the orderly management of the existing or contemplated growth or decline of coal impacts, and documentation of citizen participation.

(2) Applications will be evaluated based on the five criteria listed in ARM 8.101.301. The application shall be considered by the Coal Board during the next scheduled quarterly meeting after receipt of the completed application, and either be approved, denied, or tabled pending submittal of additional information to the Coal Board. The application form is available online at http://comdev.mt.gov/CDD_CB.asp.

(2) (3) ‡ The application shall include a citation to the section of the Montana Code Annotated or, in the case of a federally-recognized Indian tribe, federal statute or regulation which authorizes the applicant to make expenditures to provide for the particular proposed governmental service or facility. The pre-application form is available online at http://comdev.mt.gov/CDD_CB.asp.

(3) (4) If the applicant for a grant is a federally-recognized Indian tribe, its application must include a resolution of the tribal council or other appropriate governing body waiving the applicant's jurisdictional immunity from suit on any issue specifically arising from the transaction of a grant obtained under this subchapter and agreeing to the adjudication of any dispute arising out of the grant transaction in the district court of the first judicial district of the state of Montana. In addition, the applicant must submit proof that it has requested approval of the transaction, including the waiver of immunity, by the secretary of the United States Department of Interior or his designated agent and that the secretary or his designated agent has either approved the transaction or found that the secretary's approval is unnecessary.

(5) Coal impact grant funds used for the preparation of plans, studies, analyses, or necessary research for the preparation of a preliminary engineering

report must meet the requirements of the most current Uniform Application for Montana Public Facility Projects. Coal impact grant funds used for the preparation of a preliminary architectural report must meet the requirements described in Appendix S of the CDBG Application Guidelines for Public Facilities Projects. The Uniform Application and the CDBG Guidelines are available on the Community Development Division web site at <http://comdev.mt.gov>.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.305 SUBMITTAL DEADLINES (1) ~~Grant pre-applications and full~~ applications shall be submitted to the administrative officer by the first of the month preceding the month of the next quarterly meeting.

(2) and (3) remain the same.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

REASON: The board is proposing to amend ARM 8.101.302 and 8.101.305 to provide for a single application form and process for all applicants for Coal Board grant assistance.

4. The board proposes to repeal the following rules:

8.101.303 FULL APPLICATION FORM (LIF 2-75) found at ARM page 8-3682.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.311 APPLICATIONS FOR PRELIMINARY ENGINEERING REPORTS OR PRELIMINARY ARCHITECTURAL REPORTS found at ARM page 8-3684.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

REASON: The board is proposing to repeal these rules to provide for a single application form and process for all applicants for Coal Board grant assistance, rendering these rules extraneous.

5. 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 the Coal Board, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2779; fax (406) 841-2771; or e-mail ehanpa@mt.gov, and must be received no later than 5:00 p.m., November 20, 2008.

6. Kelly A. Casillas, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2731, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

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

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

Certified to the Secretary of State October 14, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.8.308, 17.8.504, 17.8.744, and)	PROPOSED AMENDMENT
17.8.1205 pertaining to particulate)	
matter, permit application fees, general)	(AIR QUALITY)
exclusions for air quality permits, and)	
requirements for timely and complete air)	
quality operating permit applications)	

TO: All Concerned Persons

1. On November 25, 2008, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 10, 2008, 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:

17.8.308 PARTICULATE MATTER, AIRBORNE (1) through (4)(c) remain the same.

(5) The provisions of this rule shall not apply to emissions of airborne particulate matter originating from ~~any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exemption does not apply to the processing of agricultural products by a commercial business);~~

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(a), MCA; or

(b) a business relating to the activities or equipment referred to in (5)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(b), MCA.

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

IMP: 75-2-203, MCA

REASON: In 2007, the Montana Legislature amended 75-2-111, MCA, to

limit the board's power to regulate certain agricultural activities for air quality purposes. The references to agricultural exemptions in the current rules are not sufficiently broad to encompass the activities the Legislature defined as exempt in 75-2-111(1)(a) and (b), MCA.

The current rules do not exempt commercial agricultural operations. However, the statute exempts commercial agricultural operations unless they remain in a single location for 12 months and/or are subject to federal permitting requirements. The board is proposing to revise the rules to conform to the statutory exemption. Because the requirements related to fugitive particulate emissions and Montana air quality permits are found only in the rules, it is necessary to add the statutory language in order to avoid inconsistency with the statutory amendments.

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) ~~Concurrent with submittal of~~ An applicant submitting a Montana air quality permit application, as required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10, ~~the applicant~~ shall submit an application fee as provided in (1)(a) and (b):

(a) and (b) remain the same.

(2) ~~Concurrent with submittal~~ An applicant submitting one or more of the following air quality operating permit applications, as required in ARM Title 17, chapter 8, subchapter 12, ~~the applicant~~ shall submit an application fee of \$500 for each application as follows:

(a) an application for a new air quality operating permit ~~that is not submitted concurrently with a Montana air quality permit application;~~

(b) through (5) remain the same.

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

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

REASON: Under the current rules, a permit applicant is not charged an additional fee for an application for a Title V air quality major source operating permit if the application is submitted concurrently with an application for a Montana air quality permit (MAQP). However, the applications are reviewed separately and under different criteria, and review of each application requires a substantial amount of department staff time. Currently, the department is required to pay staff for review of Title V permit applications with funds from other sources, when the application is submitted concurrently with an application for an MAQP. However, the board believes that it would be more appropriate for the permit applicant to pay the department's costs in reviewing the application, regardless of whether it is submitted concurrently with an application for an MAQP or not. Therefore, the board is proposing to amend the rule to require a permit applicant to submit a separate fee for each permit application, regardless of when it is submitted.

Pursuant to 2-4-302(1)(c), MCA, the proposed amendment is estimated to affect seven persons for a cumulative increase of approximately \$3,500 in fees collected per year.

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under ARM 17.8.743 for the

following:

(a) through (c) remain the same.

~~(d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses)~~
any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(a), MCA;

(e) a business relating to the activities or equipment referred to in (1)(d) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(b), MCA;

(e) through (l) remain the same, but are renumbered (f) through (m).

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA

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

REASON: See reason for ARM 17.8.308.

17.8.1205 REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) remains the same.

(2) To be considered timely for the purposes of this rule, a ~~source~~ person required to obtain a permit pursuant to this subchapter ~~must~~ shall file its an application with the department as follows:

~~(a) One-third of all sources in existence on the date this rule is adopted by the board, or sources that have obtained Montana air quality permits prior to the adoption date of this rule but commence operation after such adoption date, shall submit an air quality operating permit application no later than one year after the adoption date or within 30 days of the date the permit program is approved by the administrator (including partial or interim approval), whichever is later. The remainder of these sources shall submit a permit application no later than one year after the date the permit program is approved by the administrator (including partial or interim approval). Within 30 days after the adoption date of this rule, the department shall notify the 1/3 of the above-described sources that are required to submit applications for permits under this subchapter by the first deadline set forth above. The method used by the department to determine which of the above-described sources are included in the initial 1/3 must be fair and equitable and shall to the greatest extent practicable provide for a representative sample of air quality operating permit sources in terms of source size and type.~~

~~(b) (a)~~ (a) An source applicant applying for an air quality operating permit for the first time due to the applicability of newly promulgated regulations shall submit a permit application within 12 months after the source becomes subject to the permit program.

~~(c) (b)~~ (b) Sources Persons required to obtain an air quality operating permit or permit revision that who are also required to obtain a Montana air quality preconstruction permit under this chapter shall ~~submit an~~ file a complete application for an air quality operating permit or permit revision ~~concurrent with the submittal of~~

~~the Montana air quality permit application within 12 months after commencing operation, unless an existing operating permit would prohibit the construction or change in operation. If an existing operating permit would prohibit the construction or change in operation, the owner or operator shall obtain a permit revision before commencing operation.~~

~~(i) The processing of the Montana air quality and operating permits will be coordinated to the greatest extent possible, but each permit will be issued according to the applicable procedures and time frames. Each application for an air quality operating permit, permit renewal, or permit revision and the associated Montana air quality permit application will be processed independently of any other pending application under this chapter, including sources with pending air quality operation permit applications who submit an application for a new or altered Montana air quality permit during the initial transition period. Submittal of new air quality permit applications shall not impede the issuance of any pending air quality permit application.~~

~~(ii) During the initial transition period, sources that receive final Montana air quality permits prior to their submittal of an operating permit application shall be required to address any changes to their facility in the operating permit application. The operating permit application shall be submitted per the schedule prescribed in (2)(a).~~

~~(d) (c) For renewal, a source permittee shall submit a complete air quality operating permit application to the department not later than six months prior to the expiration of its the existing permit, unless otherwise specified in that permit. If necessary to ensure that the terms of the existing permit will not lapse expire before the renewal permit is issued, the department may specify notify the permittee in writing to the permitted source a longer time period for submission of that the renewal application must be submitted by a specified deadline that is earlier than six months prior to permit expiration. Such written notification must be provided at least one year before the renewal application due date established in the existing permit. In no case shall may this extended time period or the time period established in the existing permit be greater than 18 months.~~

~~(e) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.~~

~~(3) To be deemed complete for the purposes of this rule, a source must file its an application for an air quality operating permit, or permit revision must be filed with the department as follows:~~

~~(a) An air quality operating permit application must applicant shall provide all information required pursuant to this rule and ARM 17.8.1206. An application applicant for permit revision need supply such shall submit all required information only if it is related to the proposed change, and an. An application for renewal need only must address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. The applicant shall submit information submitted pursuant to this rule and ARM 17.8.1206 must be sufficient for the department to evaluate the subject source and its the application and pursuant to determine all applicable requirements. If the applicant provides sufficient information to satisfy the requirements of the application completeness~~

checklist, then the application shall be deemed to be administratively complete for the purposes of applying the application shield provided for in ARM 17.8.1221, and the department shall notify the applicant of such administrative completeness. ~~Use of the completeness checklist is not intended to replace a substantive completeness review and determination pursuant to this subchapter, but is only intended to facilitate the application of the application shield.~~ A responsible official shall certify the submitted information consistent with ARM 17.8.1207. Except as otherwise provided in ARM 17.8.1220(6) and (7), or unless the department determines that an air quality operating application is not substantively complete within 60 days of receipt of the application, such application shall be deemed to be substantively complete.

~~(b) If, while processing an application for an air quality operating permit or permit revision that has been determined or deemed to be substantively complete~~ During the permit review process set forth in (3)(a), the department may determine that additional information is necessary to evaluate or take final action on that the application, it and may request such information in writing and set a reasonable deadline for a response, (which may not be less than 15 days).

~~(c) The source's ability to operate without an air quality operating permit, as set forth in ARM 17.8.1221(2), shall be in effect from the date the application is determined or deemed to be administratively complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.~~

~~(d) (c) Sources that would qualify~~ Applicants eligible for a general air quality operating permit ~~must shall~~ provide written notification to the department of their intent to operate under the terms of the general permit, or ~~must shall~~ apply for an air quality operating permit consistent with (1). The terms of the general permit adopted pursuant to ARM 17.8.1222 may provide for applications ~~which that~~ deviate from the requirements of (1), and ARM 17.8.1206, ~~provided that if such requirements~~ applications are consistent with Title subchapter V of the FCAA, and include all information necessary for the department to determine qualification for, and assure compliance with, the general permit.

~~(e) (d) An application applicant~~ for an air quality operating permit revision that ~~is submitted as a~~ submits an application for a minor permit modification shall meet the requirements of ARM 17.8.1206, and shall include the following with the application:

- (i) remains the same.
- (ii) the ~~source's~~ applicant's suggested draft permit;
- (iii) and (iv) remain the same.

~~(f) (e)~~ An application for an air quality operating permit revision that is submitted as part of a group processing of minor modifications shall ~~must~~ meet the requirements of ARM 17.8.1206, and shall must include the following:

- (i) remains the same.
- (ii) the ~~source's~~ applicant's suggested draft permit;
- (iii) remains the same.

(iv) a list of the ~~source's~~ applicant's other pending permit modification applications ~~awaiting group processing~~, and a determination of as to whether the requested modification, when aggregated with these other applications, equals or

exceeds the threshold set under ARM 17.8.1226(7)(b);

(v) certification by a responsible official, consistent with ARM 17.8.1207, that the ~~source has~~ applicant notified the administrator of the proposed modification. Such notification need only contain a brief description of the requested modification; and

(vi) remains the same.

(4) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for an air quality operating permit or permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such ~~supplementary~~ facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it the applicant filed a substantively complete application, but prior to release of a draft permit.

(5) ~~Where~~ If an applicant ~~has submitted~~ submits information to the department under a judicial determination of confidentiality, the ~~source must~~ applicant shall submit a copy of such information directly to the administrator. This requirement does not preclude or limit ~~in any manner~~ the right of the applicant to assert to the administrator the confidential status and nature of the information.

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

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

REASON: The board is proposing to amend ARM 17.8.1205(2) to ensure an MAQP and a Title V permit may be processed in an order that preserves the integrity of the timelines and, therefore, the validity of the final decision for each.

The underlying federal Title V permit regulations upon which the state rules and associated enforcement authority are predicated provide that "[a] timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." 40 CFR 70.5(a)(1)(i). The current state rule requires an applicant to submit an application for a Title V permit concurrently with an application for a MAQP. Upon receipt of a complete application for a Title V permit, the department is required, pursuant to ARM 17.8.1220(2), to take final action regarding the application within 18 months. Title V permits must include all requirements applicable to the facility, so, when a MAQP also is required, it is impractical to issue a Title V permit prior to issuing a final MAQP. However, the MAQP process may be interrupted or delayed for a variety of reasons outside the department's control. Therefore, the board is proposing to amend ARM 17.8.1205(2) to require the owner or operator to file an application for a Title V permit within 12 months after commencing operation, or, if an existing permit would prohibit the proposed construction or change, before commencing operation.

ARM 17.8.1205(2) also contains provisions regarding the processing of initial applications, which occurred several years ago. These provisions are no longer necessary and are proposed for deletion.

The board is proposing to delete from ARM 17.8.1205(3)(a) the references to an application completeness checklist. The checklist, which may be used by

department staff to assist them in determining whether an application is complete, is not required by rule. Therefore, although the checklist may be a useful aid to permit application reviewers, the board believes that it is not appropriate to refer to the checklist in the rule and that the formal determination of application completeness should be based on the requirements stated in the rules.

The rule contains a provision at (3)(c) which is redundant of ARM 17.8.1221 and is, therefore, unnecessary and proposed for deletion.

The amendments also would correct a number of grammatical and syntax errors.

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., November 25, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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; open-cut 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 Ave., 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.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply to the proposed amendments related to the agricultural exemption, and the department has complied with those requirements. The bill sponsor was notified by U.S. mail on August 21, 2008.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, October 14, 2008.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
17.56.502, pertaining to reporting of	)	PROPOSED AMENDMENT
suspected releases)	
	)	(UNDERGROUND STORAGE
	)	TANKS)

TO: All Concerned Persons

1. On November 12, 2008, at 10:30 a.m., a public hearing will be held in Room 112, 1100 North Last Chance Gulch, 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 Elois Johnson no later than 5:00 p.m., November 3, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson, Paralegal, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the Remediation Division of the department and the implementing agency or to the 24-hour Disaster and Emergency Services officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (h) remain the same.

(i) sampling, testing, or monitoring results from a release detection method, required under subchapter 4, that are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking; ~~and~~

(j) analytical results from soil samples that exceed 200 milligrams per kilogram for extractable petroleum hydrocarbons (EPH); ~~and~~

(k) activation of a leak detection equipment monitoring alarm, or activation of flow restriction mode for a mechanical line leak detector, unless:

(i) within 24 hours of the occurrence of the condition, the condition is investigated, the cause of the condition is discovered, corrected, and a release to the environment or to secondary containment has not occurred;

(ii) the leak detection system is returned to a fully operational condition within 24 hours; and

(iii) records documenting the cause of the condition and the investigative and corrective actions undertaken in response to the condition are maintained for a three-year period at the facility, or at a readily available alternative site, where the records may be provided for inspection by the department upon request.

(2) remains the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: This amendment is necessary to ensure that owners, operators, and other persons knowledgeable in the operation and maintenance of UST systems report or investigate leak detection equipment warnings, alarms, or abnormal equipment operation notifications that may indicate a release of regulated substances into the environment so that necessary actions to cease further release and initial response and abatement measures, pursuant to ARM 17.56.602, may be undertaken without delay. Timely reporting or investigative actions in response to leak detection equipment warnings, alarms, or abnormal equipment operation notifications, that indicate releases may be occurring, can significantly reduce risks to human health, safety, and the environment. Failure to take timely and appropriate actions to address releases may cause severe damage to the environment, serious risks of fire and explosion, and acute and chronic health impacts in affected human populations. It is necessary to maintain records related to leak detection equipment warnings, alarms, or abnormal equipment operation notifications. The records are necessary to document the cause of the condition, and investigative and corrective actions undertaken in response to the condition. It is necessary to maintain the records for three years so that these records are available to assist the owner, operator, and the department in the investigation of any later-discovered releases to the environment.

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., November 20, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Kirsten Bowers, attorney, has been designated to preside over and conduct the 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 must 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 supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

/s/ Richard H. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, October 14, 2008.

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

In the matter of the proposed amendment) NOTICE OF PROPOSED
of ARM 24.156.2719 expired license) AMENDMENT
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On December 12, 2008, the Board of Medical Examiners (board) proposes to amend the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., on November 14, 2008, to advise us of the nature of the accommodation that you need. Please contact Ken Threet, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2359; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

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

24.156.2719 EXPIRED LICENSE (1) An expired EMT license may be ~~renewed~~ reactivated upon completion of an expired license renewal application. To ~~renew~~ reactivate an expired license the applicant shall:

- (a) remains the same.
- (b) pay the license fee plus late penalty fee as specified in ARM 24.101.403 for each year the license has expired up to two years; and
- ~~(c) submit a current NPDB self-query; and~~
- ~~(d) (c)~~ (c) submit a current NREMT certification.
- (2) remains the same.

AUTH: ~~37-1-141~~, 37-3-203, 50-6-203, MCA
IMP: 37-1-141, 50-6-203, MCA

REASON: The board is amending this rule by correcting terminology regarding expired licenses to comply with statutory language in 37-1-141, MCA.

The current rule requires licensees to submit a new National Practitioners Databank (NPDB) self query to renew an expired license. The board concluded that this query is not required of other licensees seeking to renew an expired license. Therefore, the board determined it is reasonably necessary to remove the

requirement from this rule to achieve consistency within the rules. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, to be received no later than 5:00 p.m., November 21, 2008.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov. The comments must be received no later than November 21, 2008.

6. If the board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rule amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be approximately three based on approximately 30 licensees renewing an expired license each year after the renewal deadline date. The requirement of submitting the NPDB self-query was added to this rule in error; the board is attempting to correct the erroneous requirement by this rule amendment.

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person

wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsmed@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF MEDICAL EXAMINERS
ARTHUR K. FINK, DO, PRESIDENT

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

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

Certified to the Secretary of State October 14, 2008

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

In the matter of the proposed adoption of) NOTICE OF PUBLIC HEARING ON
NEW RULE I medical direction) PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 13, 2008, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (board) no later than 5:00 p.m., on November 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Ken Threet, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2359; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I MEDICAL DIRECTION (1) Effective June 30, 2009 and within six months of taking on the responsibilities as an EMT off-line medical director, a physician or physician assistant shall:

(a) complete a board specified training program;
(b) demonstrate the principals of medical direction; or
(c) receive approval from the board in the event that (1)(a) or (b) is not available in that six month period.

(2) A physician or physician assistant who fails to comply with the requirements of (1) may not function as a medical director.

(3) The off-line medical director shall be responsible for the overall medical care provided by EMTs for whom the director agrees to provide medical oversight.

(4) The off-line medical director must assure and have access to records of all EMTs for whom the director provides medical oversight. These records must include but are not limited to:

(a) the name, address, and current Montana licensure of the EMT including any endorsements;

(b) date when medical oversight began and at what level the EMT is authorized to function; and

(c) any changes to limit or approve the EMT's ability to function at the EMT's current licensure level.

(5) The off-line medical director must develop a process to assure continued appropriate patient care. This process may include regular review of patient care

reports (PCR), direct observation of care, skills demonstrations, and ongoing involvement in EMT education. Documentation of these activities must be maintained.

(6) An off-line medical director may assign duties where appropriate but retains the responsibility for all assigned duties.

(7) The off-line medical director may cease medical oversight by providing written notice to the EMT and the board.

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

IMP: 50-6-203, MCA

REASON: Montana physicians are currently providing medical oversight to emergency medical technicians (EMTs) operating in local areas across the state. The board notes that only a single provision in the board's administrative rules at ARM 24.156.625(1)(x) addresses this medical oversight by including a medical director's failure to appropriately supervise and train EMTs as unprofessional conduct. The board concluded that this provision fails to adequately define the role and responsibilities of the EMT medical director. The board determined it is reasonably necessary to propose this new rule and set forth the board's intent by clearly delineating the role and function of the EMT medical director for physicians functioning as or wishing to function as medical director.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., November 21, 2008.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or

standard mail is preferred. Such written request may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsmed@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
ARTHUR K. FINK, DO, PRESIDENT

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

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

Certified to the Secretary of State October 14, 2008

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.204.501 limited permit,) ON PROPOSED AMENDMENT
24.204.504 practice limitations,)
24.204.507 course requirements,)
24.204.511 permit exams, and)
24.204.2101 continuing education)

TO: All Concerned Persons

1. On November 17, 2008, at 10:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Radiologic Technologists (board) no later than 5:00 p.m., on November 10, 2008, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrts@mt.gov.

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

24.204.501 LIMITED PERMIT APPLICATION - TYPES (1) and (2) remain the same.

(a) graduates of ~~the 88-hour~~ a board-approved course set forth in as described in ARM 24.204.507; or

(b) and (3) remain the same.

(4) Upon ~~approval~~ submission of the permit application, the applicant shall submit the ~~appropriate examination permit application fee (\$85) and optional combined exam fee (\$15)~~ made out to the Board of Radiologic Technologists. Upon approval of the permit application, the applicant shall submit the American Registry of Radiologic Technologists (ARRT) examination fee to ARRT with the registration letter.

~~(5) Upon passage of the examination, the license applicant shall submit the appropriate original license fee.~~

AUTH: 37-1-131, 37-14-202, ~~37-14-306~~, MCA

IMP: 37-14-306, MCA

REASON: The board is amending the limited permit rules throughout by removing the specific minimum hour requirements for limited permit courses as the 88-hour course is outdated. The board notes that by 2015, an AA degree will be required for certification which is required for permitting. The board is amending the rules to align with these changes and allow the board to approve the limited permit courses deemed adequate to ensure competent practitioners.

The board determined it is reasonably necessary to amend this rule to reduce confusion among applicants by specifying which fees are payable to the board. The board notes that after board staff approves an application and registers the applicant for the national exam, the applicant then must submit their national exam fee directly to the American Registry of Radiologic Technologists.

Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.204.504 PERMITS - PRACTICE LIMITATIONS (1) and (2) remain the same.

(3) Limited permit holders who have completed ~~the 88-hour training a board-approved course~~ are not authorized or permitted to perform fluoroscopy procedures due to the difficulty in monitoring, limiting, and controlling the accumulative doses of ionizing radiation.

(4) remains the same.

(a) ~~identifies~~ the student ~~as being~~ is enrolled in a radiology program accredited by a mechanism recognized by the ARRT;

(b) through (d) remain the same.

(5) If a student of a radiologic technologist program accredited by a mechanism recognized by the ARRT has completed the first two semesters of the program or its equivalent, as determined by the board, and has become a limited permit holder, that person may perform procedures while operating portable fluoroscopy equipment and may be compensated so long as the student is not performing procedures on school time and has completed the clinical time requirements.

AUTH: 37-1-131, 37-14-202, MCA

IMP: 37-14-301, 37-14-306, MCA

REASON: The board is amending this rule to clarify when students may be compensated for performing radiologic procedures. The board concluded the amendment is necessary to address numerous questions received at the board office on this issue.

24.204.507 COURSE REQUIREMENTS FOR LIMITED PERMIT APPLICANTS (1) remains the same.

(2) The course shall be ~~40 hours~~ board-approved in length and consist of the following:

(a) through (h) remain the same.

(3) An additional course, to include anatomy, physiology, positioning, pathology, x-ray technique, and proper handling of trauma patients, shall be required

for the applicant to qualify for examination in each of the specified limited x-ray procedures. ~~Course length is specified~~ Specific courses for each limited x-ray procedure include:-

- (a) ~~chest—four hours;~~
- (b) ~~extremities—eight hours;~~
- (c) ~~spine—eight hours;~~
- (d) ~~skull—eight hours;~~
- (e) ~~abdomen—four hours;~~
- (f) ~~GI tract and associated overhead films—eight hours;~~
- (g) ~~positioning—eight hours.~~

(4) A portion of the required classroom hours may be substituted by a verifiable correspondence or online internet course subject to board approval. The portion of required classroom hours completed by correspondence may not exceed 40 percent of the total hours required for examination(s) requested by the applicant. Fifty percent of all board-approved courses taken by the applicant must be clinical courses.

(5) remains the same.

AUTH: 37-14-202, MCA

IMP: 37-14-301, 37-14-306, MCA

REASON: It is reasonable and necessary to amend this rule to address courses obtained via the internet. The board acknowledges the high quality of some online courses and their inherent availability to applicants. This amendment will expand the approved courses available to these applicants.

The board is amending this rule to specify that at least half the required limited permit course work is obtained in clinical courses. The board determined that this requirement is necessary to ensure clinically competent permit holders and the adequate protection of public health, safety, and welfare.

24.204.511 PERMIT EXAMINATIONS (1) remains the same.

(2) In addition to the ARRT limited scope core examination, ~~88-hour course~~ board-approved course graduates shall complete a module examination for selected anatomic regions in which the applicant desires to be permitted.

(a) through (5) remain the same.

(6) Applicants for ~~an 88-hour course~~ a board-approved course permit who fail any portion of the ARRT limited scope examination (core or any module examination) on two attempts shall be required to successfully complete additional coursework in the failed area(s) of the examination before being allowed to retake the failed portion(s) of the examination a third time.

(a) through (10) remain the same.

AUTH: 37-1-131, 37-14-202, MCA

IMP: 37-1-131, 37-14-306, MCA

24.204.2101 CONTINUING EDUCATION – LICENSEES AND PERMITEES

(1) ~~An applicant for renewal of a limited permit shall affirm on the renewal~~

~~form that the applicant has completed six contact hours (one hour equals not less than 55-60 minutes) of continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until after the licensee's first full year of licensure.~~

~~(2) remains the same but is renumbered (1).~~

(2) A permit holder seeking to renew a limited permit shall affirm on the renewal form that the permittee has completed eight contact hours (one hour equals not less than 55-60 minutes) of continuing education as provided in this rule as a condition to establishing eligibility for renewal. The continuing education requirement will not apply until after the permittee's first full year as a permit holder.

(3) Licensees and permit holders shall maintain records and documentation of completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles, and book reviews.

~~(3) (4) The licensees and permit holders is are required to make records and documentation available to the board as proof of meeting the continuing education requirement, if so requested to do so during a random audit.~~

~~(4) (5) A random audit of the licensees' and permit holder's continuing education will be conducted on an annual basis.~~

~~(5) The permit holder shall maintain records and documentation of completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles, and book reviews.~~

(6) All continuing education must be germane to the radiographic portion of permit holder's profession and must contribute to the professional competence of a ~~limited~~ permit holder as determined by the board based on information presented on a form provided by the board.

(7) through (9) remain the same.

(10) The board shall accept any continuing education accrued by a permittee attending seminars, lectures, or courses directly related to the ~~individual's permittees'~~ field of practice or operation not already approved by one of the professional organizations previously mentioned upon approval by the board. The sponsor or organization of any such continuing education may obtain board-approved credit upon submission of information regarding the course content and participant evaluation procedures.

(11) Subject to approval by the board, continuing education may be earned by a permittee for reading books germane to the profession, according to the following limitations:

(a) through (14) remain the same.

AUTH: 37-1-319, 37-14-202, MCA

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

REASON: The board is amending this rule to require eight hours of continuing education (CE) in x-ray procedures for permit holders. The board determined it is reasonably necessary to increase the CE requirement by two hours to ensure permit holders have continued competency in high quality imaging procedures.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrts@mt.gov, and must be received no later than 5:00 p.m., November 25, 2008.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrts@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
CHARLES MCCUBBINS, CHAIRMAN

/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 October 14, 2008

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.10.132, and	)	ON PROPOSED AMENDMENT
adoption of New Rule I and New Rule II	)	AND ADOPTION
regarding firewarden qualifications,)	
duties, and legal representation for state)	
firefighters)	

To: All Concerned Persons

1. On November 13, 2008, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Bannack Conference Room, at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on November 6, 2008, to advise the agency of the nature of the accommodation that you need. Please contact Ted Mead, Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4304; fax (406) 542-4217; e-mail tmead@mt.gov.

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

36.10.132 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the forest fire rules and regulations and as used in these rules:

(1) and (2) remain the same.

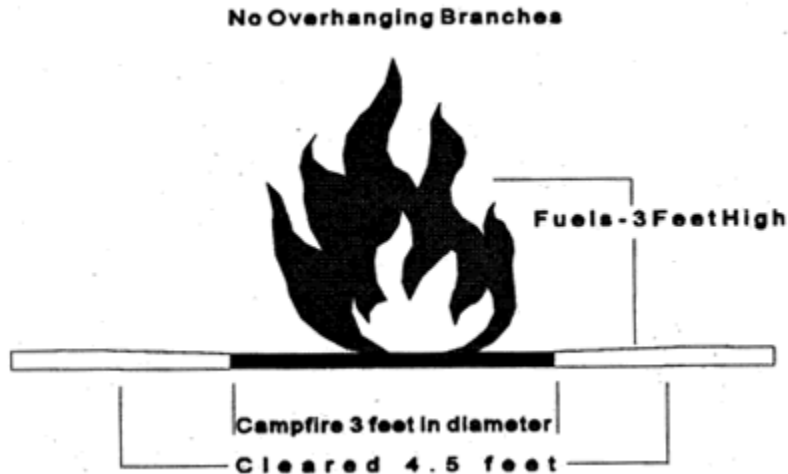
(3) "Campfire" means a fire set for cooking, warming, or ceremonial purposes which meets the following criteria:

(a) not more than ~~3~~ three feet in diameter or height;

(b) void of overhanging branches;

(c) ~~with~~ all combustible material is cleared at least ~~1-1/2~~ one and one-half times the diameter of the fire; or

(d) a barbecue in a noncombustible container.



(4) remains the same.

(5) "Department," as defined in 76-13-102(2), MCA, means the Department of Natural Resources and Conservation as provided for in 2-15-3301, MCA.

(6) "Firewarden" includes the following:

(a) a person employed by a local government fire protection entity provided for in Title 7, chapter 33, MCA, by the state of Montana, by the federal government, or by any other governmental or nongovernmental entity the department recognizes as a fire-protection agency. A firewarden must meet the qualifications of a firewarden as provided in 76-13-116, MCA, and [NEW RULE I]; and

(b) "firefighter," as that term is used in [NEW RULE II].

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

~~(6)~~ (8) "Forested land" means land that has been classified as forest land by the department and has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with, or contiguous to and no further than one-half mile from areas of forest land.

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

~~(10)~~ (12) "Recognized fire-protection agency" means an agency organized for the purpose of providing fire protection and recognized by the department board as giving adequate fire protection to forest lands in accordance with rules adopted by the department board.

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

~~(12)~~ (14) "Shovel" means vehicle, equipment, and chainsaw operator shovels that will have a minimum overall length of 36 inches with and a round pointed shovel head with a minimum width of 6 six inches.

(a) Shovels required for campfires must be at least 24 inches in length with a pointed shovel head. Folding handles qualify.

AUTH: 76-13-104, ~~76-13-109~~, 76-13-140, MCA

IMP: 76-13-104, ~~76-13-109~~, 76-13-140, MCA

REASONABLE NECESSITY: The amendments are meant to provide additional definitions regarding firewardens and firefighters to comply with 76-13-104(7), MCA, and to partially implement 76-13-140(2), MCA.

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

NEW RULE I FIREWARDEN QUALIFICATIONS AND DUTIES (1) All firewardens may perform the duties prescribed in (3) on private, state, or state-protected federal lands.

(2) To qualify as a firewarden, a person must possess knowledge of wildland fires and be able to prevent, detect, suppress, or investigate wildland fires, and to coordinate, or in any manner facilitate, the furtherance of the fire policy provided for in 76-13-115, MCA.

(3) In addition to the duties prescribed in 76-13-116, MCA, a firewarden is responsible for carrying out the following duties:

(a) perform as a liaison between local, state, and federal agencies, incident management teams, and suppression forces as relates to wildland fire;

(b) coordinate training, prevention, detection, suppression, or mitigation of wildland fire activities between local, state, and federally recognized fire-protection agencies; and

(c) assist in determining the origin and cause of wildland fires and in recovering wildland fire-suppression costs and, if necessary, assist with the criminal prosecution of wildland fire-related criminal offenses.

AUTH: 76-13-104, MCA

IMP: 76-13-104, MCA

REASONABLE NECESSITY: New Rule I is meant to prescribe a broad list of qualifications and duties for firewardens. New Rule I is also meant to comply with the mandate contained in 76-13-104(7), MCA.

NEW RULE II LEGAL REPRESENTATION FOR STATE FIREFIGHTERS

(1) The department shall pay reasonable attorney fees and costs for outside legal counsel to defend a firefighter employed by the department against a criminal prosecution for a good faith act or omission by the firefighter arising from the firefighter's performance of duties during a wildfire. The department may determine whether the firefighter's act or omission was in good faith and arising from the performance of the firefighter's duties during a wildfire. The requirement to pay attorney fees and costs does not apply to any postconviction legal proceedings.

(a) In determining whether a firefighter's act or omission was in good faith and arose from the firefighter's performance of duties during a wildfire, the department will consider, in addition to the factors contained in [NEW RULE I(2) and (3)], any other factors that the department determines are, on a case-by-case basis, relevant to that determination.

(2) In determining whether attorneys fees and costs are reasonable, the department will compare those charged with those that have been, or are normally charged under the circumstances in the county in which the criminal defense takes

place, or if the department considers it necessary, those that are charged within the state or in states surrounding Montana.

(a) The department will take into account the complexity of a criminal defense in determining whether attorneys fees and costs are reasonable.

(b) The department will not pay attorneys fees and/or costs that exceed those that are reasonable.

AUTH: 76-13-140, MCA

IMP: 76-13-140, MCA

REASONABLE NECESSITY: New Rule II is meant to provide direction related to the manner the department will determine whether a state firefighter has acted in good faith in carrying out the firefighter's duties during a wildfire. New Rule II also provides direction in determining reasonable attorneys fees and costs and is meant to comply with the mandate contained in 76-13-140(2), MCA.

5. 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 Doug Williams, Rural Fire Coordinator, Department of Natural Resources and Conservation, P.O. Box 1204, Fort Benton, MT 59442; telephone (406) 622-5455; fax (406) 622-5455; e-mail dwilliams4@mt.gov, and must be received no later than 5:00 p.m. on November 21, 2008.

6. Ted Mead, Fire and Aviation Management Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over and conduct the hearing on November 13, 2008.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption 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.

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 conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to Lucy Richards, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT, 59620; telephone (406) 444-6699; fax (406) 444-2684; or e-

mail lrichards@mt.gov or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsors were notified by regular mail on November 21, 2007.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Mark Phares
MARK PHARES
Rule Reviewer

Certified to the Secretary of State on October 14, 2008.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.2207, 37.86.2230, and) PROPOSED AMENDMENT
37.86.5110 pertaining to Medicaid)
school-based health services)

TO: All Concerned Persons

1. On November 12, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services 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 Public Health and Human Services no later than 5:00 p.m. on November 3, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) Reimbursement for an EPSDT service, except as otherwise provided in this rule, is the lowest of the following:

(a) through (c) remain the same.

(d) for public agencies, cost based reimbursement as determined in accordance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments as established and approved by the department. The department adopts and incorporates by reference the OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, as further amended ~~August 29, 1997~~ May 14, 2004. A copy of OMB Circular A-87 may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) through (10) remain the same.

(11) Reimbursements for school-based health related services are specified in the School-Based Health Service Fee Schedule dated ~~October 2007~~ 2008, which is adopted and incorporated by reference. A copy of the ~~s~~S~~chool-b~~h~~Based h~~Health ~~s~~S~~ervice f~~E~~e s~~S~~chedule~~ is posted at <http://medicaidprovider.hhs.mt.gov>. Rates are

adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

(12) and (13) remain the same.

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

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

37.86.2230 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), SCHOOL-BASED HEALTH RELATED SERVICES (1) through (4) remain the same.

(5) All health related services billed to Medicaid must have PASSPORT approval with the exception of mental health related services and school-based health services.

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

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

37.86.5110 PASSPORT TO HEALTH PROGRAM: SERVICES (1) An enrollee must obtain the services in (1)(a), except as provided in (1)(b), directly from or through authorization by the enrollee's primary care provider:

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

(b) aspects of services listed in (1)(a) that do not require prior authorization by the enrollee's primary care provider:

(i) through (ix) remain the same.

(x) testing for lead blood levels; ~~and~~

(xi) dental, vision, and hearing services portion of the screening services for children; and

(xii) school-based health services.

(2) The primary care provider's authorization is not required for any of the following Medicaid services:

(a) through (x) remain the same.

(y) case management services as defined in ARM ~~37.86.3305 et seq.~~ Title 37, chapter 86, subchapter 33;

(z) through (4) remain the same.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-116, MCA

4. The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.86.2207, 37.86.2230, and 37.86.5110, pertaining to Medicaid school-based services. The proposed rule changes are necessary to eliminate the requirement for Passport approval of school-based health services and to update the fee schedule effective October 1, 2008.

ARM 37.86.2207

The proposed change to ARM 37.86.2207 would implement changes in federal financial participation and a 1.67% across-the-board increase in reimbursement applied to the School-Based Health Service Fee Schedule. Medicaid fees for school-based services are set according to the resource based relative value scale (RBRVS) fees as defined in ARM 37.85.212.

The proposed October 1, 2008 effective date would reflect the change in the Federal Matching Assistance Percentage (FMAP) rate. The FMAP changes each October. On October 1, 2008 the FMAP rate will be reduced slightly from 68.53% to 68.04%. Medicaid fees for the Comprehensive School and Community Treatment (CSCT) would also be increased to reflect the Office of Public Instruction (OPI) budgeted inflationary factor of 3%. Overall, the changes would result in an increase in all reimbursement fees applicable to CSCT services.

Funding for CSCT services is provided by the OPI match and FMAP. The department could have allocated the increased funding unequally among the providers. This alternative would have required development of a new reimbursement formula and new cost determinations. It would have made reimbursement for school-based services inconsistent with RBRVS methodology. Instead, the department chose to increase all rates to compensate, in part, for inflation.

ARM 37.86.2230 and 37.86.5510

The department proposes amendments to these two rules to eliminate the Passport approval requirements for a school-based provider. The department's experience has shown Passport approval unnecessary for services provided by such providers.

A school-based provider is currently required to contact the Medicaid recipient's primary care physician (PCP) to authorize services to the client. Typically, school-based services are approved by the client's Individual Education Plan (IEP) team. This team consists of the client's parent or guardian, teacher, counselor, and a licensed therapist. Considering the fact that school-based treatment plans are developed through an IEP team approach, the department recommends removing the Passport approval requirement. Since this proposal would eliminate an unnecessary step in the delivery of services, the department did not consider other options.

Financial effects

The proposed Medicaid school-based services rate increase for state fiscal year (SFY) 2009 is expected to result in additional expenditures for those services totaling \$604,749 above SFY 2008 figures. Of this, \$193,278 would be from a state education match and \$411,471 federal special revenue derived from federal financial participation.

Number of persons affected

There are about 47,500 school-aged Medicaid recipients eligible for services and about 175 school-based service providers that could be affected by the proposed amendments.

5. The department intends to apply these rule amendments upon adoption retroactive to October 1, 2008. Medicaid recipients and school-based service providers will experience no detrimental effects from the rule amendments.

6. 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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 20, 2008.

7. The Office of Legal Affairs, Department of Public Health and Human Services, 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 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 6 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 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 notice requirements of 2-4-302, MCA, do not apply.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 14, 2008.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.106.2301 and 37.106.2311) PROPOSED AMENDMENT
pertaining to hospice facilities)

TO: All Concerned Persons

1. On November 12, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services 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 Public Health and Human Services no later than 5:00 p.m. on November 3, 2008, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, Montana, 59620-2951; telephone (406)444-9503; fax (406)444-9744; or e-mail dphhslegal@mt.gov.

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

37.106.2301 MINIMUM STANDARDS FOR A HOSPICE PROGRAM:
GENERAL (1) through (1)(j) remain the same.

(k) "Palliation" means controlling pain and other symptoms which are manifested during the dying process and are consistent with professional practice and regulations of the Montana Board of Pharmacy.

(l) "Respite care" means short-term in-patient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

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

(3) A hospice program must have the following organizational components:

(a) a formally established governing body, individual, group, or corporation with authority to make decisions affecting the operation of the hospice;

(b) an organization chart defining reporting relationships among hospice workers;

(c) A statement of patient rights and the rights of a patient's family;

(d) through (vii) remain the same.

(e) ~~D~~development of annual budgets; and

(f) ~~A~~ annual evaluation of each aspect of the hospice program, including the program's quality assessment and improvement measures and a system to implement recommendations for future program planning.

(4) A hospice program must have an interdisciplinary team responsible for the provision of hospice care. The interdisciplinary team must:

(a) ~~C~~onfer or meet regularly;

(b) ~~H~~ave responsibility for implementation of each individual plan of care as directed by an identified coordinator; and

(c) ~~E~~ncourage the patient/family to participate in developing the interdisciplinary team plan of care and in the provision of hospice services.

(5) remains the same.

(6) A hospice program must maintain a medical record for every individual accepted as a hospice patient. The medical record must include:

(a) patient identification, diagnosis, and prognosis;

(b) through (f) remain the same.

(7) A hospice program which utilizes volunteers must provide volunteer training which includes:

(a) remains the same.

(b) instruction on the volunteer's role, responsibilities, restrictions, and expectations; and

(c) information concerning the physical, emotional, and spiritual issues encountered by hospice patients and families.

(8) and (9) remain the same.

(10) A hospice program must:

(a) remains the same.

(b) monitor and assess the quality of contract services through annual review;

(c) ensure that hospice nursing emergency care is available on a 24-hour basis;

(d) and (e) remain the same.

(11) The hospice program must comply with ARM 37.106.2901, 37.106.2902, 37.106.2904, 37.106.2905, and 37.106.2908, pertaining to restraints, safety devices, assistive devices, and postural supports.

AUTH: 50-5-103, 50-5-210, MCA

IMP: 50-5-103, 50-5-204, 50-5-210, MCA

37.106.2311 MINIMUM STANDARDS FOR A RESIDENTIAL HOSPICE FACILITY (1) A residential hospice facility must meet all of the requirements contained in ARM 37.106.2301, in addition to those contained in this rule.

(2) through (3)(f) remain the same.

(4) A residential hospice must assure that individuals providing personal care to residential hospice patients have received, prior to delivering such care, documented training that includes the following elements, or the documented equivalent of such training:

(a) through (k) remain the same.

(l) health oriented record keeping, ~~including time/employment records.~~

(5) A residential hospice facility must meet the life-safety requirements set forth in chapters ~~22 and 23~~ 32 and 33, Life Safety Code Handbook, National Fire Protection Association, ~~1994~~ 2000 Edition, for residential board and care occupancies.

(6) In patient areas, a residential hospice must:

(a) through (e) remain the same.

(f) be equipped with furnishings which are home-like in design and function and contribute to a safe environment; and

(g) remains the same.

(7) In patient bedrooms, a residential hospice must:

(a) through (f) remain the same.

(g) in each two-bed room, provide either flame-resistant cubicle curtains for each bed or movable flame-resistant screens to provide privacy upon request of a resident patient; and

(h) remains the same.

(8) A residential hospice must provide the following bathroom and toilet facilities:

(a) through (d) remain the same.

(e) all doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside. Dutch doors, bi-folding doors, sliding pocket doors, and other bi-swing doors may be used if they do not impede the bathroom access width and are approved by the department. A shared bathroom with two means of access is also acceptable; and

~~(e) (f)~~ if the needs of a patient require a call system or communication device to be in place in the patient's bathroom, make it available; otherwise, the hospice may, but is not required to, provide a patient bathroom with a call system or communication device that is connected to an area in the hospice that is consistently staffed.

(9) A residential hospice must do the following for infection control:

(a) remains the same.

(b) develop a procedure to monitor the infection control program on a regular basis; and

(c) remains the same.

(10) A residential hospice must meet the following meal service, menu planning, and supervision standards:

(a) ~~F~~foods must be served in amounts and variety to meet the needs of each hospice patient.

(b) ~~T~~he hospice must provide a practical freedom-of-choice diet to patients and assure that patients' favorite foods are included in their diets whenever possible.

(c) ~~T~~he food service ~~must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving and handling that are sufficient to prevent food spoilage and transmission of infectious disease.~~ shall comply with the Montana administrative rule requirements for compliance with ARM Title 37, chapter 110, subchapter 2, Food Service Establishments administered by the Food and Consumer Safety Section of the Department of Public Health and Human Services.

(d) through (e) remain the same.

(11) In order to provide pharmaceutical services to patients, a residential hospice must:

(a) ~~D~~evelop and maintain a system for the administration and provision of pharmaceutical services that are consistent with the drug therapy needs of the patient as determined by the hospice medical director and patient's primary physician;

(b) ~~E~~ensure that medications ordered are consistent with the hospice philosophy which focuses on palliation, ~~i.e., controlling pain and other symptoms which are manifested during the dying process and are consistent with professional practice and regulations of the Montana board of pharmacy.~~

(c) ~~E~~ensure that all prescription medications are ordered in writing by someone licensed to write prescriptions under Montana state law, dispensed by a licensed pharmacy, received by the patient, ~~or the patient's family, or other~~ designated individual(s), and maintained in the hospice;

(d) ~~U~~nless the pharmacy provides a unit dose system, ensure that all prescription drugs are labeled with a label that includes:

(i) through (ix) remain the same.

(e) ~~D~~document all medication administration in the patient's record;

(f) ~~E~~ensure that medications are administered only by one of the following individuals:

(i) remains the same.

(ii) the patient or patient's family if the physician allows them to do so and an order acknowledging that fact is noted in the hospice care plan; and

(iii) remains the same.

(g) ~~A~~allow medications to be left at the bedside of a hospice patient when to do so is approved in the hospice plan of care, and, whenever such approval exists, provide for the storage of such medications in a safe and sanitary manner;

(h) ~~E~~ensure that medications not stored at the bedside are maintained in locked storage in a central location in the hospice that is near or adjacent to an area for medication preparation and has appropriate refrigeration, a sink for handwashing, and locking cabinets;

(i) ~~D~~destroy medications when the label is mutilated or indistinct, the medication is beyond the expiration or shelf life date, or unused portions remain due to discontinuance of use or death or discharge of the patient; and

(j) ~~D~~develop and follow written policies and procedures for destruction of legend drugs that include listing the type of drug(s) destroyed and the amount destroyed.

(12) The department ~~hereby~~ adopts and incorporates by reference chapters ~~22 and 23~~ 32 and 33 of the Life Safety Code Handbook, National Fire Protection Association, ~~1994~~ 2000 Edition, which establishes building construction requirements for residential board and care occupancies. Copies of the above standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MD ~~02269~~ 02169, or by using their web site, www.nfpa.org.catalogue.

(13) Respite care may be provided only on an occasional basis for no more than five consecutive days at a time.

AUTH: 50-5-103, 50-5-201, MCA
IMP: 50-5-210, MCA

4. The department has reviewed the current administrative rules for the minimum standards for hospice facilities, ARM 37.106.2301 through 37.106.2311, and has determined that the following changes need to be made.

The definition of "palliation" found currently in ARM 37.106.2311(11)(b) has been moved to ARM 37.106.2301(1)(k), for rule format consistency.

A definition for "respite care" has been added to ARM 37.106.2301(1)(l), Minimum Standards for a Hospice Program: General. This definition is required to assist licensed only residential hospice providers under ARM 37.106.2311, Minimum Standards for a Residential Hospice Facility, in clarifying what respite care is. Further, the definition uses the terminology found in 42 CFR 418.204, which is referenced in ARM 37.106.2305, to support consistency in the continuity of patient/family care provided in home, outpatient, and in-patient settings.

Currently ARM 37.106.2301(3)(a) requires a "governing body", assuming that the hospice is a not-for-profit organization. However, hospices do exist that are run by individuals, groups, or corporations for profit. To address for profit hospice governance structure "individual, group, or corporation" has been added to the rule.

Clarification for contract service review has been added to ARM 37.106.2301(10)(b), Minimum Standards for a Hospice Program: General. During on-site surveys hospice programs frequently have outdated and/or expired contracts. This proposed addition will require an annual review of the contract services to ensure the quality and access of services to the program when or should the services be needed by the hospice family and/or patient.

ARM 37.106.2301(11) has been added to ensure the appropriate and safe use and application of safety devices for the hospice patients. Sections 50-5-1201 through 50-5-1205, MCA, Safety Devices in Long-Term Care Facilities, were enacted by the 2001 Montana Legislature. These statutes provide for informed consent for the use of certain safety devices aimed at ensuring the physical safety of individuals by reducing the risk of falls and injury associated with medical symptoms. The department finds that the patients under hospice care meet the definition of long-term care facility patients, and so the need for assurance of informed consent for the use of certain safety devices, just as those individuals who reside or are admitted to other health care facilities or health care programs. Additionally, conflicts have occurred when a hospice patient residing in an assisted living facility obtains and uses full length bed rails, which are prohibited in assisted living facilities under 50-5-226(2)(a), MCA. By requiring all hospice programs to comply with ARM 37.106.2901 through 37.106.2908, the safety and well-being of hospice patients is improved, as well as the cooperation and communication between hospice personnel and assisted living staff.

The verbiage "including time/employment records" has been struck from ARM 37.106.2311(4)(l), Minimum Standards for a Residential Hospice, which defines documentation requirements of the health oriented record keeping. The time/employment records are not part of the hospice patient's health-oriented record. This documentation is related to and essential for business management and employee records, not the patient's health-orientated record.

The 1994 Edition of the Life Safety Code Handbook, National Fire Protection Association has been updated to the 2000 Edition with the correct corresponding sections in ARM 37.106.2311(5) and (12), Minimum Standards for a Residential Hospice and address and web site.

"Resident" has been struck and replaced with "Patient" in ARM 37.106.2311(7)(g) for rule language consistency.

To ensure the safety of the frail terminally ill patient in the event of a fall and/or entrapment in a patient bathroom, ARM 37.106.2311(8)(e), Minimum Standards for a Residential Hospice has been added.

Reference to ARM Title 37, chapter 110, subchapter 2, Food Service Establishments administered by the Food and Consumer Safety Section of the department has been added to ARM 37.106.2311(10)(c), Minimum Standards for a Residential Hospice striking the general terminology currently contained in the rule. ARM Title 37, chapter 106, subchapter 2 provides the facility with the details in establishing and maintaining standards for food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving, and handling to prevent food spoilage and transmission of infectious disease as listed in the current rule.

The definition for "palliation" currently is contained in ARM 37.106.2311(11)(b), Minimum Standards for a Residential Hospice. To maintain rule format the definition has been struck and moved to ARM 37.106.2301(1)(k).

Often hospice care involves the utilization of a variety of individuals assisting the terminally ill patient. The phrase "or designated individual(s)" has been added to ARM 37.106.2311(11)(c), Minimum Standards for a Residential Hospice to include other individuals who may be able to receive the patient's medication on behalf of the patient or the patient's family, including hospice staff.

To maintain consistency in the continuity of care between in-patient and residential care, the criteria for respite care found in 42 CFS 418.204 has been added in ARM 37.106.2311(13), Minimum Standards for a Residential Hospice. This allows Residential Hospice facilities that provide short-term in-patient care to individuals when it is necessary to relieve family members or other persons caring for the dying individual.

5. 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 Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, Montana, 59620-2951, no later than 5:00 p.m. on November 20, 2008. Comments may also be faxed to (406)444-9744 or e-mailed dphslegal@mt.gov.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Lisa Swanson
Rule Reviewer

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

Certified to the Secretary of State October 14, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC
New Rule I relating to the temporary) HEARING ON PROPOSED
emergency lodging credit) ADOPTION

TO: All Concerned Persons

1. On November 12, 2008, at 1:00 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rule.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 3, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I CREDIT FOR TEMPORARY EMERGENCY LODGING

(1) The owner or operator of an establishment in Montana that is licensed by the Montana Department of Public Health and Human Services (DPHHS) to provide lodging may claim the credit described in (2) against the taxes imposed in 15-30-103 or 15-31-101, MCA, for furnishing temporary lodging in Montana, at no cost, to an individual who has been referred by a DPHHS designated charitable organization because the individual is in temporary immediate danger from an assault or potential assault by a partner or family member. The list of organizations designated by DPHHS as authorized to make a referral is available at <http://www.dphhs.mt.gov/PHSD/Food-consumer/emergency-lodging.shtml>. Additional information regarding the program is also available at this web site.

(2) The amount of credit is \$30 for each night, up to five, of gratis lodging provided to a referred individual during a calendar year. The credit must be claimed by the person that owns or operates the licensed establishment in the Montana tax return or report that includes the establishment's lodging receipts for the period during which the creditable lodging was provided. If the credit is claimed by an entity taxed as an S corporation or partnership, the credit must be attributed to shareholders or partners in the same proportion used to report the corporation's or

partnership's income or loss for Montana income tax purposes. The credit is "refundable," and if the amount of the credit exceeds the taxpayer's liability, if any, under 15-30-103 or 15-31-101, MCA, for the period during which the creditable lodging was provided, the excess will be refunded to the taxpayer.

(3) The credit is \$30 per night regardless of the number of individuals in the room. For example, if two people are provided lodging in the same room for three nights, the amount of the credit is \$90 (three nights of lodging multiplied by \$30 per night). If two or more referred individuals share a room for one night, each is treated as having been provided one night of lodging. An establishment may offer a referred individual more than five night's emergency lodging during a calendar year, but only the first five nights qualify for the credit.

(4) The room must be provided at no cost to either the individual or the referring organization.

(5) The credit must be claimed on Montana Form TELC.

(6) The taxpayer claiming the credit must retain a voucher, letter, or similar documentation from the referring organization as support for the calculation of the credit. The documentation must be retained as a tax record and provide the following information:

(a) name of the referring organization;

(b) a statement describing the reason for the lodging;

(c) number of individuals provided lodging;

(d) name and address of the establishment providing the lodging; and

(e) date(s) lodging was provided.

(7) An establishment that relies in good faith on information provided by a designated charitable organization is allowed the credit if it is subsequently determined that the reason for the referral was not valid.

(8) The owner or operator of an establishment may claim the credit even if they operated at a loss for the tax year during which the creditable lodging is provided and have no taxable income. The credit cannot be claimed by an organization that is not subject to tax, such as a nonprofit organization. A nonprofit organization can claim the credit if it is required to file a return and pay tax on unrelated business taxable income under the provisions of 15-31-102, MCA.

AUTH: 15-1-201, 15-30-305, 15-31-150, MCA

IMP: 15-30-103, 15-30-196, 15-31-101, 15-31-102, 15-31-171, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the 2007 Legislature through House Bill 240 enacted a new law which created a corporate and individual income tax credit for lodging facilities that provide temporary emergency lodging to individuals referred by certain charitable organizations. This rule directs the public to the DPHHS web site, which lists the designated charitable organizations that may refer qualified persons to a lodging facility in case of temporary immediate danger from assault by a partner or other family member. The rule further clarifies the calculation of the credit and provides information on how the owner or operator of an establishment may claim the credit and the necessary recordkeeping requirements.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 22, 2008.

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

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

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Bill Nooney, was notified on July 22, 2008, by regular mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 14, 2008

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
4.14.303 and 4.14.305, and repeal of	)	REPEAL
ARM 4.14.304 relating to Montana)	
agricultural loan authority)	

TO: All Concerned Persons

1. On September 11, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-182 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 1950 of the 2008 Montana Administrative Register, Issue Number 17.

2. The agency has amended ARM 4.14.303 and 4.14.305, and repealed ARM 4.14.304 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, October 14, 2008.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.2.101 pertaining to)
incorporation of model rules by)
reference)

TO: All Concerned Persons

1. On August 14, 2008, the Department of Commerce published MAR Notice No. 8-2-69 pertaining to the proposed amendment of the above-stated rule at page 1652 of the 2008 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

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

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

Certified to the Secretary of State October 14, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.102, 17.8.301, 17.8.901, 17.8.1007,))
17.8.1201, 17.8.1206, and 17.8.1212))
pertaining to incorporation by reference))
of current federal regulations and other))
materials into air quality rules))

NOTICE OF AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 17, 2008, the Board of Environmental Review published MAR Notice No. 17-271 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1371, 2008 Montana Administrative Register, issue number 13. On August 28, 2008, the board published MAR Notice No. 17-274 regarding a Notice of Second Hearing and Extension of Comment Period on Proposed Amendment of the above-stated rules at page 1743, 2008 Montana Administrative Register, issue number 16.

2. The board has amended ARM 17.8.301, 17.8.901, 17.8.1007, 17.8.1201, 17.8.1206, and 17.8.1212 exactly as proposed and has amended ARM 17.8.102 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) remains as proposed.

~~(2) If EPA or a federal court of competent jurisdiction vacates, or otherwise nullifies, any emission standard, in whole or in part, incorporated by reference pursuant to ARM 17.8.103(1)(a) through (j), the affected emission standard or part thereof shall not be effective after the date of any such decision.~~

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

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: A commentor stated, in opposition to the proposed new ARM 17.8.102(2), that rulemaking actions by the U.S. Environmental Protection Agency (EPA) and vacatures of federal regulations by federal courts should not be automatically accepted as appropriate for Montana and that the board should, instead, undertake its own rulemaking to determine whether federal regulatory changes are appropriate and necessary. The commentor stated that, if Montana law automatically conformed to an invalidated standard that is more stringent than a pre-existing standard, Montana would be deprived of the opportunity to determine whether it is appropriate to maintain the more stringent standard. The commentor stated that, when an invalidated standard is less stringent than a pre-existing standard, the more stringent federal standard pre-empts Montana law while the state

determines how to proceed and that, therefore, an automatic rule change is not necessary in order for the state to maintain primacy over its air quality program. Finally, the commentor stated that automatically changing state rules in response to nullification of federal regulations by a federal court could result in regulatory uncertainty and administrative headache because the court's decision later could be overturned on appeal.

RESPONSE: When the board adopts and incorporates by reference federal regulations, including emission standards, it is doing so to: ensure that Montana's air quality rules are at least as stringent as federal air quality regulations; to maintain primacy over implementation of Montana's air quality program; and to timely implement emission standards that have been developed on the federal level. When the board finds that it is appropriate to adopt a separate state rule, including an emission standard such as the recent mercury emission standard adopted by the board, the board adopts a state rule through a separate rulemaking proceeding. The proposed new ARM 17.8.102(2) would not change that process or deprive the board of the opportunity, within the restrictions of state and federal law, to adopt different or more stringent state rules that the board finds are appropriate and reasonably necessary. Rather, the proposed new subsection would be consistent with the incorporation by reference process. When the board has adopted and incorporated by reference a federal regulation because it is an existing federal air quality requirement, it is consistent to nullify that incorporation by reference when the regulation has been rescinded by EPA or vacated by a federal court.

The proposed new subsection was intended to provide greater regulatory certainty and a more efficient rulemaking process by providing immediate nullification of rescinded or vacated federal emission standards rather than having a significant interim period between annual incorporation by reference updates when a standard would have to be implemented by the department and the regulated community on the state level, despite having been nullified on the federal level. Over the last several years, numerous federal emission standards have been vacated by federal courts based on findings that the federal regulations did not conform to requirements of the Federal Clean Air Act (FCAA). In most of these instances, the challenge that led to court vacature was the claim that the federal standard was not as stringent as required by the FCAA. The proposed new rule subsection would prevent implementation of emission standards on the state level that have been found, on the federal level, to violate the FCAA. Also, the proposed new subsection would prevent situations where a regulated entity is required to install equipment or make operational changes that no longer would be necessary after the board's next annual update to the incorporation by reference rules, or, more significantly, install inadequate control equipment that might influence future regulatory decisions regarding appropriate air pollution control requirements for the facility.

The commentor assumes that, when a court nullifies a federal standard that is less stringent than a pre-existing federal standard, the pre-existing standard automatically would be in force on the federal level and would pre-empt state law, making it unnecessary to change state rules in order to maintain primacy. This is not correct. State primacy is based on the provisions of the Clean Air Act of Montana, rules adopted by the board implementing that act, board orders, and other

actions that have been approved by EPA. While a court decision might or might not reinstate a more stringent federal standard that had been superseded by EPA rulemaking, this would have no effect on Montana's incorporation by reference of the less stringent federal standard. Without a rule automatically nullifying the vacated less stringent federal standard, it would be necessary for the board to initiate and complete a separate rulemaking process to adopt the more stringent standard. In the meantime, the department and board would be required to enforce the less stringent rule.

However, based on issues that arose during the rulemaking proceeding, the board has not adopted the proposed new ARM 17.8.102(2), pending re-evaluation of the proposed language, which may be interpreted in a way that creates regulatory uncertainty regarding the applicable emission standards.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, October 14, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.505 and 17.8.514 pertaining to air)
quality operation fees and open burning)
fees)

NOTICE OF AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 17, 2008, the Board of Environmental Review published MAR Notice No. 17-272 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1378, 2008 Montana Administrative Register, issue number 13. On August 28, 2008, the board published MAR Notice No. 17-275 regarding a Notice of Second Hearing and Extension of Comment Period on Proposed Amendment of the above-stated rules at page 1745, 2008 Montana Administrative Register, issue number 16.

2. The board has amended the rules exactly as proposed.

3. No comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, October 14, 2008.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.180.301 definitions, 24.180.401 fees,) AND ADOPTION
24.180.404 applications, 24.180.407)
examinations, 24.180.504 journeyman)
qualifications, 24.180.506 master)
qualifications, 24.180.603 reciprocity,)
24.180.607 temporary practice permits,)
24.180.704 medical gas piping)
endorsement, and adoption of NEW RULE)
I reissuance of retirement status license)

TO: All Concerned Persons

1. On July 17, 2008 the Department of Labor and Industry published MAR Notice No. 24-180-45 pertaining to the proposed amendment and adoption of the above-stated rules at page 1391 of the 2008 Montana Administrative Register, Issue no. 13.

2. On August 11, 2008, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The department has amended ARM 24.180.301, 24.180.401, 24.180.404, 24.180.407, 24.180.504, 24.180.506, 24.180.603, 24.180.607, and 24.180.704 exactly as proposed.

4. The department has adopted New Rule I (24.180.608) exactly as proposed.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

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

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

Certified to the Secretary of State October 14, 2008

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.207.401 fees, 24.207.402 adoption of)
USPAP, 24.207.403 regulatory reviews,)
24.207.501 examination, 24.207.502)
application requirements, 24.207.504)
through 24.207.507 education)
requirements, 24.207.508 and)
24.207.509 experience, 24.207.510)
scope of practice, 24.207.517 trainee)
requirements, 24.207.518 mentor)
requirements, 24.207.520 renewals, and)
24.207.2101 continuing education)

TO: All Concerned Persons

1. On July 17, 2008, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-29 regarding the amendment of the above-stated rules, at page 1402 of the 2008 Montana Administrative Register, issue no. 13.

2. On August 12, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Two comments were received by the August 20, 2008, deadline.

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

COMMENT 1: One commenter stated that by removing "or its equivalent" from ARM 24.207.505, 24.207.506, 24.207.507, and 24.207.517, the board would limit Montana real estate appraisers to taking only the AQB developed 15-hour national USPAP course and eliminate the opportunity to take a course developed by another provider but submitted to the AQB for review and approval as equivalent.

RESPONSE 1: The board has determined that the courses offered in this area are not equivalent to the 15-hour national USPAP course. The board is amending ARM 24.207.505, 24.207.506, 24.207.507, and 24.207.517 exactly as proposed.

COMMENT 2: A commenter questioned the proposed amendment to scope of practice in ARM 24.207.510, stating that it differs from that found in the AQB criteria and will confuse appraisers and users of appraisal services. The commenter recommended the board use the scope of practice found in the AQB.

RESPONSE 2: The board agrees that the proposed amendment may cause confusion and has decided to not amend this rule at this time.

4. The board has amended ARM 24.207.401, 24.207.402, 24.207.403, 24.207.501, 24.207.502, 24.207.504, 24.207.505, 24.207.506, 24.207.507, 24.207.508, 24.207.509, 24.207.517, 24.207.518, 24.207.520, and 24.207.2101 exactly as proposed.

5. The board is not amending ARM 24.207.510 as proposed based on comment received.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, CHAIRPERSON

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

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

Certified to the Secretary of State October 14, 2008

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 June 30, 2008. This table includes those rules adopted during the period July 1, 2008, through September 30, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2008, 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 2007 and 2008 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in September 2008 appear. Vacancies scheduled to appear from November 1, 2008, through January 31, 2009, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 2008.

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

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterans' Affairs (Governor)			
Mr. Byron Erickson Helena	Governor	LaTray	9/2/2008 8/1/2009
Qualifications (if required): U.S. Department of Labor representative			
Community Service Commission (Labor and Industry)			
Mr. Jack Chambers Missoula	Governor	Maffit	9/2/2008 7/1/2011
Qualifications (if required): representative of the disabilities community			
Mr. James B. Corson Billings	Governor	reappointed	9/2/2008 7/1/2011
Qualifications (if required): public representative			
Mr. Robert E. Harris Great Falls	Governor	reappointed	9/2/2008 7/1/2011
Qualifications (if required): public representative			
Rep. Sheila Rice Great Falls	Governor	reappointed	9/2/2008 7/1/2010
Qualifications (if required): representative of volunteer agencies			
Mr. James Steele Pablo	Governor	King	9/2/2008 7/1/2011
Qualifications (if required): representative of Tribal government			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Department of Military Affairs Director (Governor) Lt. Colonel John Walsh Helena Qualifications (if required): none specified	Governor	not listed	9/6/2008 0/0/0
MSU - Great Falls College of Technology Local Executive Board (University System) Mr. Dave Warner Great Falls Qualifications (if required): public representative	Governor	reappointed	9/17/2008 4/15/2011
MSU - Northern Local Executive Board (University System) Ms. Pamela A. Hillery Havre Qualifications (if required): public representative	Governor	reappointed	9/17/2008 4/15/2011
Montana State University - Billings Local Executive Board (University System) Mr. Jeremy Seidlitz Billings Qualifications (if required): public representative	Governor	Rukstad	9/17/2008 4/15/2011
Montana State University Local Executive Board (University System) Mr. Bill Bryan Bozeman Qualifications (if required): public representative	Governor	reappointed	9/17/2008 4/15/2011

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Public Defender Commission (Administration)			
Ms. Jennifer L. Hensley Butte	Governor	reappointed	9/17/2008 7/1/2011
Qualifications (if required): member of organization advocating on behalf of people with mental illness			
Mr. Kenneth Olson Billings	Governor	Donovan	9/17/2008 7/1/2011
Qualifications (if required): attorney nominated by the Montana Supreme Court			
Ms. Majel Russell Billings	Governor	Grant	9/17/2008 7/1/2009
Qualifications (if required): member of organization advocating on behalf of racial minorities			
Mr. James Park Taylor Pablo	Governor	reappointed	9/17/2008 7/1/2011
Qualifications (if required): attorney nominated by the State Bar			
Tourism Advisory Council (Commerce)			
Ms. Sandra Cahill Livingston	Governor	reappointed	9/10/2008 7/1/2011
Qualifications (if required): resident of Yellowstone Country			
Mr. Ed DesRosier East Glacier Park	Governor	reappointed	9/10/2008 7/1/2011
Qualifications (if required): resident of Glacier Country			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce) cont.			
Ms. Ramona Holt Lolo Qualifications (if required): resident of Glacier Country	Governor	reappointed	9/10/2008 7/1/2011
Commissioner Dolores Plumage Chinook Qualifications (if required): resident of Russell Country	Governor	reappointed	9/10/2008 7/1/2011
Mr. Rob Ringer Red Lodge Qualifications (if required): resident of Yellowstone Country	Governor	Scholz	9/10/2008 7/1/2011
Mr. Paul Tuss Havre Qualifications (if required): resident of Russell Country	Governor	Stoltz	9/10/2008 7/1/2011
Ms. Amber Woods-Jensen Butte Qualifications (if required): resident of Goldwest Country	Governor	Hucke	9/10/2008 7/1/2011
UM-Helena College of Technology Local Executive Board (University System)			
Mr. Ray Peck Helena Qualifications (if required): public representative	Governor	reappointed	9/17/2008 4/15/2011

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
UM-Montana Tech Local Executive Board (University System)			
Mr. Doug Peoples Butte	Governor	reappointed	9/17/2008 4/15/2011
Qualifications (if required): public representative			
UM-Western Local Executive Board (University System)			
General James Womack Dillon	Governor	reappointed	9/17/2008 4/15/2011
Qualifications (if required): public representative			
University of Montana Local Executive Board (University System)			
Mr. Bill Woody Missoula	Governor	reappointed	9/17/2008 4/15/2011
Qualifications (if required): public representative			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Agriculture Land Valuation Advisory Council (Revenue)		
Mr. Melvin Goffena, Wilsall Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Jim Johnson, Bozeman Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Al Kington, Helena Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. John Lawyer, Plains Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Jerry Nielsen, Bozeman Qualifications (if required): member of the Montana State University College of Agriculture staff	Governor	12/31/2008
Mr. Richard O'Brien, Great Falls Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Ms. Rhonda Pimley, Chester Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Ernie Ratzburg, Ledger Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. John Schutter, Manhattan Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Agriculture Land Valuation Advisory Council (Revenue) cont.		
Ms. Helen (Jo) Shipman, Lewistown Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Ms. Kathy Sikorski, Baker Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Lon Withrow, Geraldine Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Alternative Livestock Advisory Council (Governor)		
Ms. Linda Nielsen, Nashua Qualifications (if required): Board of Livestock representative	Governor	1/1/2009
Mr. Victor Workman, Whitefish Qualifications (if required): Fish, Wildlife and Parks Commission representative	Governor	1/1/2009
Board of Chiropractors (Labor and Industry)		
Dr. John Sando, Butte Qualifications (if required): practicing chiropractor	Governor	1/1/2009
Ms. Lucy Heger, Livingston Qualifications (if required): public representative	Governor	1/1/2009
Board of Crime Control (Justice)		
Mr. Steve McArthur, Butte Qualifications (if required): community corrections representative	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Mayor Pam Kennedy, Kalispell Qualifications (if required): representative of both local government and the Youth Justice Council	Governor	1/1/2009
Mr. Nickolas C. Murnion, Jordan Qualifications (if required): local law enforcement representative	Governor	1/1/2009
Board of Environmental Review (Environmental Quality) Mr. Don Marble, Chester Qualifications (if required): having expertise or background in local government planning	Governor	1/1/2009
Ms. Robin Shropshire, Helena Qualifications (if required): having expertise or background in hydrology	Governor	1/1/2009
Ms. Gayle Skunk Cap, Browning Qualifications (if required): having expertise or background in environmental science	Governor	1/1/2009
Board of Horse Racing (Livestock) Mr. Mike Tatsey, Valier Qualifications (if required): resident of district 3	Governor	1/20/2009
Ms. Mary Ogdahl, Miles City Qualifications (if required): resident of district 1	Governor	1/20/2009
Board of Investments (Governor) Mr. James Turcotte, Helena Qualifications (if required): TRS representative	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Sue Furey, Missoula Qualifications (if required): public representative</p>	Governor	12/31/2008
<p>Board of Oil and Gas Conservation (Natural Resources and Conservation) Sen. Linda J. Nelson, Medicine Lake Qualifications (if required): landowner with minerals</p>	Governor	1/1/2009
<p>Commissioner Joan Stahl, Forsyth Qualifications (if required): public member</p>	Governor	1/1/2009
<p>Mr. Donald D. Bradshaw, Fort Benton Qualifications (if required): representative of the oil and gas industry</p>	Governor	1/1/2009
<p>Mr. Wayne Smith, Valier Qualifications (if required): representative of the oil and gas industry</p>	Governor	1/1/2009
<p>Board of Personnel Appeals (Labor and Industry) Ms. Alice Whiteman, Bonner Qualifications (if required): full time management employee in an organization with a collective bargaining unit</p>	Governor	1/1/2009
<p>Mr. Quinton Nyman, Helena Qualifications (if required): full-time employee of a labor union</p>	Governor	1/1/2009
<p>Capital Investment Board (Commerce) Ms. Ellen Feaver, Helena Qualifications (if required): having expertise and competence in investment and/or tax credit administration management</p>	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Investment Board (Commerce) cont.		
Mr. Robert Pancich, Great Falls Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2009
Mr. Lawrence A. Anderson, Great Falls Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2009
Children's Trust Fund (Governor)		
Ms. Nancy Anderson, Great Falls Qualifications (if required): public representative	Governor	1/1/2009
Ms. Mylene M. Widner, Billings Qualifications (if required): public representative	Governor	1/1/2009
Coal Board (Commerce)		
Mayor John Williams, Colstrip Qualifications (if required): resident of an impact area/District 2	Governor	1/1/2009
Mr. Dan Dutton, Belfry Qualifications (if required): resident of District 1	Governor	1/1/2009
Mr. Gerald Navratil, Sidney Qualifications (if required): resident of District 2	Governor	1/1/2009
Mr. Chad Fenner, Hardin Qualifications (if required): resident of an impact area/District 2	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Human Rights Commission (Labor and Industry) Ms. Emorie Davis-Bird, Browning Qualifications (if required): public representative	Governor	1/1/2009
Ms. Maria E. Beltran, Worden Qualifications (if required): public representative	Governor	1/1/2009
Labor-Management Advisory Council on Workers' Compensation (Labor and Industry) Mr. Don Judge, Helena Qualifications (if required): representing injured workers	Director	12/1/2008
Mr. Bill Dahlgren, Missoula Qualifications (if required): representing employers	Director	12/1/2008
Lt. Governor John Bohlinger, Helena Qualifications (if required): none specified	Director	12/1/2008
Mr. Riley Johnson, Helena Qualifications (if required): representing employers	Director	12/1/2008
Mr. Jerry Keck, Helena Qualifications (if required): ex-officio	Director	12/1/2008
Ms. Connie Welsh, Helena Qualifications (if required): representing employers	Director	12/1/2008
Ms. Jacquie Helt, Missoula Qualifications (if required): representing injured workers	Director	12/1/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Labor-Management Advisory Council on Workers' Compensation (Labor and Industry) cont. Mr. Doug Buman, Seattle Qualifications (if required): representing injured workers	Director	12/1/2008
Mr. Dan Lee, Missoula Qualifications (if required): representing injured workers	Director	12/1/2008
Mr. Jason Miller, Helena Qualifications (if required): representing injured workers	Director	12/1/2008
Ms. Annette Hoffman, Billings Qualifications (if required): representing employers	Director	12/1/2008
Mr. Bob Worthington, Helena Qualifications (if required): representing employers	Director	12/1/2008
Livestock Loss Reduction and Mitigation Board (Livestock) Mr. James Cross, Kalispell Qualifications (if required): wildlife conservation representative	Governor	1/1/2009
Ms. Janelle Holden, Livingston Qualifications (if required): wildlife conservation representative	Governor	1/1/2009
Mr. Brad Radtke, Drummond Qualifications (if required): livestock industry representative	Governor	1/1/2009
Ms. Whitney Wankel, Bozeman Qualifications (if required): livestock industry representative	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Alfalfa Seed Committee (Agriculture) Mr. James Whitmer, Glendive Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2008
<p>Mr. John Mehling, Hardin Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2008
<p>Mr. Marvin Frank, Joliet Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2008
<p>Montana Council on Developmental Disabilities (Commerce) Rep. Carol Lambert, Broadus Qualifications (if required): legislator</p>	Governor	1/1/2009
<p>Director Joan Miles, Helena Qualifications (if required): agency representative</p>	Governor	1/1/2009
<p>Ms. Sarah Casey, Helena Qualifications (if required): agency representative</p>	Governor	1/1/2009
<p>Sen. Carol Williams, Missoula Qualifications (if required): legislator</p>	Governor	1/1/2009
<p>Mr. Roger Holt, Billings Qualifications (if required): advocacy representative</p>	Governor	1/1/2009
<p>Mr. Don Berryman, Anaconda Qualifications (if required): secondary consumer representative</p>	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Homelessness (Public Health and Human Services) Mr. Nicholas Peterson Vrooman, Helena Qualifications (if required): public representative	Governor	12/21/2008
Mr. Eric Sells, Missoula Qualifications (if required): public representative	Governor	12/21/2008
Mr. Thomas Huddleston, Helena Qualifications (if required): public representative	Governor	12/21/2008
Ms. Gloria O'Rourke, Anaconda Qualifications (if required): public representative	Governor	12/21/2008
Ms. Trish Flynn, Billings Qualifications (if required): public representative	Governor	12/21/2008
Mr. Doug Overman, Kalispell Qualifications (if required): public representative	Governor	12/21/2008
Ms. Mary Guokas, Helena Qualifications (if required): public representative	Governor	12/21/2008
Mr. Robert Buzzas, Bozeman Qualifications (if required): public representative	Governor	12/21/2008
Ms. Mary Berg, Butte Qualifications (if required): public representative	Governor	12/21/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Homelessness (Public Health and Human Services) cont. Mr. Eric Berger, Great Falls Qualifications (if required): public representative	Governor	12/21/2008
Ms. Judy Stewart, Billings Qualifications (if required): public representative	Governor	12/21/2008
Mr. Lafe Haugen, Lame Deer Qualifications (if required): public representative	Governor	12/21/2008
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Leo Solf, Winnett Qualifications (if required): grazing district director	Governor	1/1/2009
Mr. Alvin Windy Boy Sr., Box Elder Qualifications (if required): public representative	Governor	1/1/2009
Sheriff Tony Harbaugh, Miles City Qualifications (if required): sheriff	Governor	1/1/2009
Captain Dennis McCave, Billings Qualifications (if required): detention center representative	Governor	1/1/2009
Mr. Steve Barry, Helena Qualifications (if required): Department of Corrections representative	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Public Safety Officer Standards and Training Council (Justice) Mr. Raymond Murray, Missoula Qualifications (if required): public member</p>	Governor	1/1/2009
<p>Ms. Bonnie Wallem, Kalispell Qualifications (if required): Board of Crime Control representative</p>	Governor	1/1/2009
<p>Sergeant Mike Reddick, Helena Qualifications (if required): state government law enforcement representative</p>	Governor	1/1/2009
<p>Ms. Hannah Tillman, Crow Agency Qualifications (if required): public member</p>	Governor	1/1/2009
<p>Publishing Policy Committee (Administration) Director Jim Lynch, Helena Qualifications (if required): department director</p>	Governor	1/1/2009
<p>Rail Service Competition Council (Transportation) Mr. William Fogarty, Anaconda Qualifications (if required): knowledgeable of class I railroads</p>	Governor	1/1/2009
<p>Mr. Michael O'Hara, Fort Benton Qualifications (if required): farm commodity producer</p>	Governor	1/1/2009
<p>Mr. Doug Miller, Troy Qualifications (if required): knowledgeable of transportation for the mineral industry</p>	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Rail Service Competition Council (Transportation) cont. Mr. John DeMichiei, Billings Qualifications (if required): knowledgeable of transportation for the coal industry	Governor	1/1/2009
Risk Management Advisory Council (Administration) Mr. Jeff Shada, Bozeman Qualifications (if required): public self-insured organizations	Director	11/1/2008
Mr. Allen Hulse, Helena Qualifications (if required): public self-insured organizations	Director	11/1/2008
Mr. Greg Jackson, Helena Qualifications (if required): public self-insured organizations	Director	11/1/2008
Ms. Tana Wilcox, Butte Qualifications (if required): private self-insured organizations	Director	11/1/2008
Ms. Jacquie Duhamel, Missoula Qualifications (if required): private self-insured organizations	Director	11/1/2008
Ms. Sheryl Olson, Helena Qualifications (if required): Director of the Department of Administration designee	Director	11/1/2008
Mr. Bill Price, Bozeman Qualifications (if required): insurance agent	Director	11/1/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Small Business Health Insurance Pool Board (State Auditor)		
Ms. Connie Welsh, Helena	Governor	1/1/2009
Qualifications (if required): management level individual with knowledge of state employee health benefit plans		
Speech-Language Pathologists and Audiologists (Labor and Industry)		
Ms. Lynn Harris, Missoula	Governor	12/31/2008
Qualifications (if required): speech-language pathologist		
Ms. Tina Hoagland, Billings	Governor	12/31/2008
Qualifications (if required): audiologist		
State Employee Group Benefits Advisory Council (Administration)		
Sen. Mike Cooney, Helena	Director	12/31/2008
Qualifications (if required): representing Legislature		
Mr. Thomas Schneider, Helena	Director	12/31/2008
Qualifications (if required): representing Labor Organization		
Ms. Mary Dalton, Helena	Director	12/31/2008
Qualifications (if required): representing State Employees/Executive Branch Agencies		
Mr. Steve Barry, Helena	Director	12/31/2008
Qualifications (if required): representing State Employees/Executive Branch Agencies		
Mr. John McEwen, Helena	Director	12/31/2008
Qualifications (if required): representing Retired State Employees		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont.		
Mr. Richard Cooley, Helena Qualifications (if required): representing State Employees/Executive Branch Agencies	Director	12/31/2008
Mr. Monte Brown, Helena Qualifications (if required): representing State Employees/Executive Branch Agencies	Director	12/31/2008
Ms. Connie Welsh, Helena Qualifications (if required): Ex-Officio Member and Presiding Officer	Director	12/31/2008
Mr. Tom Bilodeau, Helena Qualifications (if required): representing Labor Organization	Director	12/31/2008
Ms. Christi Jacobsen, Helena Qualifications (if required): representing State Employees/ICCW	Director	12/31/2008
Ms. Kelly DaSilva, Helena Qualifications (if required): Legislative branch agency representative	Director	12/31/2008
State Tax Appeals Board (Administration)		
Ms. Karen Powell, Helena Qualifications (if required): public representative	Governor	1/1/2009
Transportation Commission (Transportation)		
Ms. Barb Skelton, Billings Qualifications (if required): resident of District 5	Governor	1/1/2009

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Transportation Commission (Transportation) cont. Ms. Diann Seymour-Winterburn, Helena Qualifications (if required): resident of District 3 and an Independent	Governor	1/1/2009
Trauma Care Committee (Public Health and Human Services) Dr. J. Bradley Pickhardt, Missoula Qualifications (if required): Western Region Trauma Care Advisory Committee representative	Governor	11/2/2008
Ms. Carol Kussman, Helena Qualifications (if required): Central Region Trauma Care Advisory Committee representative	Governor	11/2/2008
Dr. Charles Swannack, Missoula Qualifications (if required): Montana Medical Association representative	Governor	11/2/2008
Mr. Jay Pottenger, Fort Benton Qualifications (if required): Montana Hospital Association representative	Governor	11/2/2008
Traumatic Brain Injury Advisory Council (Public Health and Human Services) Ms. Julia Hammerquist, Kalispell Qualifications (if required): traumatic brain injury survivor	Governor	1/1/2009
Mr. Lucas Foust, Bozeman Qualifications (if required): representative of Injury Control or Prevention Programs	Governor	1/1/2009
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) Mr. Larry Curran, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.		
Mr. John Hollenback, Gold Creek Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Sally Johnson, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Barbara Evans, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Kathy Hadley, Deer Lodge Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Director Jeff Hagener, Helena Qualifications (if required): Director of the Department of Fish, Wildlife and Parks	Governor	12/31/2008
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	12/31/2008
Mr. James Dinsmore, Hall Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Director Richard Opper, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	12/31/2008
Mr. Dennis Daneke, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2008 through JANUARY 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont. Mr. Paul Babb, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Mr. Milo Manning, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Robbie Taylor, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Mr. James Yeoman, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Rebecca Guay, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008