ISSUE NO. 19

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 10.57.102, 10.57.201, 10.57.204, 10.57.215, 10.57.301, 10.57.413, 10.57.420, 10.57.425, 10.57.426, and 10.57.437 pertaining to educator licensure	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 9, 2009, at 9:00 a.m., the Board of Public Education will hold a public hearing in the conference room of the Office of Public Instruction Building, at 1201 11th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on October 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, Montana, 59620-0601, telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov.

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

NEW RULE I CLASS 8 DUAL CREDIT-ONLY POSTSECONDARY FACULTY LICENSE ENDORSEMENTS (1) Dual credit instructors must qualify for licensure and endorsement under one of the following categories:

(a) Class 1 professional or Class 2 standard license according to ARM 10.57.410, 10.57.411, and 10.57.412;

(b) Class 4 career and technical license according to ARM 10.57.420 and 10.57.421; or

(c) Class 8 dual credit-only postsecondary license according to ARM 10.57.437 and this rule.

(2) Areas approved for endorsement on Class 8 dual credit-only postsecondary faculty licenses include the following: agriculture, art K-12, biology, business education, chemistry, computer science K-12, drama, earth science, economics, English, family and consumer sciences, geography, health, history, history-political science, industrial arts, journalism, marketing, mathematics, music K-12, physical education K-12, science (broadfield), social studies (broadfield), sociology, speech-communication, speech-drama, technology education, trade and industry and world languages.

(3) Applicants for the Class 8 license with degrees in highly specialized academic areas and hired by the postsecondary institution under the policies set

forth in ARM 10.57.102(10) to teach specific courses not covered by the K-12 endorsement areas in (2), may be eligible for a designation in their area of specialization as approved by the Superintendent of Public Instruction.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

4. The board proposes to amend the following rules, new matter underlined, deleted matter interlined:

10.57.102 DEFINITIONS The following definitions apply to this chapter.

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

(c) In addition to any postsecondary teaching assignments, an individual licensed as a dual credit-only postsecondary faculty pursuant to ARM 10.57.437 and [New Rule I] is limited to teaching dual credit courses in their endorsed area to Montana high school students.

(11) through (22) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, MCA

10.57.201 GENERAL PROVISIONS TO ISSUE LICENSES (1) Teacher, specialist, or administrator licenses ~~are~~ may be issued by the Superintendent of Public Instruction to applicants who submit acceptable evidence of successful completion of an accredited professional educator preparation program.

(2) through (4) remain the same.

(5) Applicants for ~~an~~ initial Class 6 ~~license~~ licensure who meet relevant sections of ARM 10.57.433, 10.57.434, and 10.57.435 may be licensed as appropriate. Those whose degree is more than five years old and who do not have current out-of-state licensure must have earned six graduate semester credits within the five-year period preceding the effective date of the license.

(6) Applicants for initial Class 4 licensure who have a current career and technical license from another state in an area that can be endorsed in Montana shall be licensed as Class 4A, 4B, or 4C depending on the level of education and extent of training as required under ARM 10.57.420 and 10.57.421.

(7) remains the same.

(8) Applicants for initial Class 7 Native American language and culture licensure who meet the requirements of ARM 10.57.436 may be licensed as appropriate.

~~(8)~~ (9) Applicants for initial Class 8 dual credit-only postsecondary faculty licensure shall meet requirements of ARM 10.57.437 and [New Rule I].

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

AUTH: 20-4-102, MCA
IMP: 20-4-103, MCA

10.57.204 EXPERIENCE VERIFICATION (1) remains the same.

~~(2) When teaching experience is required for a new license or endorsement, the majority of the experience required must be obtained in a school organization consistent with Montana's K-12 pattern.~~

~~(3) When experience is required for a new license or endorsement, experience gained prior to basic eligibility for initial licensure is not considered.~~

AUTH: 20-4-102, MCA
IMP: 20-4-103, MCA

10.57.215 RENEWAL REQUIREMENTS (1) Requirements for renewal of Montana educator licenses are as follows:

(a) Class 1 ~~and 3~~ licenses require 60 renewal units;

(b) through (d) remain the same.

(e) Class 5 licenses cannot be renewed;

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

(2) through (7) remain the same.

AUTH: 20-2-121, 20-4-102, MCA
IMP: 20-4-102, 20-4-108, MCA

10.57.301 ENDORSEMENT INFORMATION (1) remains the same.

(2) ~~Licenses are endorsed~~ Endorsements are granted by the Superintendent of Public Instruction for the appropriate level(s) and area(s) of preparation based on the college program completed.

(3) remains the same.

AUTH: 20-4-102, MCA
IMP: 20-4-103, 20-4-106, MCA

10.57.413 CLASS 3 ADMINISTRATIVE LICENSE (1) through (3) remain the same.

(4) A Class 3 administrative license shall be renewable pursuant to the requirements of ARM 10.57.215.

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

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.420 CLASS 4 CAREER AND TECHNICAL EDUCATION LICENSE

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

(3) To obtain a Class 4 career and technical educator license an applicant must meet the requirements of (2)(a), (b), or (c) above and qualify for one or more endorsements as outlined in ARM 10.57.421.

(3) through (4)(a)(ii) remain the same but are renumbered (4) through (5)(a)(ii).

(b) for Class 4B and 4C licenses, the licensee must verify completion of four semester credits of coursework earned during the fire-year period preceding the

validation date of the new license in the following areas:

(i) through (viii) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.425 CLASS 5 ALTERNATIVE LICENSE – ELEMENTARY LEVEL

(1) remains the same.

(a) ~~meeting or exceeding the minimal educator licensure requirements set forth in ARM 10.57.102(15)~~ a bachelor's degree;

(b) through (d) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.426 CLASS 5 ALTERNATIVE LICENSE – SECONDARY LEVEL

(1) remains the same.

(a) ~~meeting or exceeding the minimal educator licensure requirements set forth in ARM 10.57.102(14)~~ a bachelor's degree;

(b) through (d) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.437 CLASS 8 DUAL CREDIT-ONLY POSTSECONDARY FACULTY LICENSE (1) through (3)(b) remain the same.

(i) Applicant has earned a major or minor or the equivalent in one of the endorsable teaching areas as set forth in ARM ~~10.57.301~~ [New Rule I]; and

(ii) through (6) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

5. REASON: During the Board of Public Education meeting on March 13, 2009, the board adopted changes to Title 10 chapter 57 of the Administrative Rules of Montana, as recommended by the Chapter 57 Review Team. The review team convenes every five years as required by ARM 10.57.101 to conduct a comprehensive review of the entire chapter. In implementing those recommended changes, the OPI Educator Licensure Division discovered omissions and clerical errors in administering the new rule. The adoption of New Rule I and the amendment of rules in chapter 57 is presented to correct those omissions and errors. No significant changes are requested to most of the chapter. However, with the implementation of the Class 8 Dual Credit-only Postsecondary Faculty License, two difficulties arose with regard to (1) endorsement of faculty who are highly specialized in their field of study, and (2) those faculty members teaching in career and technical fields, e.g. health occupations. Changes to the Class 8 language will allow licensing in these areas and create additional dual credit opportunities for Montana's students.

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: Steve Meloy, Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov, and must be received no later than 5:00 p.m., November 12, 2009.

7. Steve Meloy, Executive Secretary of the Board of Public Education has been designated to preside over and conduct this hearing.

8. 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 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 board.

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

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

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

/s/ Patty Myers
Patty Myers
Chairperson
Board of Public Education

Certified to the Secretary of State October 5, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.111, 17.53.112, 17.53.113, 17.53.207, and 17.53.603 pertaining to hazardous waste fees, registration of generators, information requests and annual reports	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On November 6, 2009, at 10:30 a.m., a public hearing will be held in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., October 26, 2009, 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:

17.53.111 REGISTRATION OF HAZARDOUS WASTE GENERATORS AND TRANSPORTERS (1) Hazardous waste ~~G~~generators who accumulate, treat, store, dispose, transport, or offer for transportation hazardous waste shall register with the department, except as provided otherwise in (2).

(2) The following persons are not required to register as hazardous waste generators ~~or to pay the fee required by ARM 17.53.113~~:

(a) conditionally exempt small quantity generators who are subject to the exclusionary provisions of 40 CFR 261.5~~, other than generators of greater than one kilogram (2.2 pounds) of acute hazardous waste~~;

(b) through (d) remain the same.

(3) A hazardous waste generator shall complete and submit the registration form provided by the department or the EPA to register with the department.

~~(a)~~ (4) Registration is complete when the department ~~receives~~ approves the ~~properly completed~~ registration form and ~~the generator~~ receives the registration fee required by ARM 17.53.113;

~~(b)~~ (5) A hazardous waste generator must inform the department of any changes to the information contained on the original registration form.

(6) Hazardous waste transporters must register with the department pursuant to ARM 17.53.703.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA
IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-405, MCA

REASON: The department is proposing amendments to ARM 17.53.111(1) through (3) that would clarify that hazardous waste generators must register with the department.

The department is proposing to delete language from ARM 17.53.111(2) because there are instances when a conditionally exempt small quantity generator would pay a registration fee under ARM 17.53.113.

The department is proposing to delete from ARM 17.53.111(2)(a) the phrase "other than generators of greater than one kilogram (2.2 pounds) of acute hazardous waste" because it is redundant. This condition is included in 40 CFR 261.5.

The department is proposing to add ARM 17.53.111(6) to clarify that hazardous waste transporters must register under ARM 17.53.703.

17.53.112 FACILITY PERMIT FEES: APPLICATION, ~~RENEWAL~~ REISSUANCE, MODIFICATION, AND MAINTENANCE FEES (1) through (2)(d) remain the same.

(3) At the time the permit reissuance process is initiated, the department shall assess a permit reissuance fee.

~~(a)~~ The fees ~~shall be~~ are as follows:

~~(i)~~ (a) ~~$10,000~~ 15,000 for a Class I facility;

~~(ii)~~ (b) ~~$5,000~~ 7,000 for a Class II facility; and

~~(iii)~~ (c) ~~$2,000~~ 3,000 for a Class III facility.

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

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

~~(a)~~ (6) The fees for permit modifications at the request of the permittee are ~~shall be~~ as follows:

~~(i)~~ (a) ~~$3,000~~ 7,200 for Class ~~2 or~~ 3 modifications, as listed in 40 CFR 270.42, Appendix I~~, except that, if a Class 2 or 3 modification is so significant as to constitute reissuance of a permit, the fee schedule set forth in (3) applies in lieu of the $3,000 fee~~;

(b) $3,600 for Class 2 modifications, as listed in 40 CFR 270.42, Appendix I; and

~~(ii)~~ (c) ~~F~~for Class 1 modifications listed in 40 CFR 270.42, Appendix I:

~~(A)~~ (i) ~~$200~~ 240 for ~~those~~ Class 1 modifications listed in ~~items~~ A through E of Appendix I; and

~~(B)~~ (ii) ~~$1,000~~ 1,200 for ~~those~~ Class 1 modifications listed in ~~items~~ F through L of Appendix I; and

(d) for "other modifications," as provided in 40 CFR 270.42(d), the fees will be assessed as set forth in this section pursuant to a modification class as determined by the department.

(7) The fees for permit modifications initiated by the department, pursuant to 40 CFR 270.41, are as follows:

(a) for modifications, for causes described in 40 CFR 270.41, the fees are as follows:

(i) $7,200 for Class 3 modifications, as listed in 40 CFR 270.42, Appendix I;

(ii) $3,600 for Class 2 modifications, as listed in 40 CFR 270.42, Appendix I; and

(iii) for Class 1 modifications listed in 40 CFR 270.42, Appendix I:

(A) $240 for Class 1 modifications listed in A through E of Appendix I; and

(B) $1,200 for Class 1 modifications listed in F through L of Appendix I; and

(b) for causes to revoke and reissue a permit as described in 40 CFR 270.41, the fees are as provided in the schedule set forth in (3).

~~(b)~~ (8) If a Class 1 permit modification is very minor (e.g., changing only a name or an address on the permit documents), the department may waive the fee.

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

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

(a) remains the same.

(b) $4 per ton of hazardous wastes received at the facility or site for management in any regulated unit or units other than those described in ~~(5)~~(10)(a).

(c) The fees established in ~~(5)~~(10)(a) and (b) may be prorated for amounts of hazardous waste received that are less than one ton in weight.

(d) Payment of the fees established in ~~(5)~~(10)(a) and (b) shall be submitted to the department quarterly, with payments due on March 31, June 30, September 30, and December 31 of each year.

AUTH: 75-10-404, 75-10-405, 17-10-406, MCA
IMP: 75-10-405, 75-10-406, MCA

REASON: The department is proposing to increase the permit reissuance fees in ARM 17.53.112(3). The permit reissuance fee rule was first adopted in 1983. In 1993, the definitions of Class 1, 2, and 3 facilities were added, and the fees for these classes were set at the current amounts of $10,000, $5,000, and $2,000. The permit reissuance fees have not changed since then. The department is proposing an increase to the permit reissuance fees based on the rate of inflation since 1993. The department selected the Consumer Price Index (CPI) for western urban areas as the basis for determining the inflation index. The department calculated the inflation index from June 1993 to May 2009. The index is 1.497 which was rounded up to 1.50 for the purposes of the fee calculations. Therefore, the permit reissuance fee for a Class 1 facility is proposed to be increased from $10,000 to $15,000, a Class 2 facility from $5,000 to $7,500, and a Class 3 facility from $2,000 to $3,000.

Facility permits are reissued every ten years. The number of facilities affected by the increase to the permit reissuance fees would be eight, because there are currently eight permitted facilities. The department does not anticipate any permit reissuances until 2011. Between 2011 and 2014, there may be five permit reissuances. Therefore, the cumulative amount of the increase to the permit reissuance fees for all facilities from 2009 to 2014 would be $11,000.

The department is proposing to increase the permit modification fees in ARM 17.53.112(4) (renumbered (5) through (7)). The permit modification fees were last increased in 2002. The department is proposing an increase to the permit modification fees based on the rate of inflation since 2002. The department selected the CPI for western urban areas as the basis for determining the inflation index. The department calculated the inflation index from January 2002 to May 2009. The

index is 1.198 which was rounded up to 1.20 for the purposes of the fee calculations. Therefore, the Class 1 permit modification fees are proposed to be increased from $200 to $240 and from $1,000 to $1,200, and the Class 2 permit modification fee from $3,000 to $3,600.

In the existing fee schedule, the Class 3 modification fee is the same as the Class 2 fee. Using the inflation index of 1.20, the Class 3 fee would be increased to $3,600. However, a Class 3 modification requires much more staff time than a Class 2 modification. In order to reflect the additional resources spent on a Class 3 modification, the department is proposing that the Class 3 modification fee be increased to double the amount of the Class 2 fee or $7,200.

The number of facilities affected by the increase to the permit modification fees would be eight, because there are currently eight permitted facilities. There is generally one standard Class 1 modification and one standard Class 2 modification per year. Therefore, the cumulative amount of the increase to the permit modification fees for all facilities would be approximately $640 per year.

17.53.113 ~~GENERATOR~~ REGISTRATION AND REGISTRATION MAINTENANCE FEES: FEE ASSESSMENT (1) Concurrent with the submittal of a registration form, a generator shall submit to the department a ~~generator~~ registration fee of ~~$95~~ 225.

(2) ~~An annual generator fee must be submitted to the department by each generator not exempted under ARM 17.53.111 for the entire previous calendar year.~~ The department shall assess an annual registration maintenance fee, as provided in (3), for the following hazardous waste generators:

(a) a person who generates more than 100 kilograms (220 pounds) of hazardous waste, or more than one kilogram (2.2 pounds) of acute hazardous waste, in any calendar month;

(b) a person who accumulates more than 1,000 kilograms (2,200 pounds) of hazardous waste, or more than one kilogram (2.2. pounds) of acute hazardous waste at any time in a calendar year; and

(c) A conditionally exempt small quantity generator, as defined in ARM 17.53.301(2), that has registered with the department and desires to remain registered.

~~(a)~~ (3) The annual ~~generator~~ registration maintenance fee for a calendar year is ~~$95~~ 200 plus ~~$1~~ a per-ton fee for all regulated hazardous waste generated during the previous calendar year~~;~~ of:

(a) $5 per ton for all regulated hazardous waste generated during the 2009 calendar year;

(b) $10 per ton for all regulated hazardous waste generated during the 2010 calendar year;

(c) $15 per ton for all regulated hazardous waste generated during the 2011 calendar year; and

(d) $20 per ton for all regulated hazardous waste generated during the 2012 calendar year, and each year thereafter.

~~(b)~~ (4) The ~~$1~~ per-ton fee in (3)(a) through (d) is assessed only if the amount of regulated hazardous waste generated during the previous calendar year is equal to or greater than ~~13.0~~ 1.3 tons~~;~~.

(5) For purposes of determining the registration maintenance fee, any part of a ton of generated hazardous waste, greater than 1.3 tons, must be rounded up to the next tenth of a ton.

(6) Hazardous waste generators exempt from registration, pursuant to ARM 17.53.111(2), for the entire previous calendar year are not required to pay the registration or registration maintenance fees, except as provided in ARM 17.53.113(2)(c).

(7) Persons are not required to pay the registration or registration maintenance fees if they are registered only for the purpose of:

(a) transporting hazardous waste;

(b) handling universal waste;

(c) handling used oil; or

(d) conducting a treatability study.

~~(c)~~ (8) ~~Annually, t~~The department shall provide a written notice of the amount of the registration maintenance fee, the basis for the fee assessment, and the date the fee is due to each hazardous waste generator required to pay an annual ~~generator~~ registration maintenance fee ~~with written notice of the amount of the fee, the basis for the fee assessment, and the date the fee is due~~.

~~(d)~~ (9) If a hazardous waste generator that was assessed an annual ~~generator~~ registration maintenance fee fails to pay the required fee within 60 days after the billing date, the department may impose a late payment charge of 10% of the fee, plus interest on the fee computed at the interest rate established under 75-2-220(5)(a)(i), MCA.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

REASON: The department is proposing amendments to ARM 17.53.113(1) through (3), (8), and (9) which would clarify that the department is assessing hazardous waste generator registration and registration maintenance fees, and not a hazardous waste generation fee. In 1983, 75-10-405(1)(i), MCA, was enacted to provide authority for the department to adopt rules for assessment of fees for registration of hazardous waste generators. In 1983, the department adopted the first hazardous waste generator registration and registration maintenance fee rule (ARM 16.44.404). The name of the fee remained the same until 2002. In a rulemaking effective December 13, 2002, the department inadvertently changed the name of the registration fee to generator fee. The proposed amendments to ARM 17.53.111(4) and 17.53.113(1) through (3), and (7) would change the name back to registration fee.

The department is proposing to add ARM 17.53.113(2)(a) and (b) which would have the same meaning as the deleted language "not exempted under ARM 17.53.111 for the entire previous calendar year." Proposed (a) and (b) would clarify which hazardous waste generators must pay the registration maintenance fee.

In ARM 17.53.113(2)(c), the department is proposing to add conditionally exempt small quantity generators, that desire to maintain an active registration, as generators that would pay the registration maintenance fee. Conditionally exempt small quantity generators are not required under ARM 17.53.111 to be registered,

but those that desire to maintain an active registration would pay the annual registration maintenance fee. The department expends resources on the registration of conditionally exempt small quantity generators and believes it is appropriate to assess a fee to recover those costs.

In response to federal funding cuts, the department is proposing an increase to the registration and annual registration maintenance fees in ARM 17.53.113 to defray a portion of the state's costs of maintaining the hazardous waste program (program). EPA funding for the program has decreased 29% from FY 2004 ($478,783) through FY 2009 ($339,129).

The department has raised the registration and annual registration maintenance fees only once (2002) since 1983. The 2002 fee increase was projected to double the amount collected from $20,555 in 2001 to $43,000 in 2002. However, because of a decrease in the amount of hazardous waste generated, only $20,173 was collected in 2002. From 2003 through 2006 the amounts collected ranged from $14,000 to $18,000. Despite the increase in fees in 2002, less money was collected in each of the next five years.

The number of persons affected by the increase to the registration and registration maintenance fees would be 117, based on calendar year 2008.

The department is proposing to increase the registration fee from $95 to $225. The cumulative amount of the increase to the registration fee for all persons would be approximately $15,200, based on 117 people.

The existing annual hazardous waste generator registration maintenance fee includes a flat administrative fee of $95 plus $1 per ton of regulated hazardous waste generated in the previous calendar year. The department is proposing to raise the administrative fee to $200 and progressively raise the tonnage fee pursuant to (3)(a) through (d).

The cumulative amount of the increase to the registration maintenance fee for all persons projected to be billed in 2010 would be approximately $47,600, based on a projected approximate 9,000 tons of hazardous waste.

The cumulative amount of the increase to the registration maintenance fee for all persons projected to be billed in 2011 would be approximately $73,800, based on a projected approximate 9,000 tons of hazardous waste.

The cumulative amount of the increase to the registration maintenance fee for all persons projected to be billed in 2012 would be approximately $118,400, based on a projected approximate 9,000 tons of hazardous waste.

The cumulative amount of the increase to the registration maintenance fee for all persons projected to be billed in 2013 would be approximately $163,100, based on a projected approximate 9,000 tons of hazardous waste.

In ARM 17.53.113(4), the department is proposing to change the minimum tonnage for assessment of the registration maintenance fee from 13 tons to 1.3 tons. An amount of 1.3 tons is equal to 220 lbs of generated hazardous waste per month. An amount of 220 lbs is the maximum amount of hazardous waste generated per month by a generator to qualify as a small quantity generator. The department believes that it is appropriate to have the minimum quantity of hazardous waste for fee assessment match the maximum quantity to qualify as a small quantity generator. The number of persons affected by changing the minimum amount for assessing registration maintenance fees would be 117, based on calendar year

2008. The department is proposing the addition of ARM 17.53.113(6), which would clarify the rule, but not change the meaning.

The department is proposing to add ARM 17.53.113(7), which would clarify that hazardous waste transporters, universal waste handlers, used oil handlers, and persons conducting treatability studies are not required to pay fees under ARM 17.53.113.

The department is proposing grammatical revisions to ARM 17.53.113(8) that clarify the section, but do not change the meaning.

17.53.207 FORM OF REQUEST (1) A request for information pertaining to a facility under this subchapter must be made in writing, must reasonably describe the records sought in a way that will permit their identification, and should be addressed to the ~~Air and Waste Management~~ Hazardous Waste Section, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

REASON: The department is proposing to revise an outdated address. The revision is necessary because, in 2004, the Hazardous Waste Management Program was moved to the Waste and Underground Tank Management Bureau.

17.53.603 ANNUAL REPORT FROM GENERATORS ~~WHO SHIP~~ OF HAZARDOUS WASTE ~~OFF-SITE~~ (1) A generator who generates or ships ~~his~~ hazardous waste ~~off-site to a designated facility within the United States~~ shall submit annual reports to the department, on forms obtained from the department, no later than March 1 of each year. The annual report must cover generator activities during the previous calendar year and must include the following information:

(a) through (3) remain the same.

(4) A conditionally exempt small quantity generator, as defined in ARM 17.53.301(2), that has registered with the department and desires to remain registered shall submit an annual report pursuant to ARM 17.53.603(1).

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

REASON: The department is proposing to delete the word "off-site" and add the word "generates" because the sentence is confusing concerning who must submit an annual report. The proposed amendments do not change the meaning of the rule.

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 November 13, 2009. To

be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Carol Schmidt, 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 shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 (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 contact requirements of 2-4-302, MCA, do not apply.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: */s/ Richard H. Opper*
RICHARD H. OPPER, Director

Certified to the Secretary of State, October 5, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.802 and 17.36.805 pertaining to fee schedules and changes in subdivision	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On November 4, 2009, at 1:30 p.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., October 26, 2009, 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:

17.36.802 FEE SCHEDULES (1) An applicant for approval of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces, and tourist campgrounds shall pay the following fees:

	UNIT	UNIT COST
TYPE OF LOTS		
Subdivision lot	lot/parcel	$ ~~75~~ 100
Condominium/trailer court/recreational camping vehicle campground	unit/space	$ ~~30~~ 40
Resubmittal fee – previously approved lot, boundaries are not changed	lot/parcel	$ ~~50~~ 60
TYPE OF WATER SYSTEM		
Individual or shared water supply system (existing and proposed)	unit	$ ~~50~~ 60

Multiple user system - new system	each	$250 (plus $~~50~~ 75/hour for review in excess of ~~five~~ four hours)
- connection to approved existing distribution system	lot/unit	$ ~~15~~ 20
- extension to existing distribution system	lot/unit	$ ~~30~~ 50
- new distribution system	lot/unit	$ ~~30~~ 50
Public water system New system per DEQ-1	component	per ARM 17.38.106 fee schedule
- connection to existing system	lot/structure	$ ~~15~~ 20
- extension of existing system	lot/structure	$ ~~30~~ 40
- new distribution system	lot/structure	$ ~~30~~ 40
TYPE OF WASTEWATER DISPOSAL		
Existing systems	unit	$ ~~50~~ 60
New subsurface system	drainfield	$ ~~60~~ 75
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, ~~and~~ nutrient removal, and whole house subsurface drip irrigation systems	design	$150 (plus $~~50~~ 75/hour for review in excess of ~~three~~ two hours)
Drainfields for pressured-dosed, intermittent sand filter, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, and nutrient removal	drainfield	$ ~~30~~ 40
Gray water reuse systems. This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost	unit	$ 75 (plus $75/hour in excess of two hours
Multiple user wastewater system - connection	lot/unit	$ ~~15~~ 20
- extension	lot/unit	$ ~~30~~ 50
- new collection system	lot/unit	$ ~~30~~ 50

New public wastewater system per DEQ-2	component	per ARM 17.38.106 fee schedule
- New connection to existing system	lot/structure	$ ~~15~~ 20
- New extension to existing public wastewater system	lot/structure	$ ~~30~~ 50
- New public wastewater collection system	lot/structure	$ ~~30~~ 50
OTHER		
Deviation from circular	request or per design	~~$100~~ 150 (plus ~~$50~~ 75/hour for review in excess of two hours)
Waiver from rule	request	~~$100~~ 150 (plus ~~$50~~ 75/hour for review in excess of two hours)
Reissuance of original approval statement	request	$ 50
Municipal facilities exemption checklist (former master plan exemption)	application	$ ~~75~~ 100
Nonsignificance determinations/categorical exemption reviews		
- individual/shared systems	drainfield	$ ~~40~~ 50
- multiple-user and public systems	lot/structure	$ ~~20~~ 25
Storm drainage plan review		
- plans exempt from Circular DEQ-8	~~plan~~ lot	$ ~~25~~ 30
- Circular DEQ-8 review	~~plan~~ lot	$ ~~50~~ 30 (plus ~~$50~~ 75/hour for review in excess of ~~one hour~~ 30 minutes per lot)

Preparation of environmental assessments/environmental impact statements	----	actual cost

AUTH: 76-4-105, MCA
IMP: 76-4-105, 76-4-128, MCA

17.36.805 CHANGES IN SUBDIVISION (1) remains the same.

(2) Other changes for plan components not listed in ARM 17.36.802 are also subject to additional review fees. The department shall determine the exact amount of the additional fee based on how much review time the change(s) require. Review time must be charged at the rate of ~~$50~~ 75 per hour with a minimum charge of ~~$50~~ 75.

AUTH: 76-4-105, MCA
IMP: 76-4-105, MCA

REASON: ARM 17.36.802 and 17.36.805 establish fees for department review of subdivisions under the Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA. The department's subdivision review program is funded entirely by application fees. The fees have not been increased since 2002. Since that time personnel and operating expenses have gone up substantially. The number of applications has dropped significantly in past years, from 1,619 in FY06, 1,443 in FY07, 1,230 in FY08 to 931 in FY09. To save expenses, in August of 2009 the department reduced by 3.0 FTE the number of subdivision staff that are paid by fees, but fee revenues are still insufficient to maintain essential staff levels. The department has drawn down the reserve in the subdivision account, and it is necessary to raise fees to maintain minimum program functions. The proposed amendments would raise subdivision review fees by about 30 to 40%, depending on the review item. The department estimates that the fee increase will affect approximately 900 applicants in the next year, for a total cumulative impact of the increase next year of approximately $300,000.

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 November 12, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. James Madden, 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 shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (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 contact requirements of 2-4-302, MCA, do not apply.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden BY: */s/ Richard H. Opper*
JAMES M. MADDEN RICHARD H. OPPER, Director
Rule Reviewer

Certified to the Secretary of State, October 5, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.55.102, 17.55.108, 17.55.111, and 17.55.114 pertaining to definitions, facility listing, facility ranking, and delisting a facility on the CECRA priority list; adoption of New Rules I through V pertaining to incorporation by reference, proper and expeditious notice, third-party remedial actions at order sites, additional remedial actions not precluded, and orphan share reimbursement; and repeal of ARM 17.55.101 pertaining to purpose	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL (CECRA REMEDIATION)

TO: All Concerned Persons

1. On November 5, 2009, at 9:00 a.m., a public hearing will be held in Room 122 of the Last Chance Gulch Building, 1100 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., October 26, 2009, 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:

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

(1) remains the same.

(2) "Final permanent remedy" means all of the remedial actions identified by the department in a record of decision.

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

~~(3) "Friable asbestos-containing material" means any material containing more than 1% asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.~~

(4) "Imminent and substantial endangerment" means contaminant concentrations in the environment exist or have the potential to exist above risk-

based screening levels adopted by the department in [NEW RULE I] or other statutory or regulatory cleanup levels.

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

(6) "Record of decision" means the final agency decision document that identifies and explains the final remedial actions selected by the department that will be used to clean up a facility. It does not include a voluntary cleanup plan approved under 75-10-736, MCA.

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

~~(6) The department adopts and incorporates by reference:~~

~~(a) department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems," 2004 edition, which establishes technical standards for construction of subsurface wastewater treatment systems; and~~

~~(b) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (February 2008 edition).~~

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: Adopting a rule to define what constitutes the final permanent remedy and how it is selected, through a record of decision (which is also defined by this rule) at a facility, is critical to determining when and how cost recovery actions will be pursued. The June 2008 Performance Audit ("Program and Policy Issues Impacting State Superfund Operations") indicated that the department needs to pursue cost recovery and memorialize rules and policies related to when the department will bring legal action for nonpayment of costs.

The department has determined that friable asbestos-containing material does not need to be defined separately for listing purposes because it is, by definition, already a hazardous and deleterious substance addressed by the rules. Therefore, the definition has been deleted.

Section 75-10-711, MCA, requires that an imminent and substantial endangerment be present before the department takes or requires remedial action and this requirement is reflected in ARM 17.55.108. The department has consistently determined that an imminent and substantial endangerment may exist if contaminant concentrations exceed certain risk-based screening levels. Concentrations that fall below these screening levels will not trigger CECRA action. Adoption of this amendment to define "imminent and substantial endangerment" with reference to the risk-based screening levels adopted in New Rule I will provide clarity to the department's interpretation.

The rule deletes the reference to DEQ-4 because these technical standards for wastewater treatment systems are not used in the definition section or for any screening purposes. The rule deletes the reference to DEQ-7 because all adoptions by reference are being incorporated into New Rule I.

As stated above, the June 2008 Performance Audit recommended the department adopt rules for cost recovery purposes. Adopting the definition of a record of decision is necessary to ensure it is clear what agency decision document identifies the final permanent remedy.

17.55.108 FACILITY LISTING (1) The department may list a facility on the CECRA priority list if the department determines there is a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial ~~threat~~ endangerment to public health, safety, or welfare or the environment.

(2) through (4) remain the same.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: The department is proposing to amend ARM 17.55.108 because the term "imminent and substantial threat" does not match the terminology used in CECRA, which is "imminent and substantial endangerment." This is a clerical correction and is not intended to have a substantive effect on the rule itself.

17.55.111 FACILITY RANKING (1) remains the same.

(2) A maximum priority designation must be given to a facility that exhibits one or more of the following characteristics:

(a) documented release to surface water in a drinking water intake that is a public drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(b) documented release to ground water in a drinking water well that is a public drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(c) documented release into a drinking water line that is part of a public drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(d) documented release to surface water in a drinking water intake that is a domestic or commercial drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(e) documented release to ground water in a drinking water well that is a domestic or commercial drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(f) documented release into a drinking water line that is a domestic or commercial drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(g) through (i) remain the same.

(3) A high priority designation must be given to a facility whose release does not exhibit any of the characteristics provided in (2) but exhibits one or more of the following characteristics:

(a) documented release to surface water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~ in a drinking water supply intake; and

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, no concentration at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply intake;

(b) documented release to ground water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as drinking water maximum contaminant level listed at 40 CFR 141 ~~(1997)~~ in a drinking water supply well; and

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141 ~~(1997)~~, no concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply well;

(c) remains the same.

(d) documented release of ~~friable asbestos-containing material~~ a hazardous or deleterious substance on the ground surface that poses a threat to public health;

(e) through (8) remain the same.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: The department removed the references to 1997 because it is adopting the most recent versions of DEQ-7 and 40 CFR 141 in New Rule I. Also, the department has determined that there is no need for friable asbestos-containing material to have its own listing criteria as it is more appropriately addressed by the term "hazardous and deleterious substance".

17.55.114 DELISTING A FACILITY ON THE CECRA PRIORITY LIST

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

(2) In determining whether to delist a facility from the CECRA priority list, the department shall consider whether:

(a) remains the same.

(b) liable persons or other persons have completed all appropriate remedial actions required by the department~~,~~ including, but not limited to, completion of a final long term remedy, ~~required by the department~~ and payment of the state's remedial action costs including interest and, if applicable, penalties under 75-10-715(3), MCA; and

(c) through (7) remain the same.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, 75-10-715, 75-10-722, MCA

REASON: The June 2008 Performance Audit ("Program and Policy Issues Impacting State Superfund Operations") directed the department to pursue cost recovery and memorialize rules and policies related to when the department will bring legal action for nonpayment of costs. Ensuring that reimbursement of the state's costs is made prior to delisting promotes remediation of contamination by providing money for a revolving fund for remediation of other sites.

4. The proposed new rules provide as follows:

NEW RULE I INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, Montana Numeric Water Quality Standards (February 2008);

(b) Drinking Water Maximum Contaminant Levels, published at 40 CFR 141 (2008);

(c) Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (September 2009);

(d) U.S. Environmental Protection Agency, Regional Screening Levels for

Chemical Contaminants at Superfund Sites (April 2009), except when:

(i) comparing contaminant concentrations to the regional screening levels, with the exception of lead, the department will adjust the non-carcinogenic levels by dividing by ten to account for cumulative potential health effects;

(ii) comparing contaminant concentrations to the protection of ground water soil screening levels, the department will adjust the dilution attenuation factor to ten to account for a state-specific attenuation factor;

(iii) comparing contaminant concentrations to the protection of ground water soil screening levels, the department will apply an appropriate adjustment to ensure that contaminants potentially leaching to ground water will not exceed Montana numeric water quality standards found in department Circular DEQ-7.

(e) Montana Department of Environmental Quality, Remediation Division, Action Level for Arsenic in Surface Soil (April 2005); and

(f) U.S. Environmental Protection Agency Region 3 Biological Technical Assistance Group Freshwater Sediment Screening Benchmarks (August 2006).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: It is necessary to adopt these references to ensure that the risk-based screening levels, relied upon by the department to determine "imminent and substantial endangerment" which may trigger listing, are clearly identified, as well as to ensure the most recent versions of the documents are used in making listing decisions.

Department Circular DEQ-7 standards are appropriate, as they have already been adopted by the Board of Environmental Review as the standards that apply to surface water and ground water in Montana to protect uses that are being or may be made of state waters. The department has used these levels consistently when evaluating potential risk to surface water and ground water. Use of the maximum contaminant levels is appropriate as they have been adopted by EPA for protection of public drinking water supplies. The department has used these levels consistently when evaluating potential risks to drinking water.

The risk-based corrective action guidance sets soil screening levels using input modeling parameters representative of estimated statewide conditions. They are based on both direct contact with contaminated soil and leaching to ground water. They are also based on residential, industrial, or construction/excavation exposure and various depths to ground water and take into account multiple pathways and cumulative exposure. These screening levels are based on a 10^{-6} screening level for carcinogens, which allows the department to ensure that cumulative carcinogenic risk at sites does not exceed the 10^{-5} cumulative risk level. This is the risk level established by the Montana Legislature for adoption of water quality standards. For non-carcinogenic contaminants, the guidance uses a

cumulative hazard index of 1, which represents the value which indicates that no adverse non-cancer human health effects are expected to occur.

The regional screening levels are being used by various states and EPA and provide conservative screening values that provide the same levels of protection for non-petroleum compounds as are provided by the risk-based guidance for petroleum discussed above. The regional screening levels are based on ingestion, inhalation, and dermal contact and include residential and industrial exposure and are used to screen potential risk at a wide variety of sites. The department uses these levels but makes two adjustments to the levels to ensure adequate protectiveness of human health and the environment. With the exception of lead, the department will adjust the non-carcinogenic levels in the regional screening levels by dividing by 10. This ensures that, when multiple contaminants are found at a site that may have the same health effects, cumulative potential health effects are considered. As part of the development of the risk-based corrective action guidance, the department evaluated dilution attenuation factors for Montana and determined an average statewide factor of 10. Therefore, when comparing contaminant concentrations to the protection of ground water soil screening levels found in the regional screening level document, the department will adjust the dilution attenuation factor to 10 to account for that state-specific attenuation factor. Finally, if the DEQ-7 standard differs from the maximum contaminant level or the tap water regional screening level, when comparing contaminant concentrations to the protection of ground water soil screening levels, the department will apply an appropriate adjustment to ensure that contaminants potentially leaching to ground water will not exceed Montana numeric water quality standards found in department Circular DEQ-7. This ensures that state water quality is adequately protected and meets state standards.

Use of the action level for arsenic in surface soil is appropriate as it considers background arsenic soil concentrations in Montana and recognizes the presence of naturally-occurring levels of arsenic in this state. It uses data from around the state and, through the use of standard statistical methodology, determines an appropriate screening level for arsenic in residential soil that will prevent adverse human health effects above those expected to occur because of natural conditions.

Use of the sediment screening benchmarks is appropriate as they are already being used by various states and EPA and provide a conservative screening value. The sediment screening benchmarks provide screening for toxicity to aquatic organisms which aids the department in evaluating one potential risk to the environment.

NEW RULE II PROPER AND EXPEDITIOUS NOTICE (1) At a facility on the CECRA priority list for which no administrative or judicial order under 75-10-711, MCA, has been issued, the department shall, as resources allow and considering the facility ranking, take the following actions:

(a) ensure that a person liable or potentially liable under 75-10-715, MCA, is expeditiously performing remedial actions as required by 75-10-711, MCA, by requiring the establishment of a department-approved schedule for remedial actions. When establishing the schedule, the department shall consider the size and complexity of the facility and may approve, disapprove, or modify the schedule proposed by the person liable or potentially liable under 75-10-715, MCA;

(b) send a letter to a person liable or potentially liable under 75-10-715, MCA, providing the opportunity to conduct the required remedial actions; and

(c) ensure that a person liable or potentially liable under 75-10-715, MCA, is properly performing the remedial actions by reviewing work plans, reports, or other documents submitted by the person and identifying required revisions. The person liable or potentially liable under 75-10-715, MCA, must be given one opportunity to address all of the department's required revisions on each submittal. If the department determines that its required revisions were not adequately addressed, the department shall incorporate its required revisions electronically into the document so that it can be finalized.

(2) A person liable or potentially liable under 75-10-715, MCA, shall complete all remedial actions required by the department according to the department's approved schedule, unless an extension is requested and approved by the department.

(3) If a person liable or potentially liable under 75-10-715, MCA, does not comply with the approved schedule or does not incorporate the department's required revisions on work plans, reports, or other documents, the department may determine that the person is not properly and expeditiously performing the appropriate remedial actions and may:

(a) issue a unilateral order requiring the person liable or potentially liable under 75-10-715, MCA;

(b) file a civil action as provided in 75-10-711, MCA;

(c) conduct the required remedial actions and seek cost recovery and penalties as provided in 75-10-711, MCA;

(d) file a cost recovery action as provided in 75-10-722, MCA; or

(e) pursue any other action allowed by law.

(4) All submittals to the department from a person or potentially liable person under 75-10-715, MCA, including those from its consultant or contractor, must be in both hard copy as well as modifiable electronic format.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-706, 75-10-711, MCA

REASON: The purpose of CECRA is to protect human health and the environment against the dangers arising from releases of hazardous or deleterious substances. Generally, the department can take remedial action when it determines that none of the potentially liable persons under 75-10-715, MCA, are acting properly and expeditiously to perform the necessary work. To ensure that the procedures leading up to such a department determination are clear, it is appropriate to adopt rules defining the process by which parties will be given the chance to conduct remedial work without an administrative order and to ensure that Montana citizens are protected against these dangers. In addition, the November 2006 HJR 34 Study Report ("Improving the State Superfund Process") recommended that the department develop a framework for more timely and consistent use of its enforcement authority and this rule addresses that recommendation. It also addresses the concern that the department respond to submittals in a timely fashion. By requiring the submittal of electronic documents, the department can use the

"redline/strikeout" method of commenting, which will shorten the response time on documents.

NEW RULE III THIRD PARTY REMEDIAL ACTIONS AT ORDER SITES

(1) At a facility for which an administrative or judicial order under 75-10-711, MCA, has been issued, a person not subject to that order may not conduct any remedial action at the facility that is subject to the order without the written permission of the department.

(2) When requesting permission, the person wishing to conduct the remedial action shall submit a work plan or other document request for such permission in writing to the department at least 30 calendar days in advance of the proposed start date for the remedial action. The document must include:

(a) a map or figure showing the location of the requested remedial action in relation to the facility boundary;

(b) a work plan that clearly states the objective of the remedial action;

(c) a description of the proposed remedial action;

(d) a description of whether investigation-derived waste including, but not limited to, drill cuttings, excavated soil, purge water, decontamination water, and personal protective equipment, will be generated and, if so, how the waste will be disposed;

(e) a description of any proposed laboratory analyses;

(f) if monitoring wells are proposed for installation, a statement that the wells will be constructed and later abandoned according to Montana regulations by a licensed well driller;

(g) a statement that an appropriate health and safety plan will be used for the work;

(h) provision of a summary report upon completion of the work to be submitted within a specified time after completion of the remedial action; and

(i) any other information required by the department.

(3) The department shall review the request and shall either provide permission or require revision to the document to ensure that:

(a) the proposed remedial action will not conflict with ongoing work at the facility;

(b) the proposed work, if conducted in the manner described in the document, will not spread, worsen, or otherwise exacerbate the contamination; and

(c) other relevant factors are considered by the department.

(4) The department's permission under this rule does not provide the right to access the property and the person wishing to conduct the remedial action is responsible for gaining permission to access any property necessary to conduct the work.

(5) The department's permission does not waive or otherwise alleviate the need to obtain permits that may be required to conduct the work.

(6) If the department provides written permission to conduct the work, the person conducting the work is responsible for ensuring that all work complies with applicable laws and regulations that may govern that work.

(7) If the department provides written permission to conduct the remedial action, the person conducting that action must notify the department of the date that

the person is commencing the remedial action at least ten calendar days prior to the start of the remedial action and must provide the department with any further requested information including, but not limited to, a summary report upon completion of the work, laboratory data, log books, field notes, photographs, or other information.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-706, MCA

REASON: In order to assist third parties who desire to conduct remedial actions at a facility under order, it is appropriate to adopt rules describing the steps necessary to get department permission. The department has seen an increase in the number of third parties who are requesting this permission and adoption of a rule will help streamline the process for them to obtain department permission in a timely fashion. The information required in this rule is the information the department needs in order to determine in a timely manner whether the work will meet the criteria in (3). The criteria are necessary to ensure that third-party activities do not pose an unacceptable risk to human health or the environment.

The requirement in (7) is necessary to monitor the work performed to ensure that it is performed in accordance with the plan.

NEW RULE IV ADDITIONAL REMEDIAL ACTIONS NOT PRECLUDED

(1) If the department selects or approves a remedial action and subsequently determines that the remedial action has failed or that additional remedial actions are required, the department shall require further remedial action at the facility by a person liable or potentially liable under 75-10-715, MCA.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: The November 2006 HJR 34 Study Report ("improving the State Superfund Process") recommended that the department take steps to avoid "paralysis by analysis," which it partially described as the perception that the department is slow to approve interim or other remedial actions because of the fear of remedy failure or that the department will be precluded from requiring additional actions. This rule addresses this issue by providing that, should remediation fail to be effective, the department may require additional remediation. Therefore, approval of interim or other actions may be made with a lesser degree of certainty than if the department could not require additional actions.

NEW RULE V ORPHAN SHARE REIMBURSEMENT (1) Upon completion and department approval of the final report evaluating the nature and extent of contamination at a facility with an approved stipulated agreement under 75-10-750, MCA, the lead liable person under 75-10-746, MCA, may submit a claim to the department for reimbursement of the orphan's share of the cost associated with the preparation of that report.

(2) Upon completion and department approval of the final report formulating

and evaluating final remedial alternatives at a facility with an approved stipulated agreement under 75-10-750, MCA, the lead liable person under 75-10-746, MCA, may submit a claim to the department for reimbursement of the orphan's share of the cost associated with the preparation of that report.

(3) Upon completion of the department-approved remedial action plan at the facility and department approval of that completion, the lead liable person under 75-10-745, MCA, may submit a claim to the department for reimbursement of the orphan's share of the cost associated with completion of the department-approved remedial action plan.

(4) Reimbursement under (1), (2), and (3) is limited to those eligible costs, as provided for in 75-10-743(5), MCA, incurred by the lead liable person and is governed by the other provisions of 75-10-743, MCA.

(5) If the department determines the lead liable person is eligible for hardship reimbursement under 75-10-743(7), MCA, the department may reimburse the lead liable person for the orphan's share of ongoing remedial action costs but shall, at a minimum, retain the orphan's share of remedial action costs incurred prior to the date the hardship determination was made in order to ensure the completion of all required remedial actions.

AUTH: 75-10-702, MCA
IMP: 75-10-702, 75-10-743, MCA

REASON: The 2009 Legislature, in SB 71 (Chapter 266, Laws of 2009), revised the Controlled Allocation of Liability Act to allow for reimbursement of claims at two distinct points in the remediation process, as well as for final reimbursement after the completion of cleanup. This rule is necessary to ensure that the three reimbursement points (approval of final remedial investigation including all supplemental investigations, approval of final feasibility study, and completion of final remedy) are clearly defined. The legislation identified some points in the process prior to final cleanup when the department could provide reimbursement but did not clearly define those points. The rule clarifies that the reimbursement is only for the orphan share's portion of the eligible costs. This implements 75-10-743(6)(b), MCA, which provides that, to be eligible for reimbursement from the orphan share fund, a person must have paid a share of the costs attributable to the orphan share. The rule also provides that partial reimbursements may be made only if there is an approved stipulated agreement in place. This is added because, without an approved stipulated agreement, the proportion of costs attributed to the orphan share may not have been established at the investigation or remedy evaluation stages. In addition, of the three allocations completed by the department, two have included hardship determination requests. Identifying what the department will consider in evaluating these requests and how early reimbursement can occur will assist allocation participants in making such requests. One of the fundamental purposes of CALA is to ensure that final cleanup occurs and that is the reason that only limited reimbursement may occur before final cleanup is complete. Withholding a portion of the orphan share's costs provides the incentive for the lead person to complete the work, thus meeting this fundamental purpose.

5. The rule proposed to be repealed is as follows:

17.55.101 PURPOSE (Located at page 17-5911, Administrative Rules of Montana. Auth: 75-10-702, 75-10-704, MCA; IMP: 75-10-702, 75-10-704, MCA)

REASON: It is necessary to repeal this rule because the department is proposing to adopt rules which address more than the current listing, delisting, and ranking rules to which the current purpose rule applies. Therefore, the rule is being repealed because the revised rules are implementing additional portions of the Montana Comprehensive Environmental Cleanup and Responsibility Act.

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 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 November 12, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Cynthia Brooks, attorney, 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 and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The rules in this notice are the first rules to implement SB 171 (2009), which revises the orphan share reimbursement requirements under the Controlled Allocation of Liability Act. The sponsor of SB 171 was informed by letter on August 24, 2009, that the department was beginning to work on the substantive content of the rules.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: */s/ Richard H. Opper*
RICHARD H. OPPER, Director

Certified to the Secretary of State, October 5, 2009.

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

In the matter of the amendment of ARM 24.138.402 fee schedule, 24.138.406 dental auxiliaries, 24.138.2104 requirements and restrictions, 24.138.3207 continuing education, and the adoption of NEW RULES I through III pertaining to restricted volunteer licensure	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 5, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption 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 Dentistry (board) no later than 5:00 p.m., on October 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@mt.gov.

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

24.138.402 FEE SCHEDULE (1) through (16) remain the same.
(17) Restricted temporary volunteer license, original or renewal 10
(17) remains the same but is renumbered (18).

AUTH: 37-1-131, 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, MCA
IMP: 37-1-134, 37-1-141, 37-4-301, 37-4-307, 37-4-340, 37-4-341, 37-4-402, 37-4-405, MCA

REASON: The 2009 Montana Legislature enacted Chapter 315, Laws of 2009 (Senate Bill 226), an act authorizing the temporary licensure of nonresident dentists and dental hygienists to provide voluntary services to persons served by university clinics, correctional facility clinics, and certain federally funded clinics. The bill was signed by the Governor on April 18, 2009, and became effective October 1, 2009. The board determined it is reasonably necessary to amend this rule to establish a licensure fee for restricted temporary volunteer licensure and renewal in response to

the legislation. The fee will affect approximately 12 licensees each year and result in $120 of additional annual revenue.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) through (3)(j) remain the same.

(k) periodontal probing; ~~or~~

(l) air polishing;

(l) remains the same but is renumbered (m).

(4) through (8)(d) remain the same.

~~(9) No dentist shall allow a dental auxiliary not qualified as stated above to expose radiographs except during one training period that:~~

~~(a) is under the direct supervision of the dentist; and~~

~~(b) is not longer than six calendar months commencing from the time the auxiliary begins training.~~

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

~~(11)~~ (10) The board will accept documentation of (8)(a) through (c) as certification for radiographic exposure. ~~The board will issue a certificate to those auxiliaries who complete (8)(d) as their means to qualify for radiographic exposure.~~

AUTH: 37-4-205, 37-4-408, MCA
IMP: 37-4-408, MCA

REASON: The board is amending this rule to add air polishing as a duty that cannot be performed by dental auxiliaries for reasons of public safety. The board concluded that air polishing equipment has the ability to harm gum tissue and this procedure should only be performed by a licensed dental hygienist having extensive education and appropriate training in the use of the equipment.

The board is deleting (9) to comply with (8)(d) that specifies that dental auxiliaries must first pass the written exam before they are allowed to expose radiographs. The board eliminated the requirement for passage of a clinical exam in 2007. The training program in (9) was in place to prepare auxiliaries for the clinical exam and is being deleted now as unnecessary.

It is reasonably necessary to delete the last sentence of (10) because testing entities issue a certificate when an auxiliary successfully passes the exam and the board no longer issues any certificates.

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) remains the same.

(a) for dentists, 60 per three-year cycle. Dentists who have general anesthesia ~~or conscious sedation~~ permits must ~~acquire these~~ complete 20 hours of anesthesia specific continuing education as part of the 60 continuing education credits ~~in addition to those~~ required ~~for maintenance of those permits;~~ . Dentists who have conscious sedation permits must complete 12 hours of anesthesia specific continuing education as part of the 60 continuing education credits required;

(b) through (5) remain the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-205, 37-29-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.138.3207 to no longer require that dentists holding anesthesia permits obtain anesthesia specific continuing education (CE) in excess of the 60 hours already required by rule. The board concluded that the additional CE is not necessary and the public is adequately protected as long as anesthesia permit holders obtain some CE specific to anesthesia. Therefore, the board is amending these rules to require anesthesia specific CE as part of the total 60 hours of CE required for dentist licensure.

24.138.3207 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide general anesthesia must submit evidence of having attended a minimum of 20 clock hours of anesthesia specific continuing education every three years.

(2) All dentists holding permits to provide conscious sedation must submit evidence of having attended a minimum of 12 clock hours of anesthesia specific continuing education every three years.

(3) through (7) remain the same.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA
IMP: 37-1-319, 37-4-511, MCA

4. The proposed new rules provide as follows:

NEW RULE I RESTRICTED TEMPORARY LICENSURE OF NONRESIDENT VOLUNTEER DENTISTS AND DENTAL HYGIENISTS

(1) Dentists and dental hygienists actively licensed in good standing in another state and seeking to practice in Montana under a restricted temporary volunteer license, shall submit a complete application and the following documentation:

(a) verification of graduation from a dental or dental hygiene program or school accredited by the American Dental Association Commission on Dental Accreditation (CODA) or its successor;

(b) license verifications(s) from all states where the licensee currently holds a license;

(c) verification that the applicant has no pending discipline in any state in which the applicant holds current licensure; and

(d) a notarized statement that the applicant shall not receive monetary or other compensation for providing any dental or dental hygiene services in Montana, while in possession of the temporary volunteer license.

(2) Temporary volunteer licenses are valid for 14 days from the date of issuance.

(3) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months, a new application and fees must be submitted.

(4) Temporary volunteer licenses may be renewed annually by the date set by ARM 24.101.413.

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA
IMP: 37-1-131, 37-1-141, 37-4-341, MCA

REASON: The 2009 Montana Legislature enacted Chapter 315, Laws of 2009 (Senate Bill 226), an act authorizing the temporary licensure of nonresident dentists and dental hygienists to provide voluntary services to persons served by university clinics, correctional facility clinics, and certain federally funded clinics. The bill was signed by the Governor on April 18, 2009, and became effective October 1, 2009. The board determined it is reasonably necessary to adopt New Rules I and II to set forth the minimum licensure requirements and scope of practice for this restricted volunteer license and further implement the legislation.

NEW RULE II SCOPE OF TREATMENT FOR TEMPORARY VOLUNTEER LICENSE (1) Temporary volunteer licensees shall:

(a) practice dentistry or dental hygiene within the scope of their professional license and in compliance with board statutes and administrative rules; and

(b) provide dental or dental hygiene services only to individuals served by clinics listed in 37-4-103, MCA.

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA
IMP: 37-1-131, 37-4-341, MCA

NEW RULE III TEETH WHITENING (1) The board of dentistry interprets the definition of the practice of dentistry set forth at 37-4-101, MCA, to include services or procedures that alter the color or physical condition of a tooth or teeth.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, MCA

REASON: It is reasonable and necessary to adopt New Rule III to address teeth whitening services currently being offered in salons and malls throughout Montana. The board notes that these teeth whitening procedures use a bleaching chemical that has potential to harm patients that have not had a thorough dental assessment done prior to application of the whitening agent. The board concluded that teeth whitening agents should only be applied by a dentist after a thorough examination and assessment of the individual patient's condition and needs.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., November 13, 2009.

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

7. The board 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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdden@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 7, 2009, by electronic mail.

9. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
PAUL SIMS, DDS, 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 5, 2009

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

In the matter of the amendment of ARM 24.101.413 renewal dates, 24.210.611, 24.210.641, 24.210.660, 24.210.674 and 24.210.677 brokers and salespersons, 24.210.801, 24.210.805, 24.210.809, 24.210.828, 24.210.835, 24.210.840 and 24.210.843 property management, 24.210.1001, 24.210.1007, 24.210.1016, 24.210.1020, 24.210.1025 and 24.210.1037 timeshare licensure and registration, and the repeal of 24.210.1003, 24.210.1005, 24.210.1011, 24.210.1013, 24.210.1018, 24.210.1029, 24.210.1033 and 24.210.1035 timeshare licensure and registration	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 9, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on November 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrre@mt.gov.

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

<u>24.101.413 RENEWAL DATES AND REQUIREMENTS</u> (1) through (5)(ag) remain the same.

(ah)	Realty Regulation	Property Manager	Annually	October 31

		Real Estate Broker	Annually	October 31
		Real Estate Salesperson	Annually	October 31
		~~Timeshare Broker~~	~~Annually~~	~~October 31~~
		Timeshare Salesperson	Annually	October 31
		~~Timeshare Offering~~	~~Annually~~	~~Anniversary Date of License~~

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

REASON: The 2009 Montana Legislature enacted Chapter 317, Laws of 2009 (Senate Bill 269), an act revising the laws regulating the sale of timeshares. The bill was signed by the Governor on April 18, 2009, and became effective on October 1, 2009. The department is amending this rule to align with the statutory changes and implement the legislation by deleting the fees for timeshare broker licensure and renewal of timeshare offering licenses.

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

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER (1) through (4) remain the same.

(5) All experience, including transactions, must be presented on board forms.

(6) A waiver applicant must hold a current active license in good standing.

(7) All waiver applicants will be required to pass the state examination.

~~(5)~~ (8) In addition to (1) through ~~(4)~~ (7), all applicants for licensure as a salesperson must:

(a) and (b) remain the same.

~~(6)~~ (9) In addition to (1) through ~~(4)~~ (7), all applicants for licensure as a broker must:

(a) and (b) remain the same.

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

(d) remains the same.

(e) Entry-only listings and transactions in which the applicant only participated as a mortgage broker shall not qualify as experience under (9)(b) or under 37-51-302, MCA.

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

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

REASON: The board determined it is reasonably necessary to amend this rule throughout by renumbering for better organization and clarity. The board is adding (5) to require that applicants submit proof of experience on forms provided by the board. Applicants often provide experience documentation that is incomplete or extremely difficult for staff to review and evaluate. Requiring the use of board forms will shorten the evaluation process and ensure the required information is submitted.

The board recently proposed a rule defining an entry-only listing, which has become a common listing format. However, entry-only listings require next to no involvement by a licensee and as such, do not provide applicants with the experience that the board deems necessary to show an applicant is qualified. Further, while other jurisdictions' real estate boards and commissions do license mortgage brokers, the Montana board does not. Brokers coming from other jurisdictions often submit mortgage transactions as qualifying experience for an endorsement real estate broker license. The board concluded that experience in entry-only listings and mortgage brokering does not qualify a person to be a Montana licensed real estate broker and is amending this rule to clarify this.

Because the board has the ability under 37-1-304, MCA, to waive the exam requirement for out-of-state applicants, the board recently canceled all reciprocity agreements with other states. All out-of-state licensed applicants must now go through the waiver process to qualify for a Montana license, if they wish to rely on their current license status. A waiver is the board's evaluation of an applicant's previous experience. Often, out-of-state applicants are not currently licensed in the other state, are on a status other than active, or are subject to discipline in the other state. The board believes that an applicant's recent, active, and current experience helps ensure qualified Montana licensees and enhances public safety and welfare. Therefore, the board is amending this rule to specify that out-of-state applicants must be currently licensed and in good standing in another state.

The board is adding (7) to specify that although the board may waive some of the licensure requirements for out-of-state licensed applicants, they will not waive the state exam requirement. The board has always required that all waiver applicants must pass the state examination, but had not yet put it into rule.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(q) remain the same.

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

(s) through (u) remain the same, but are renumbered (r) through(t).

(u) violating the residential tenants' security deposits laws of Title 70, chapter 25, MCA;

(v) violating the landlord and tenant residential and commercial laws of Title 70, chapter 26, MCA;

(w) violating the Montana Residential Mobile Home Lot Rental Act of Title 70, chapter 33, MCA;

(x) violating as a seller's agent, the radon disclosure requirements of Title 75, chapter 3, MCA;

(y) violating the Residential Lead-Based Paint Disclosure Program of Title X, section 1018 of the United States Code.

(v) through (an) remain the same but are renumbered (z) through (ar).

(6) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board determined it is reasonable and necessary to eliminate from unprofessional conduct the failure of an agent to inform the seller in writing of estimated costs and fees. Because many factors can impact the proceeds, estimated costs and fees are typically unknown to an agent. The board also notes that because any estimate from an agent could be imprecise, there is a great chance of unfair liability against the agent, even when every good faith effort is made to provide accurate information. Rather than subject the agent to unnecessary liability and/or litigation, the board is amending this rule to no longer include the failure to provide written estimates of costs and fees as unprofessional conduct.

The board is amending this rule to add to unprofessional conduct a licensee's violation of several federal and Montana laws. The board intends that violations of all Montana's landlord tenant laws be considered unprofessional conduct, but recently discovered that several of these laws are not included in (5)(w) of this rule as they do not appear in Title 70, chapter 24, MCA. The board is amending this rule to include the provisions as unprofessional conduct.

The board is also adding provisions regarding radon and lead-based paint nondisclosure as unprofessional conduct. These disclosure requirements currently apply to licensees through other statutes and the board concluded that specifying the violations as unprofessional conduct will enhance public safety and welfare.

24.210.660 PRELICENSING EDUCATION -- SALESPERSONS AND BROKERS (1) through (3)(b) remain the same.

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

(d) through (13) remain the same.

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

REASON: The board is amending this rule and ARM 24.210.674 to clarify that it is the individual distance education course that must be ARELLO certified and not the provider. The amendments also clarify that the provider must provide adequate documentation to the board of a distance course's current certification. The board

notes that this is the current requirement, but is amending the rule in response to requests for clarification of the process for distance education course approval.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) through (5)(b) remain the same.

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

(d) remains the same.

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

24.210.677 CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL (1) remains the same.

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

(3) through (5) remain the same.

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

REASON: The board determined it is reasonably necessary to amend this rule to specify that the board may revoke an instructor's approval for cause. The board recently addressed a situation where an instructor did not teach per the approved course outline and provided inaccurate information, but did not necessarily demonstrate poor teaching skills. The board concluded that to better ensure that approved instructors are teaching appropriately, it is necessary to amend this rule to allow instructor approval revocation for reasons other than poor teaching skills.

24.210.801 FEE SCHEDULE (1) through (11) remain the same.

(12) ~~Continuing education~~ Education course instructor application for approval or renewal 50

(13) Prelicensing course ~~250~~ 150

(14) remains the same.

AUTH: 37-1-134, ~~37-51-202,~~ 37-51-203, MCA
IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: The board is amending the property management fee schedule to specify that the education course instructor fee applies to the approval and renewal of all instructors, not just continuing education instructors. The board approves several types of education course instructors and is amending the rule to reflect this.

The board is also amending this rule to reduce the prelicensing course application fee to mirror the fees for that of real estate prelicensing courses at ARM 24.210.401. The board discovered that although the approval processes are the same, the fee for approval and renewal of real estate and property management prelicensing courses are different. The board estimates that this fee change will affect one licensee and result in a $100 reduction in annual board revenue.

Authority cites are being amended to provide the complete and accurate sources of the board's rulemaking authority.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT REQUIREMENTS (1) through (4) remain the same.

(5) A property manager may maintain more than one trust account~~, but must notify the board of each and every account by name and number~~.

(6) through (8) remain the same.

(9) Money held in the trust account which is due and payable to the property manager must be withdrawn within ten business days after such money becomes due and payable or when the ~~property ledger is~~ owner and tenant ledgers are reconciled, except as exempted in (4).

(10) through (16) remain the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-321, 37-51-601, MCA

REASON: The board is amending this rule regarding board notification of property management trust accounts. The board has become more concerned with identity theft and keeping information confidential and is amending this rule to no longer require that property managers notify the board office of all trust accounts maintained. The board notes that such information will be obtained by the auditor through the compliance audit process.

The board notes that property managers are required to keep the owner and tenant ledgers, but not property ledgers. An auditor recently discovered this inaccuracy and the board is amending (9) to reflect the correct ledger requirements.

24.210.809 ~~PRELICENSURE~~ PRELICENSING PROPERTY MANAGEMENT COURSE AND INSTRUCTOR REQUIREMENTS (1) Request for prelicensing education course and instructor approval must be made on forms approved by the board and submitted 60 days prior to the initial course offering date.

(2) Expiration of course approval or instructor approval is three years from the date of approval, but may be revoked for cause.

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

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

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

(c) the distance education course is certified by the Association of Real Estate License Law Officials (ARELLO) and the course provider has provided

appropriate documentation that the ARELLO certification is in effect. Approval will cease immediately should the ARELLO certification be discontinued for any reason; and

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

(4) Instructors teaching more than 25 percent of a prelicensing course must be approved by the board as prelicensing instructors.

(5) The course provider is responsible for the actions and representations of all instructors who aid or assist in the instruction of the prelicensing education course.

(6) No more than eight hours of instruction may be offered per day. Examination time does not count as hours of instruction.

(7) Approved instructors must have:

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

(b) advanced training on instruction methods and adult learning; and

(c) one year of experience in property management education.

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

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

REASON: The board determined it is reasonable and necessary to amend this rule and set forth the requirements for board approval of property management prelicensing courses and instructors. The board has received applications and inquiries regarding approval of additional prelicensing courses, prelicensing distance education courses, and instructors. The board has no mechanism in rule for the board to evaluate instructors for minimal qualifications or to approve property management prelicensing distance education courses. The board is amending this rule to address the inquiries and specify the necessary minimum requirements.

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(m) remain the same.

(n) violating the residential tenants' security deposits laws of title 70, chapter 25, MCA;

(o) violating the landlord and tenant residential and commercial laws of title 70, chapter 26, MCA;

(p) violating the Montana Residential Mobile Home Lot Rental Act of title 70, chapter 33, MCA;

(q) violating the Residential Lead-Based Paint Disclosure Program of title X, section 1018 of the United States Code;

(n) through (x) remain the same but are renumbered (r) through (ab).

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-1-319, 37-51-202, 37-51-508, 37-51-512, 37-51-601, 37-51-607, MCA

REASON: The board is amending this rule to add to unprofessional conduct a property management licensee's violation of several federal and Montana laws. The board intends that violations of all Montana's landlord tenant laws be considered unprofessional conduct, but recently discovered that several of these laws are not included in (3)(k) of this rule as they do not appear in Title 70, chapter 24, MCA. The board is amending this rule to include the provisions as unprofessional conduct.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (4) remain the same.

(5) No licensee may repeat a course for credit in the same ~~calendar year~~ reporting period.

(6) through (12) remain the same.

(13) All continuing education courses must be taken and completed within the reporting period. No carryover hours will be accepted from one reporting period to another, except as provided in ARM 24.210.829.

(14) remains the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule to correct an inaccurate reference concerning property management education. Board licenses and education requirements were formerly set on a calendar year basis but were changed to an October 31 renewal and reporting date. The board found that this outdated reference to a calendar year period was inadvertently missed in prior rulemaking projects.

The board is also amending this rule to address potential confusion regarding allowable carryover education. Per ARM 24.210.829, newly licensed property managers must complete 12 hours of specific continuing education within two years of licensure. The board is amending this rule to clarify that while carryover hours are generally prohibited, property managers are subject to this special requirement.

24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION -- COURSE APPROVAL (1) through (5)(b) remain the same.

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

(d) remains the same.

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

REASON: The board is amending this rule to clarify that it is the individual property management education course that must be ARELLO certified and not the provider.

The amendments further clarify that the course provider must provide adequate documentation to the board of a course's current certification. The board notes that this is the current requirement, but is amending the rule to address requests for clarification of the process for property management education course approval.

24.210.843 CONTINUING PROPERTY MANAGEMENT EDUCATION -- INSTRUCTOR APPROVAL (1) remains the same.

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

(3) through (5) remain the same.

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

REASON: The board determined it is reasonably necessary to amend this rule to specify that the board may revoke an instructor's approval for cause. The board recently addressed a situation where an instructor did not teach per the approved course outline and provided inaccurate information, but did not necessarily demonstrate poor teaching skills. The board concluded that to better ensure that approved instructors are teaching appropriately, it is necessary to amend this rule to allow instructor approval revocation for reasons other than poor teaching skills.

24.210.1001 FEE SCHEDULE (1) and (2) remain the same.

(3) ~~For initial~~ Initial filing of an application for registration of the sale of a timeshare $500

(4) ~~For an amendment~~ Amendment of registration of the sale of a timeshare 200

~~(5) For the renewal of registration of the sale of a timeshare 200~~

~~(6) For each original timeshare broker license application 35~~

~~(7) For each timeshare broker license renewal 35~~

~~(8)~~ (5) ~~For each original~~ Original timeshare salesperson license application ~~15~~ 35

~~(9)~~ (6) ~~For each timeshare~~ Timeshare salesperson license renewal ~~15~~ 35

(7) Placing an active license on inactive status 10

(8) Activating a license on inactive status 45

~~(10)~~ (9) ~~For each timeshare~~ Timeshare correspondence course fees are payable to the course provider as approved by the board. ~~25~~

~~(11) For the original exam registration and any subsequent exam registration 35~~

AUTH: 37-1-131, 37-1-134, 37-53-104, MCA
IMP: 37-1-134, 37-1-141, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-301, MCA

REASON: The 2009 Montana Legislature enacted Chapter 317, Laws of 2009 (Senate Bill 269), an act revising the laws regulating the sale of timeshares. The bill was signed by the Governor on April 18, 2009, and became effective on October 1, 2009. The board is amending this rule and ARM 24.210.1007, 24.210.1020, and 24.210.1037 to align with the statutory changes and further implement the legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

Because Senate bill 269 eliminated the licensure of timeshare brokers, only timeshare salespeople will now be licensed. The board is increasing the licensure fees for timeshare salespersons from $15 to $35 to ensure the fees for the timeshare licensing and regulation remain commensurate with the costs.

The board is amending this rule to add fees for changing from active to inactive status licensure and back again. Following the passage of SB269, the board anticipates that timeshare salespersons will seek inactive status and is setting these new fees to adequately cover the expenses for staff to process the changes.

Following amendment of ARM 24.210.1016 in this notice, the board will no longer offer its own timeshare prelicensure correspondence course. The board is amending (9) to clarify that although the board will still approve timeshare correspondence courses, the courses will be offered through various providers who will set and collect their own course fees.

The board estimates that the cumulative fee changes will affect approximately 96 individuals and result in a reduction in annual revenue of $5,695.

24.210.1007 LICENSURE OF TIMESHARE SALESPERSONS (1) ~~Except as provided in ARM 24.210.1003 applications~~ Applications for licensure as a timeshare salesperson shall be made on a completed form provided by the board accompanied by satisfactory proof of successful completion of an approved course of education ~~and examination, a personal disclosure statement,~~ and payment of the required fee.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-53-301, MCA

REASON: The board is amending this rule to delete the reference to ARM 24.210.1003 which is proposed for repeal in this notice. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE (1) Each applicant for licensure ~~or certificate of completion~~ shall have successfully completed a course, or courses, of education related to the timeshare industry and approved by the board. ~~An approved course of education under 37-53-301, MCA, shall consist of eight classroom hours of instruction or the equivalent in subjects approved by the board.~~

~~(2) The board shall provide a correspondence course equivalent to eight classroom hours of instruction. The course is available from the board office upon application and payment of the required fee. Persons taking the course must file an~~

~~affidavit of completion included with the course packet prior to receiving a certificate of completion or taking the required examination for licensure.~~

~~(3)~~ (2) ~~Request for approval for a course of study, other than the board's correspondence course, shall be made in writing and must contain all relevant available information about the course content and the instructors or administrators of the courses, sufficient to enable the board to evaluate timeshare relatedness and to confirm attendance and successful completion.~~ No course will be approved for an applicant if attended more than two years prior to the application for ~~certificate of completion or~~ licensure.

AUTH: 37-1-131, 37-53-104, ~~37-53-301,~~ MCA
IMP: 37-1-131, 37-53-301, MCA

REASON: The board determined it is reasonably necessary to amend this rule to no longer provide its own prelicensure correspondence course for timeshare sales applicants. The board will continue to evaluate and approve prelicensure courses offered by other providers. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.210.1020 RENEWALS (1) Each licensee shall renew on or before the date as set by ARM 24.210.413.

~~(1)~~ (2) Renewal notices for all timeshare salespeople will be sent to the last known address in the division's records as specified in ARM 24.101.414.

~~(2)~~ (3) ~~All renewals shall include a typewritten, or printed, and sworn update to the personal disclosure statement.~~ Incomplete renewal forms ~~or renewals without the personal disclosure statement~~ will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal deadline or late renewal fees will be required.

~~(3)~~ (4) ~~The provisions of~~ Timeshare sales licenses will lapse, expire, or terminate according to ARM 24.101.408 ~~apply~~.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-1-141, MCA

REASON: The board is amending this rule to set forth the requirements and standardized processes for license renewal. Although these requirements are already set forth in department rule, the board concluded that also having them in board rules will alleviate confusion among licensees.

24.210.1025 TIMESHARE REGISTRATION APPLICATION REQUIREMENTS (1) remains the same.

(2) Application materials filed with the ARELLO Timeshare Registry (ATR) are preferred.

AUTH: 37-53-104, MCA
IMP: 37-53-104, 37-53-201, 37-53-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address the recently developed ARELLO Timeshare Registry (ATR). Board use of the ATR is beneficial because the materials are stored securely in an electronic format which saves storage space but allows the board access. Timeshare applicants will no longer need to maintain large files and copy these files every time another jurisdiction requires them. Following amendment, applicants will still be able to submit a paper registration should they choose to do so.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.210.1037 TIMESHARE AMENDMENT FOR MATERIAL ~~ADVERSE~~ CHANGE REGISTRATION REQUIREMENTS (1) Amendment to application for registration ~~or renewed registration~~ shall be made on a form provided by the board and accompanied by the required attached documents and payment of the required fee.

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

REASON: The board is deleting "adverse" from this rule's title for accuracy. The board notes that developers must file an amendment for all material changes in an application, whether the changes are adverse or not.

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

24.210.1003 TIMESHARE LICENSURE FOR LICENSED REAL ESTATE BROKERS AND SALESPERSONS found at ARM page 24-24171.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-53-301, MCA

REASON: The 2009 Montana Legislature enacted Chapter 317, Laws of 2009 (Senate Bill 269), an act revising the laws regulating the sale of timeshares. The bill was signed by the Governor on April 18, 2009, and became effective on October 1, 2009. The board is repealing ARM 24.210.1003, 24.210.1005, 24.210.1011, 24.210.1013, 24.210.1018, 24.210.1029, 24.210.1033, and 24.210.1035 to align with the statutory changes and further implement the legislation.

24.210.1005 LICENSURE OF TIMESHARE BROKERS found at ARM page 24-24172.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-53-102, 37-53-301, MCA

24.210.1011 REQUIREMENTS OF PERSONAL DISCLOSURE STATEMENT REQUIRED FOR LICENSURE found at ARM page 24-24173.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-53-104, 37-53-301, 37-53-302, MCA

24.210.1013 TIMESHARE LICENSURE FOR NONRESIDENTS found at ARM page 24-24174.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-1-131, 37-53-104, 37-53-301, MCA

24.210.1018 TIMESHARE EXAMINATION REQUIREMENTS FOR LICENSURE found at ARM page 24-24180.

AUTH: 37-1-131, 37-53-104, MCA
IMP: 37-53-301, MCA

24.210.1029 TIMESHARE REGISTRATION DISCLOSURE DOCUMENT REQUIREMENTS found at ARM page 24-24182.

AUTH: 37-53-104, 37-53-303, MCA
IMP: 37-53-303, MCA

24.210.1033 TIMESHARE RENEWAL REGISTRATION REQUIREMENTS found at ARM page 24-24185.

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

24.210.1035 TIMESHARE AMENDMENT FOR ADDITIONAL INTERVAL REGISTRATION REQUIREMENTS found at ARM page 24-24185.

AUTH: 37-53-104, MCA
IMP: 37-53-103, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., November 17, 2009.

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

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

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 Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrre@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 11, 2009, by telephone and e-mail.

10. Barb McAlmond, program manager, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
CINDY WILLIS, 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 5, 2009

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.23.101, 32.23.102, 32.23.201, 32.23.301, 32.24.301, 32.24.506, 32.24.511, 32.24.520, 32.24.523 pertaining to purchase and resale of milk	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 14, 2009, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock 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 Department of Livestock no later than 5:00 p.m. on November 6, 2009 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.23.101 DEFINITIONS (1) through (1)(c) remain the same.

(d) "Excess milk" means the amount of milk delivered to a plant by a producer in excess of his/her specified quota.

(e) through (g) remain the same.

(h) "Surplus" means ~~that amount of milk produced that exceeds the class I and II needs of the market.~~ all raw milk under contract to a pool handler that is over and above the pool handler's class I and II market needs, as defined in 81-23-101 (1)(g), but excludes cream and fat products which are derived from processing.

(i) remains the same.

(j) "Hauler" means an independent ~~businessman~~ business person who owns his/her own trucking equipment and who contracts directly with the producers for hauling their milk from farm to plant. A "distributor or plant hauler" means a processing plant which provides trucking equipment to haul producer milk from farm to plant.

(k) "Jobber" means any independent ~~businessman~~ business person other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any distributor other than acquiring the distributor's packaged product and distributing and selling the same, and whose business practices and policies are within his/her exclusive province to establish, and not subject to any influence or control from the distributor.

(l) through (o) remain the same.

AUTH: 81-23-103, 81-23-402, MCA
IMP: 81-23-103, 81-23-402, MCA

32.23.102 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE (1) through (3) remain the same.

(4) Each distributor must maintain a record of butterfat tests of each producer's milk ~~or cream~~ covering each pay period and provide each producer with each butterfat test result made for that producer as provided in (7) of this rule. Such record shall be kept on file for two years and be made available to any authorized agent of the ~~department~~ bureau upon request.

(5) On or before the ~~tenth~~ 26th day of each month, the bureau will publish a ~~post for public inspection in the main office of the department an original~~ notice of the class I, II, and III prices to be paid ~~producers~~ for grade A milk by distributors during the next calendar month. In addition thereto and on the same day, the bureau will cause a correct copy of the ~~posted~~ published notice to be mailed to each distributor, producer-distributor, and producer licensed under the Act. The notices must contain not only statements of the correct prices to be paid, but statements of the applicable Chicago area average prices relied upon, and the mathematical computations by which Montana prices were arrived at.

(6) remains the same.

(7) Distributors purchasing milk ~~or cream~~ from producers shall render to producers not later than the 15th day of each month, statements showing each of the following items for the prior calendar month:

(a) through (o) remain the same.

(8) On or before the eighth business day after the end of each month, in detail and on forms supplied by the ~~department~~ bureau, each distributor must submit to the ~~department~~ bureau a report of the information required by ARM ~~32.23.512~~ 32.24.512, and a report of:

(a) and (b) remain the same.

(9) On or before the 15th day of each month, each distributor must submit to the ~~department~~ bureau a duplicate or other correct copy of its producer payroll for the preceding month, indicating total producer deliveries and payment for the preceding month for each producer supplying the plant.

(10) Each distributor whose place of business is outside the state of Montana, but who comes under the jurisdiction of the Milk Control Act, and of this rule by virtue of his distributing milk within the state, either in bulk or packaged form, must file with the ~~department~~ bureau on forms supplied by the ~~department~~ bureau, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(a) Each import jobber who purchases milk from sources outside the state of Montana for resale in Montana must file with the ~~department~~ bureau, on forms supplied by the ~~department~~ bureau, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(b) Each producer-distributor shall file with the ~~department~~ bureau, on forms supplied by the ~~department~~ bureau, on or before the 15th day of each month, a

report of his class I sales and disposition of production in excess of class I sales during the preceding month.

(11) The ~~department~~ bureau shall cause periodic audits of the books and records of distributors to be made to verify the utilization of all milk reported pursuant to ARM 32.24.512, thereby establishing payment or nonpayment of producer prices fixed by rules of the board.

(a) remains the same.

(b) Upon completion of each audit, the distributor will be furnished with an audit summary and commentary with respect to audit results and with indicated producer adjustments, if any, for each month audited. All underpayment settlements must be paid to producers on or before the next regular pay date and proof of such settlement payments must be filed with the ~~department~~ bureau by the distributor forthwith.

(c) At any time a distributor is unwilling or unable to reconcile the audit results with rules of the board ~~and/or department~~ it may request a review of the audit by the bureau. The time limitation for final settlement payment to producers will be stayed until ten days after such review is completed and the distributor has received notice of the bureau's decision.

(d) Within ten days after the distributor receives notice of the bureau's decision it may file written application for appearance before the ~~department~~ board ~~at its offices in Helena, Montana~~ to review the decision of the bureau. The time limitation on final settlement payment to producers will be further stayed until the review by the ~~department~~ board is completed. After such a review, the ~~department~~ board will make official findings and conclusions and order, to be effective upon the issuance thereof.

(12) All milk and its component quantities of skim milk and butterfat sold by a producer or a producer marketing organization which is required to be reported pursuant to ARM 32.24.512 will be classified by the ~~department~~ board pursuant to 81-23-101, MCA, for the purpose of establishing compliance with minimum producer prices fixed by applicable rule of the board, to-wit:

(a) through (13) remain the same.

(14) Except for persistent repetition of the cases set forth in (13) of this rule, no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the ~~department~~ board in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(15) No producer may terminate his contract or selling agreement with any distributor except by giving at least 30 days' WRITTEN notice to the distributor and to the ~~department~~ board of his intention to terminate. However, nothing in this rule prevents a distributor and a producer from providing by WRITTEN contract or agreement for a ~~shorter or~~ longer period of notice. Termination does not preempt a distributor's obligation to pay ~~T~~the producer ~~must be paid~~ in full by the 15th day of the month following the month of such termination.

(16) remains the same.

AUTH: 81-23-104, MCA
IMP: 81-23-103, 81-23-402, MCA

32.23.201 REGULATION OF UNFAIR TRADE PRACTICES

(1) and (2) remain the same.

(3) It is the intention of the ~~department~~ board that if any provision of the rule, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(4) remains the same.

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

32.23.301 LICENSEE ASSESSMENTS (1) through (1)(e) remain the same.

(i) This fee, pursuant to 81-23-202(4)(a), MCA, must be paid quarterly before January 15, April 15, July 15, and October 15 for the prior quarter of each year.

AUTH: 81-23-104, 81-23-202, MCA
IMP: 81-23-103, 81-23-202, MCA

32.24.301 PRICING RULES (1) through (5)(a) remain the same.

(b) The Milk Control Bureau will use the federal order fat and skim prices to calculate the producer prices. Federal order fat and skim prices ~~shall be~~ are announced on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday. ~~Montana's producer prices will be announced on or about the 5th of the subsequent month (depending upon weekends and holidays) and will be effective for the next following month.~~ Montana will follow the same schedule.

(6) Prices paid producers for class II milk will be the last spray process nonfat dry milk solids price per pound quote ~~for the~~ prior to the 20th of the month, Central States area, as most recently reported by the United States Department of Agriculture, plus a factor of $.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote ~~for~~ prior to the 20th of the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of $.0895, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of 3.5% milk), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the differential to be employed in computing prices will be determined by multiplying the above-mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent ($0.005).

(7) Prices paid to producers for class III milk will be the last Chicago area grade AA butter price quote ~~for~~ prior to 20th of the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of $.0895, less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote ~~for~~ prior to the 20th of the month, the Central States area, as most recently reported by the

United States Department of Agriculture, plus a factor of $.0125 per pound for freight, multiplied by 8.2, less 17%.

(8) Producers who ship in excess of any beneficial use, and that milk is shipped to a different market and classified by statute and rule as class III, shall receive a price for that milk based on calculations in ARM ~~32.24.522~~ 32.24.513.

(9) and (10) remain the same.

(11) Monthly price announcements for class I, II, and III producer milk pricing will be computed by the ~~m~~Milk ~~c~~Control ~~b~~Bureau in accordance with this pricing rule ~~and published by the 10th of each month~~ on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday and published on or before the 26th on the month for the following month. The minimum producer price will be uniform and identical throughout the state of Montana.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

32.24.506 PRODUCER COMMITTEE (1) remains the same.

(2) The producer committee shall consist of one eligible producer for each 10% of the total August pool raw milk represented by each pool plant with a minimum of at least one committee representative per pool plant. Calculation is done by using the total ~~August pool~~ of each pool plant's milk receipts, divided by ~~each pool plant's receipts~~ the total August pool milk, rounded to the nearest 10%, and divided by ~~.1~~ .01.

(3) through (5) remain the same.

(6) The producer committee members will serve terms of two years each, ~~but not more than two consecutive terms~~ and have the option of serving additional two year terms. Vacancies on the committee will be filled in the same manner as the original appointment. ~~Successors will complete the term of the original committee member.~~ Each committee member will be selected by all eligible pool producer representatives of each pooled plant.

(7) remains the same.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

32.24.511 POOLING PLAN DEFINITIONS The following definitions apply in subchapter 5 unless the context otherwise requires:

(1) "Excess milk over quota" means milk received ~~for~~ from a producer that is over his established quota. This milk is priced as excess milk.

(2) through (13) remain the same.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

32.24.520 DEFINITIONS The following definitions apply to ARM 32.24.523, 32.24.524, and 32.24.525 unless the context otherwise requires:

(1) through (7) remain the same.

(8) "Surplus" ~~milk" is~~ means all raw milk under contract to a pool handler that is over and above the pool handler's class I and II market needs, as defined in 81-23-101(1)(g), MCA, but excludes cream and fat products which are derived from processing.

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

32.24.523 MARKETING OF SURPLUS MILK TO NONPOOL HANDLERS

(1) through (4)(a) remain the same.

(b) an administrative fee not exceeding ~~$.12~~ .02/CWT; and

(c) through (5) remain the same.

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

REASON: The changes proposed bring the rules in compliance with SB 286 passed by the last legislative session which clarifies the jurisdiction of the Milk Control Board and bring the computation of milk prices to the producer in line with the price announcements of federal orders. The department estimates the changes will affect approximately 80 persons and will result in no change in annual revenue.

4. Effective date shall be December 1, 2009.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m. November 13, 2009.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. November 13, 2009.

7. 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

8. An electronic copy of this proposal notice is available through the department's site at www.liv.mt.gov.

9. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. 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 area of interest that the person wishes to receive notices regarding. 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 Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State October 5, 2009.

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

In the matter of the amendment of ARM 37.81.104, 37.81.304, 37.81.310, and 37.81.318 pertaining to Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx Program)	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 5, 2009, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, 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 October 26, 2009, 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, Montana, 59604-4210; telephone (406) 444-4094; 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:

37.81.104 DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) through (14) remain the same.

(15) "Income" or "family income" means salary, wage, self-employment net earnings, ~~in-kind support,~~ royalties, honoraria, social security benefits, veterans benefits, railroad benefits, pensions, workers compensation, alimony, net rental income, trust income, dividends, and interest.

(16) and (17) remain the same.

~~(18) "In-kind income" means the value of food and shelter given to the person for which someone else pays.~~

(19) through (34) remain the same but are renumbered (18) through (33).

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~$33.19~~ $37.55 per month. The benefit amount will not exceed ~~$33.19~~ $37.55 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~$33.19~~ $37.55 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~$33.19~~ $37.55, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.310 INCOME AND FAMILY SIZE CRITERIA FOR BIG SKY RX

(1) through (3) remain the same.

~~(4) The applicants' declared value of in-kind support.~~

~~(5)~~ (4) Income tax refunds, assistance based on need funded by a state or local government, and small amounts of income received infrequently or irregularly are not counted. The income listed in (2)~~,~~ and (3)~~, and (4)~~ may also be decreased based on the adjustments stated in 20 CFR 416 to calculate income for purposes of Social Security Supplemental Income (SSI).

~~(6)~~ (5) The result of adding (2)~~,~~ and (3)~~, and (4)~~ and making any disregards of income provided for in ~~(5)~~ (4) equals countable income.

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

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.318 PROCESSING BIG SKY RX PARTICIPANT APPLICATIONS

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

(3) A completed application consists of:

(a) a signed Big Sky Rx application form with the following information:

(i) through (xi) remain the same.

~~(xii) in-kind support;~~

(xiii) through (xv) remain the same but are renumbered (xii) through (xiv).

(4) through (13) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.81.104, 37.81.304, 37.81.310, and 37.81.318 pertaining to the Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx

Program). The proposed rule changes are necessary to coincide with the changes in the federal program Social Security Extra Help and are being updated to match the federal monthly benefit benchmark.

The proposed amendment to ARM 37.81.104(15) shall be changed to remove the words "in-kind support", ARM 37.81.104(18) shall be removed, 37.81.310(4) shall be removed, and 37.81.318(3)(xii) shall be removed. The department proposes to remove in-kind support as counted income for the Big Sky Rx Program in order to coincide with the federal program Social Security Extra Help.

The proposed amendment to ARM 37.81.304(1)(a) and (c) shall be changed to increase the maximum monthly benefit from $33.19 to $37.55. This increase will match the new federal monthly benefit benchmark.

The proposed amendments will help the Big Sky Rx Program evaluate income level to determine if applicants should apply for the federal program Social Security Extra Help.

The maximum monthly benefit increase will help Big Sky Rx enrollees to pay their monthly Medicare Part D premiums which in turn allow them more money to pay their other monthly expenses.

Alternative considered

The department considered keeping in-kind support as counted income for the Big Sky Rx Program but concluded that it would be difficult to determine if the applicants should apply for Social Security Extra Help.

The department considered not increasing the maximum monthly benefit of the Big Sky Rx Program which would have meant an average out-of-pocket increase of $2.81 per month per enrollee.

Financial Impact

The financial impact for increasing the maximum monthly benefit for the Big Sky Rx Program is approximately $15,696 per month.

Number of persons effected

Currently Big Sky Rx has 328 applications that have listed in-kind as income. The increase in premiums will affect approximately 3,600 Big Sky Rx enrollees which will have premiums fall above the new benchmark.

5. The department intends the proposed rule changes to be applied effective January 1, 2010.

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, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 13, 2009.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this 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 contact requirements of 2-4-302, MCA, do not apply.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 5, 2009.

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

In the matter of the amendment of ARM 37.85.206 pertaining to basic Medicaid services for able-bodied adults	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 5, 2009, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 October 26, 2009 to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.206 SERVICES PROVIDED (1) through (1)(ah) remain the same.

(2) Individuals who will receive basic Medicaid benefits are: ~~recipients of assistance in the pathways, community services or job supplement components of the Families Achieving Independence in Montana (FAIM) project and who are 21 years of age or older and all recipients of AFDC-related medical assistance only who are participating in the FAIM project and are 21 years of age or older will receive basic Medicaid benefits, except that pregnant women will be entitled to all services specified in (1)(a) through (1)(ah) of this rule. Basic Medicaid benefits are the services specified in (1)(a) through (1)(ah) of this rule except the following:~~

~~(a) eyeglasses and routine eye exams, whether provided by an optometrist, ophthalmologist or other provider;~~

~~(b) audiology and hearing aids;~~

~~(c) personal care services in the recipient's home;~~

~~(d) dental services; and~~

~~(e) durable medical equipment and supplies.~~

(a) qualified for:

(i) family or family-transitional Medicaid services; or

(ii) MHSP waiver services.

(b) age 21 through 64;

(c) not pregnant; and

(d) not disabled (according to Social Security Administration (SSA) criteria).

(3) Basic Medicaid benefits are the services specified in (1)(a) through (1)(ah) of this rule except the following:

(a) eyeglasses and routine eye exams, whether provided by an optometrist, ophthalmologist or other provider;

(b) audiology and hearing aids;

(c) personal care services in the recipient's home;

(d) dental services; and

(e) durable medical equipment and supplies.

~~(3)~~ (4) With regard to persons identified in (2) who receive basic Medicaid benefits, the department will provide the noncovered services specified in ~~(2)(a) through (2)(e)~~ (3)(a) through (3)(e):

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

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.85.206 pertaining to basic Medicaid for able-bodied adults. The amendments are necessary to provide basic Medicaid services to one additional population, referred to as "MHSP waiver". "MHSP waiver" individuals are otherwise uninsured individuals qualified for the state-only Mental Health Services Plan (MHSP) program, who have schizophrenia or bipolar disorder, who are at least 18 years of age, and who are residents of Montana with incomes at or below 150% of the federal poverty level (FPL).

Montana has been operating a basic Medicaid waiver program since 1996. Recently, Montana has submitted and the Centers for Medicare and Medicaid Services (CMS) anticipates approval of a basic Medicaid extension amendment that would allow continued coverage for 7,704 able-bodied adults, with incomes at or below 33% of the FPL as described in the current basic Medicaid waiver, without change. This extension amendment requests authorization to provide basic Medicaid services to one additional population, referred to as "MHSP waiver". Montana can cover up to an additional 400 individuals in 2010 and up to 800 additional individuals in 2011 and beyond if Medicaid spending remains budget neutral.

ARM 37.85.206

The proposed amendments to this rule would change the description of individuals who receive basic Medicaid by deleting old, outdated language. Proposed new language intended to better describe the able-bodied adult population would also include the "MHSP waiver" population.

Individuals "currently receive basic Medicaid benefits" if they are: "eligible for family or family-transitional Medicaid; age 21 to 64; not pregnant; not disabled according to Social Security Administration (SSA) criteria". The proposed amendment would add "MHSP waiver" individuals to the rule. The following paragraphs and cross-references would be renumbered.

Currently, the Montana Health Services Plan (the plan) includes very limited mental health and mental health pharmacy benefits. Individuals currently receive no physical health benefits through the plan. After the anticipated CMS approval and waiver expansion, the "MHSP waiver" population, up to 800 individuals, would receive the same basic Medicaid benefits, would be subject to the same restrictions and would pay the same cost share as currently eligible able-bodied adults.

If the department determines under ARM 37.82.424 it is cost effective through the current Medicaid Health Plan Premium Payment (HPPP) program, all Medicaid individuals who have access to employer sponsored or other private insurance may have cost share, premiums, and coinsurance paid for by Medicaid and will receive wrap around services. The "MHSP waiver" population would also receive this benefit.

Persons and entities affected

If the proposed amendments are adopted, up to an additional 800 persons could be eligible for basic Medicaid health services in the state of Montana, as long as budget neutrality is maintained.

Fiscal and benefit effects

The department expects to use accumulated federal savings from the existing basic Medicaid waiver to provide federal funding for the addition of the "MHSP waiver" expanded population to the basic Medicaid waiver. State funding would come from the state only MHSP Program.

The accumulated federal savings under the basic Medicaid waiver from February 1, 2004 through January 31, 2009 is estimated at $35,074,915. Total state and federal costs for a three-year extension, February 2009 through January 2012, for continuing the able-bodied adults population and adding one new expansion population, 400 individuals, is estimated at $101,006,485. The budget shows 400 "MHSP waiver" individuals for only one month in waiver year six or 400 "MHSP waiver" individuals each month, each year for waiver years seven and eight. The estimated total three year extension federal cost is $75,783,286 and the estimated total three-year extension state cost is $25,223,199.

Overall, the department expects the proposed amendments to be budget neutral.

5. The department intends the proposed rule changes to be applied effective January 1, 2010.

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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 13, 2009.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this 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 contact requirements of 2-4-302, MCA, do not apply.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 5, 2009.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.2.101 pertaining to the Department of Administration's Procedural Rules	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 30, 2009, the Department of Administration published MAR Notice No. 2-2-416 regarding the proposed amendment of the above-stated rule at page 1180 of the 2009 Montana Administrative Register, Issue Number 14.

2. The department has amended ARM 2.2.101 as proposed.

3. No comments or testimony were received.

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

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

Certified to the Secretary of State October 5, 2009.

BEFORE THE TEACHERS' RETIREMENT SYSTEM
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the determination of incentives and bonuses as part of a series of annual payments and included in earned compensation	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 30, 2009, the Teachers' Retirement System of the State of Montana published MAR Notice No. 2-44-415 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1183 of the 2009 Administrative Register, Issue Number 14.

2. The board has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (2.44.530) DETERMINATION OF INCENTIVES AND BONUSES AS PART OF A SERIES OF ANNUAL PAYMENTS AND INCLUDED IN EARNED COMPENSATION (1) through 1(b)(iv) remain as proposed.

(v) the specific annual amount of the incentive or bonus payment or the specific percentage of annual ~~base contract~~ salary by which the incentive or bonus payment will be calculated;

(vi) and (vii) remain as proposed.

(c) the incentive or bonus payment amount in each year is the same or is subject to fluctuation only if the payment is determined as a percentage of annual ~~base contract~~ salary, in which case, the percentage increase in annual ~~base contract~~ salary is the same in each year for all employees of the certification class (teacher, administrator, or superintendent);

(d) through (e)(i) remain as proposed.

(ii) the amount of the incentive or bonus paid to each employee of a certification class must be the same, except that the incentive or bonus payment amount paid to each member of the certification class may be calculated as a percentage of each employee's annual ~~base contract~~ salary, in which case, the percentage of annual ~~base contract~~ salary to be calculated must be the same for all employees of the certification class.

(2) remains as proposed.

(3) An employer who wants incentive and bonus payments that are part of a series of annual payments included as part of the earned compensation of its employee(s) ~~must~~ should submit the published information described in (1)(b) to the Teachers' Retirement System for review prior to submitting contributions for those compensation amounts.

(4) As used in this rule, "annual salary" means the salary to be paid to a member of the Teachers' Retirement System in a particular year as set forth in the

employer's salary schedule or in a written employment agreement, without consideration for pay for additional duties, bonuses, incentives, fringe benefits, or other additions to remuneration.

~~(4)~~(5) Bonus and incentive payments that are part of a series of annual payments are subject to the 110% cap set forth in 19-20-715, MCA, and administrative rules clarifying 19-20-715, MCA.

AUTH: 19-20-201, MCA
IMP: 19-20-101, 19-20-102, MCA

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

COMMENT #1: Commenter stated that, to the extent bonuses or incentives paid as part of a series of annual payments are agreed to through collective bargaining, and are reflected in a collective bargaining agreement, those provisions will not have separate indications of the anticipated duration of the payment of the bonuses or incentives as required by (1)(b)(iv), and requested clarification in the rule that a separate indication of intended duration will not be necessary.

RESPONSE #1: The retirement system agrees that additional indication of the intended duration of the payment of bonuses or incentives as part of a series of annual payments is not necessary if the agreement to make such payments is reflected in a collective bargaining agreement, as the term of a collective bargaining agreement is sufficiently stated and the provisions of a collective bargaining agreement continue unless affirmatively removed or amended in subsequent negotiation and execution of the collective bargaining agreement. However, the retirement system does not believe any modification of the proposed rule is necessary because the requirement set forth in (1)(b)(iv) is substantively met by inclusion of an agreement to pay a bonus or incentive as part of a series of annual payments, which meets all other requirements of this rule, in a collective bargaining agreement.

COMMENT #2: Commenter stated that the use of the term "annual base salary" in the rule may be misleading because that term is generally understood to mean only the salary paid to a first-year teacher, rather than the annual salary intended to be paid to any given employee based on the negotiated salary schedule of a school district. Commenter indicated that the term "scheduled salary" is the term generally used to refer to the annual salary to be paid to any particular teacher under a collective bargaining agreement, and suggested that the rule should be modified to refer to "annual base salary or scheduled salary."

RESPONSE #2: The retirement system did not intend to refer to the salary to be paid to first-year teachers in a school district as a basis for calculation of bonuses or incentives for all certified employees of the school district, but rather intended to refer to the annual salary agreed to be paid to each employee under a collectively

bargained salary schedule or under an employment agreement for those employees not in a bargaining unit. However, the retirement system believed a better modification would be to use the general term "annual salary," and to define that term within the rule to encompass all categories of employees reportable to the retirement system and the manners in which their annual salaries may be documented.

COMMENT #3: Commenter stated the requirement in (3), that employers must submit the published information required under (1)(b) prior to submitting contributions on the reported amounts, may be unreasonable; inquired whether an employer's failure to do so would prevent consideration of a bonus or incentive paid as part of a series of annual payments as part of earned compensation; and suggested (3) should be removed.

RESPONSE #3: The retirement system agrees that the failure of an employer to submit the published information required under (1)(b) prior to submitting contributions to the retirement system should not bar a determination that a bonus or incentive payment was made as part of a series of annual payments, if such bonus or incentive payment otherwise meets the requirements of this rule. However, the retirement system disagrees that the provision should be deleted in its entirety as prior notice to the retirement system by an employer that it is paying bonuses or incentives it believes should be included as part of earned compensation allows the retirement system to review the bonus or incentive payments to determine whether they are appropriately included as earned compensation prior to crediting a member with earned compensation on the basis of payment of a bonus or incentive. A bonus or incentive improperly credited as earned compensation would have to be rescinded at a later time, potentially to the detriment of the member, including that the member may be required to repay overpaid benefits with interest. Therefore, the retirement system is maintaining the provision but has changed the language from "must submit the published information" to "should submit the published information."

COMMENT #4: Commenter requests that (5) be modified to clarify that the exception for increases that result from collective bargaining agreements in ARM 2.44.518 applies to this rule.

RESPONSE #4: The retirement system disagrees that it is necessary or appropriate to reference a specific current rule or any discrete portion of a current rule that clarifies the statutory provisions applicable to this rule, but agrees it is reasonable to reference all administrative rules that clarify the statute providing for the 110% cap to avoid creating the impression that the 110% cap applies to bonus or incentive payments made as part of a series of annual payments exclusive of any exceptions or limitations to the application of that statute as otherwise provided by administrative rule.

By /s/ Denise Pizinni
Denise Pizzini
Rule Reviewer

By /s/ David L. Senn
David L. Senn
Executive Director
Teachers' Retirement System of the
State of Montana

Certified to the Secretary of State October 5, 2009.

BEFORE THE BOARD OF COUNTY PRINTING
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.67.201 and 2.67.303 and repeal of ARM 2.67.301 and 2.67.302 pertaining to the Board of County Printing	))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 30, 2009, the Board of County Printing published MAR Notice No. 2-67-413 regarding the proposed amendment and repeal of the above-stated rules at page 1187 of the 2009 Montana Administrative Register, Issue Number 14.

2. The board has amended ARM 2.67.201 and 2.67.303 as proposed and repealed ARM 2.67.301 and 2.67.302 as proposed.

3. No comments or testimony were received.

By: /s/ Milton Wester
Milton Wester, Chair
Board of County Printing

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

Certified to the Secretary of State October 5, 2009.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.3402 pertaining to raising the seed laboratory analysis fees	)))	NOTICE OF DECISION ON PROPOSED RULE ACTION

TO: All Concerned Persons

1. On August 13, 2009 the Montana Department of Agriculture published MAR Notice No. 4-14-185 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1319 of the 2009 Montana Administrative Register, Issue Number 15.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on September 3, 2009.

3. After considering all factors, the department believes that proceeding with the rule amendment at this time would not solve the financial problems at the seed lab. The seed laboratory needs more than just a fee increase to comply with its statutory duties and the needs of Montana Agriculture. A fee increase at this time would at best slow down the decline of revenue at the lab, but could also decrease revenue as additional clients seek different service providers. A long term solution that addresses causes of the decreased revenues, lack of efficiency, and loss of clients needs to be proposed before a fee increase is implemented. If the department decides to go forward with the rule amendment at a later date, it will start the rules process over.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Montana Department of Agriculture

Certified to the Secretary of State October 5, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102, 17.8.302, 17.8.767, 17.8.802, 17.8.822, 17.8.902, and 17.8.1002 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 June 25, 2009, the Board of Environmental Review published MAR Notice No. 17-285 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 954, 2009 Montana Administrative Register, issue number 12.

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

3. No public 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 5, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.501, 17.8.504, 17.8.505, and 17.8.514 pertaining to definitions, permit application fees, operation fees, and open burning fees	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On June 25, 2009, the Board of Environmental Review published MAR Notice No. 17-286 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 958, 2009 Montana Administrative Register, issue number 12.

2. The board has amended ARM 17.8.501, 17.8.504, and 17.8.514 exactly as proposed, and has amended ARM 17.8.505 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (6) remain as proposed.

(7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of $800, plus $ [~~an amount within the range of $36 to $41, to be determined by the board based on the hearing record~~] 38.24 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(8) through (13) remain as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff By: */s/ Joseph W. Russell*
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, October 5, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36 104, 17.36.323, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, 17.38.101, 17.55.102, and the adoption of New Rules I and II pertaining to Department Circular DEQ-4 and gray water reuse	NOTICE OF AMENDMENT AND ADOPTION (WATER QUALITY) (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT) (PUBLIC WATER AND SEWAGE SYSTEMS REQUIREMENTS) (CECRA REMEDIATION)

TO: All Concerned Persons

1. On June 25, 2009, the Board of Environmental Review published MAR Notice No. 17-288 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 968, 2009 Montana Administrative Register, issue number 12.

2. The board has amended ARM 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, and 17.55.102 exactly as proposed. The board has amended ARM 17.36.104, 17.36.323, and 17.38.101 and adopted New Rules I (17.36.319) and II (17.36.919) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT (1) remains as proposed.

(2) The following information must be provided on the lot layout document. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout document only if the document remains legible:

(a) through (i) remain as proposed.

(j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed."

TABLE 1
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Existing and				

proposed wells and 100-ft setback	X	X	X	X
Water lines (suction and pressure)			X	X
Water lines (extension and connections)		X	X	
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		
Existing and proposed gray water irrigation systems	X	X	X	X
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)~~, gray water irrigation systems~~	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form		X		
Floodplain boundaries	X	X	X	X
Cisterns		X		
Existing building locations		X		
Driveways		X		

Road cuts and escarpments or slopes > 25%		X		
Mixing zone boundaries and direction of ground water flow	X	X		

17.36.323 SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS

(1) Minimum horizontal setback distances (in feet) shown in Table 3 of this rule must be maintained. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

(2) through (4) and Table 3 remain as proposed.

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

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

(a) and (b) remain as proposed.

(c) "Gray water" is defined in 75-5-325, MCA.

(c) through (k)(ii) remain as proposed, but are renumbered (d) through (l)(ii).

(4) through (17) remain as proposed.

NEW RULE I (17.36.319) GRAY WATER REUSE (1) through (3) remain as proposed.

(4) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) through (d) remain as proposed.

(e) unless a waiver is granted by the department, the following horizontal setback distances must be maintained. Gray water irrigation may not occur within:

(i) 100 feet of ~~drinking water~~ wells;

~~(ii) 50 feet of non drinking water wells;~~

(iii) through (v) remain as proposed, but are renumbered (ii) through (iv).

(f) through (7) remain as proposed.

(8) If an existing gray water irrigation system is present in a proposed subdivision, the department shall review the adequacy of the system for the proposed use and the capability of the system to operate without risk to public health and without pollution of state waters. Existing systems must comply with state and local laws and regulations, including permit requirements, applicable at the time of installation.

NEW RULE II (17.36.919) GRAY WATER REUSE (1) and (2) remain as proposed.

(3) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) through (d) remain as proposed.
(e) gray water irrigation may not occur within:
(i) 100 feet of ~~drinking water~~ wells;
~~(ii) 50 feet of non drinking water wells;~~
(iii) through (v) remain as proposed, but are renumbered (ii) through (iv).
(f) through (6) remain as proposed.

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

ARM 17.36.104

COMMENT NO. 1: The proposed addition of gray water systems to the lot layout Table in ARM 17.36.104 should include both existing and proposed systems.

RESPONSE: This change has been made. An additional sentence has also been added to New Rule I to clarify that existing gray water systems in subdivisions must be shown as properly functioning and in compliance with regulations applicable at the time of installation.

ARM 17.36.323

COMMENT NO. 2: The amendments to ARM 17.36.323 could imply that no setbacks apply to gray water irrigation systems.

RESPONSE: The proposed amendment to ARM 17.36.323 has been changed to clarify that New Rule I does contain setbacks for gray water irrigation systems.

ARM 17.38.101

COMMENT NO. 3: The public water and sewer rules should include a definition of "gray water."

RESPONSE: A definition has been included in the proposed amendments to ARM 17.38.101.

NEW RULES I AND II

COMMENT NO. 4: The rules are inconsistent about kitchen waste. New Rule I prohibits use of gray water from kitchens for irrigation except where waste segregation systems are used. Kitchen gray water irrigation should be either considered safe in all situations or considered unsafe and prohibited for all uses.

RESPONSE: Kitchen gray water can contain a higher percentage of biological oxygen demand (BOD) than nonkitchen gray water, and it can contain pathogens not found in other gray water waste streams. The threat of pathogen infection from gray water irrigation is mitigated by the subsurface disposal requirements in the new rules and Circular, but further restrictions are warranted to minimize exposure to the pathogens in kitchen gray water. Consequently, the rules and Circular prohibit use of kitchen gray water for irrigation except where there is no

alternative, as is the case where waste segregation systems (composting or incinerating toilets) are used.

COMMENT NO. 5: In New Rules I and II, the requirement that there be a 50-foot separation between nondrinking water wells and gray water systems is not consistent with the setback in the subdivision rules and the state minimum standards for county septic rules. The other rules require 100 feet between drainfields and all wells, whether for drinking water or not. Any well is a conduit to the aquifer, and we should not provide less protection for irrigation wells.

RESPONSE: New Rules I and II have been changed to be consistent with the drainfield-well setbacks in ARM 17.36.323 and ARM 17.36.918.

COMMENT NO. 6: A commentor raised a question about how the new rules and Circular would apply to a homeowner with a parcel entirely within the floodplain who intended to fill the floodplain and irrigate in the fill area with gray water.

RESPONSE: The same floodplain restrictions applicable to all DEQ-4 systems apply to gray water irrigation. See New Rule I(4)(c) and New Rule II(3)(c). Use of fill for new gray water irrigation systems is not prohibited, however, in order to allow irrigation in raised beds. The rules do require that there be a minimum of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.101. See New Rule I(4)(d) and New Rule II(3)(d).

DEPARTMENT CIRCULAR DEQ-4

COMMENT NO. 7: Who enforces the gray water rules?

RESPONSE: Under the Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA, DEQ reviews proposed water supply, wastewater disposal, solid waste, and storm water facilities in proposed subdivisions. Since gray water is wastewater, DEQ will review proposed gray water irrigation systems in subdivisions under the Sanitation Act. DEQ has authority to bring enforcement actions for violations of the conditions of a Sanitation Act approval. The gray water rules and Circular will also be administered by local health departments under their authority to issue permits for wastewater systems. The local health departments can bring enforcement actions for violations of the local permit requirements.

COMMENT NO. 8: Filters should be required on all gray water systems.

RESPONSE: The proposed gray water irrigation chapter in Department Circular DEQ-4 recommends, but does not require, that gray water systems include a filter to prevent the buildup of solids and to insure proper system functioning. Section 3.5. If no filter is included in the design, the Circular requires that three valved irrigation zones be used to rotate the distribution of gray water between zones. The alternating irrigation zone design is based on the Uniform Plumbing Code, and the advantage is that no filtration is required. In order to allow for a variety of design options, filters will not be made mandatory for all systems.

COMMENT NO. 9: In the proposed new chapter for Department Circular DEQ-4, the introductory system description paragraph does not mention gray water

from kitchen sinks, but Section 1.5 allows irrigation using kitchen gray water when waste segregation systems are used.

RESPONSE: The system description paragraph has been modified to include a reference to kitchen gray water for waste segregation systems.

COMMENT NO. 10: In the proposed new chapter for Department Circular DEQ-4, the introductory paragraph says that gray water must meet all applicable provisions in the Circular, but Section 1.2 says that gray water irrigation that meets the requirements of this chapter are not subject to the other chapters in the Circular. This appears to be contradictory.

RESPONSE: Because gray water is wastewater, gray water disposal in general is subject to all the requirements in the Circular applicable to wastewater. However, if gray water is used for irrigation and the irrigation meets the requirements in the new Circular chapter, the irrigation is not subject to the requirements in the other chapters in the Circular, except where they are specifically referenced.

COMMENT NO. 11: A definition of "Gray water irrigation system" should be included.

RESPONSE: A definition of "gray water" exists in statute at 75-5-325, MCA, and a definition of "irrigation system" is in the proposed new Circular chapter. The requested definition would not add to these existing definitions except to specify that irrigation must be subsurface. The requirement that irrigation be subsurface is already included in the new rules and Circular.

COMMENT NO. 12: The definition of "gray water" should be changed to include laundry wastewater and exclude industrial wastewater.

RESPONSE: The definition of "gray water" is the definition set by statute at 75-5-325(1), MCA. The rules can not alter the statutory definition.

COMMENT NO. 13: The rules should specify how deep the subsurface irrigation lines must be buried.

RESPONSE: The proposed new chapter in Department Circular DEQ-4 has been modified in response to this comment to require a burial depth of at least six inches below ground surface.

COMMENT NO. 14: The rules should prohibit more than one gray water irrigation system on a lot.

RESPONSE: This restriction is not necessary. If multiple systems are proposed, each system must meet all the requirements in the rules and Circular. These requirements are protective of public health and the environment.

COMMENT NO. 15: Backflow prevention should be required to prevent black water from going into the gray water irrigation system.

RESPONSE: A change has been made to Section 2.6 of the new chapter of the Circular to require backflow prevention.

COMMENT NO. 16: A minimum horizontal setback from steep slopes and roadcuts should be required to prevent seepage of gray water to the surface.

RESPONSE: In order to allow use of gray water irrigation in raised beds, the Circular does not contain a slope setback. In reviewing designs of gray water systems the reviewing authority will apply Section 1.8 of the new chapter of the Circular, which prohibits ponding or surfacing of gray water.

COMMENT NO. 17: For gray water systems approved to accept kitchen gray water, a settling tank should be required to prevent clogging of the filter.

RESPONSE: To allow flexibility in design, the Circular does not require a settling tank. A provision will be added to Section 4.1 to advise owners about the possibility of increased maintenance for systems using kitchen gray water.

COMMENT NO. 18: The rules should allow for use of irrigation with sewage effluent that has been treated with a sand filter followed by a bark filter, or an infiltrator filled with pea gravel and planted with appropriate plants.

RESPONSE: The use of treated sewage effluent, which includes toilet waste, for irrigation is outside the scope of this rulemaking.

COMMENT NO. 19: The managing entity of a public sewer system should be contacted before system users divert their gray water streams to irrigation.

RESPONSE: Section 1.11 of the new chapter in Department Circular DEQ-4 requires that the managing entity of the public wastewater system give written approval for a system user's proposed use of gray water for irrigation.

COMMENT NO. 20: Why does the proposed Circular require that gray water surge tanks be covered?

RESPONSE: Section 3.4.3 requires that surge tanks in gray water irrigation systems be covered. This requirement protects the owner and others from exposure to gray water and helps ensure that no other items or liquids are added to the system.

COMMENT NO. 21: Section 3.4.4 of the new chapter in Department Circular DEQ-4 states that the minimum capacity of surge tanks must be 50 gallons. The commentor believes this is too small.

RESPONSE: This is the minimum size specified for gray water surge tanks in the Uniform Plumbing Code. A smaller tank is preferable to avoid long storage times, as unpleasant odors may develop.

COMMENT NO. 22: Section 3.4.6 of the new chapter in Department Circular DEQ-4 requires overflows from surge tanks to be connected to the "building drain, building sewer, or septic tank, if any." Building drains should not be connected to any wastewater treatment system.

RESPONSE: The commentor may be referring to floor drains. The intent of this section is to require that the gray water surge tank overflow be connected to the sewer that serves the building. The term "building drain" has been removed to eliminate any confusion with floor drains that may not be connected to sewer.

COMMENT NO. 23: A new paragraph should be added to the Circular to require that counties attach any new gray water system design to the original septic permit.

RESPONSE: The counties already have systems in place to track multiple systems on single lots, and gray water systems would be handled the same way.

COMMENT NO. 24: Are gray water irrigation systems subject to United States Environmental Protection Agency (EPA) permit requirements for Class V injection wells?

RESPONSE: Gray water irrigation systems may require a permit from EPA in some situations. The forward in Department Circular DEQ-4 states: "Users of these standards need to be aware that subsurface wastewater treatment systems are considered by the Environmental Protection Agency to be Class V injection wells and may require associated permits." Users are encouraged to contact EPA for further information.

COMMENT NO. 25: Has consideration been given to the fact that the gray water is alkaline and may interact with certain soils?

RESPONSE: Continued irrigation with gray water may cause a buildup of salts in certain soils. The extent to which this occurs depends not only on soils but on the types of soaps used, whether water softeners are included, and background water quality. The variety of factors that contribute to this condition make it difficult to regulate. In an effort to inform homeowners about this and other aspects of gray water irrigation, a fact sheet is being developed. The fact sheet will include a reminder that high salinity water can cause degradation of clay soils and may be harmful to some plants.

COMMENT NO. 26: Has consideration been given to the fact that gray water reuse through irrigation may limit the ability of a subdivision developer to obtain water right mitigation credits?

RESPONSE: If a subdivision developer has a ground water appropriation in a closed surface water basin, the developer may be required to mitigate any impacts the proposed well has on surface water. In some cases, wastewater return flows can be given credit as surface water mitigation. Gray water used for irrigation is consumed by the plants and would probably not receive mitigation credit. The determination of allowable mitigation credits is a matter for the Department of Natural Resources and Conservation.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden By: */s/ Joseph W. Russell*

JAMES M. MADDEN
Rule Reviewer

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

Certified to the Secretary of State, October 5, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.101, 17.38.208, 17.38.225, 17.38.229, 17.38.231, and 17.38.513 pertaining to plans for public water or wastewater systems, treatment requirements, control tests, microbial treatment, sanitary surveys, and chemical treatment of water; the adoption of New Rules I through IV pertaining to ground water, initial distribution system evaluations, stage 2 disinfection byproducts requirements, and enhanced treatment for cryptosporidium; and the repeal of ARM 17.38.701 through 17.38.703 pertaining to licenses--private water supplies, disposal of excrement, and barnyards and stockpens	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On August 13, 2009, the Board of Environmental Review published MAR Notice No. 17-291 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 1353, 2009 Montana Administrative Register, issue number 15.

2. The board has amended ARM 17.38.101, 17.38.208, 17.38.231, and 17.38.513; adopted New Rules I (17.38.211), II (17.38.212), III (17.38.213), and IV (17.38.214); and repealed ARM 17.38.701 through 17.38.703 exactly as proposed and has amended ARM 17.38.225 and 17.38.229 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.38.225 CONTROL TESTS (1) remains as proposed.

(2) ~~Chlorine~~ Disinfectant residual tests must be conducted daily by:

(a) surface water systems and consecutive systems to a surface water system in accordance with the requirements in 40 CFR 141.72 and with the other requirements in this subchapter for ~~chlorine~~ disinfectant residual monitoring for surface water supplies. At least two disinfectant residual tests must be conducted daily, one at each entry point to the distribution system and one in the distribution system;

(b) ground water systems in accordance with 40 CFR Part 141, subpart S. Disinfectant residual tests must be conducted daily at each entry point to the distribution system to prove compliance with the 4-log virus inactivation or removal requirement; and

(c) ground water systems required by the department under ARM 17.38.229 to maintain a residual, ~~in its distribution system~~ and by consecutive systems connected to those systems, at each entry point to the distribution system and, if required to maintain a residual in the distribution system, one in the distribution system. For consecutive systems, the entry point is the point at which the purchased water enters the distribution system of the consecutive system. The department may waive, on a case-by-case basis, the requirement for:

(i) through (7) remain as proposed.

17.38.229 ~~DISINFECTION~~ MICROBIAL TREATMENT (1) through (3) remain as proposed.

(4) When the department determines a residual is required in ~~the distribution system of~~ a ground water system, the residual disinfectant concentration measured as free chlorine, total chlorine, combined chlorine, chlorine dioxide, or other department approved disinfectant(s) must not be less than 0.2mg/l using the DPD method or 0.1mg/l using the amperometric titration method. A heterotrophic bacteria concentration in water in the distribution system less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this rule.

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

COMMENT NO. 1: New ARM 17.38.101(10) allows regional water systems to submit, for DEQ approval, standard construction contract documents that are intended for use in a series of construction contracts during the construction period of the project. The rule provides that DEQ approval remains in effect for the construction period of the project. The rule should be modified to provide that DEQ approvals of deviation requests also be in effect for the life of the project. The rule currently provides that deviation approvals are not subject to changes in DEQ design or construction criteria for a period of 72 months. A project-life period for deviation approvals would provide for cost savings for regional water supply system projects, and would provide for time and resource savings and efficiencies to both the system and DEQ.

RESPONSE: Proposed new ARM 17.38.101(10) incorporates new statutory requirements for the review of regional water systems. Section 1, Chapter 449, Laws of 2009. The statute specifically provides that "issuance of deviations from design and construction standards" may not be subject to change for 72 months. The statute provides a project-life approval for "standard construction contract documents and provisions for amendments to those documents." Given the clear directive in the statute that deviations are valid for 72 months rather than for the life of the project, the requested change can not be made.

COMMENT NO. 2: A regional water supply system requested clarification of whether the system should be classified as a consecutive system and clarification of the sampling requirements applicable to the system before classification.

RESPONSE: The comment does not request a change in the rules but an analysis of the requirements as they apply to this system. This request goes beyond the scope of this rulemaking. DEQ will continue to work with the system and the United States Environmental Protection Agency to determine the specific requirements applicable to this system.

COMMENT NO. 3: The amendments to ARM 17.38.208 remove the definition of "not detected" as a residual that is less than 0.2mg/l of chlorine. This appears to be in conflict with ARM 17.38.234(6)(d)(ii) because that section continues to define "not detected" as a residual that is less than 0.2mg/l of chlorine. ARM 17.38.234(6)(d)(ii) should be amended to conform to the amendments to ARM 17.38.208.

RESPONSE: Because no amendments were proposed to ARM 17.38.234 in this rulemaking, the requested modification can not be implemented at this time. In any event, retaining the definition of "not detected" in ARM 17.38.234(6)(d)(ii) does not create a conflict or lead to an increased burden on regulated systems. ARM 17.38.234(6)(d)(ii) defines "not detected" for purposes of implementing 40 CFR 141.75, which sets forth reporting requirements for certain systems. Leaving the definition in ARM 17.38.234(6)(d)(ii) will require these systems to continue reporting to DEQ the number of days in which their sampling shows the system residual as less than 0.20 mg/l or 0.10 mg/l, depending on the test method, even though residuals under those levels would not necessarily constitute a "non-detect" that would be a violation of the disinfectant residual requirement under ARM 17.38.208.

COMMENT NO. 4: In ARM 17.38.225, the phrase "chlorine residual tests" should be replaced with the phrase "disinfectant residual tests," in order to accommodate cases where chlorine is not the disinfectant.

RESPONSE: The board agrees with the suggestion and has amended ARM 17.38.225 as shown above.

COMMENT NO. 5: The proposed amendments to ARM 17.38.225 appear to remove the requirement for water systems to conduct at least two chlorine residuals per day, one from each entry point to the distribution system and one from the distribution system.

RESPONSE: The proposed amendments were not intended to remove the requirements for systems to conduct daily residual tests from each entry point and, if required to maintain a residual in the distribution system, from the distribution system. The amendments to ARM 17.38.225 have been modified to clarify that water systems must continue to conduct the appropriate disinfectant residual tests daily.

COMMENT NO. 6: The proposed amendments to ARM 17.38.225 and ARM 17.38.229 raise the question whether all ground water systems are required to report disinfectant residuals in accordance with the levels prescribed in new ARM 17.38.229(4).

RESPONSE: The proposed amendments were intended to remove the numeric minimum disinfectant level, prescribed in new ARM 17.38.229(4), from

surface water systems and from ground water systems that are subject to the federal ground water rule. This is necessary to conform to current federal requirements. However, the department may require a ground water system to disinfect for other reasons, pursuant to the authority in ARM 17.38.229. In order to assure adequate treatment, those systems must demonstrate disinfectant residuals that meet the numeric levels in new ARM 17.38.229(4). New (4) has been amended slightly to clarify that the numeric residual disinfectant levels apply to both entry point and distribution system sampling. The word "disinfection" in the title of ARM 17.38.229 should have been stricken in the proposed notice to be consistent with the other proposed amendments.

COMMENT NO. 7: The rules should be amended to indicate that E. coli is the department's fecal indicator for systems with a population of 25 - 1,000 persons.

RESPONSE: Under the ground water rule, which is proposed for adoption by reference through New Rule I, there are three fecal indicators that a primacy agency may use to determine compliance. If the primacy agency allows the use of E. coli as the fecal indicator, systems with a population of 25 - 1,000 may use the fourth repeat sample, from the total coliform rule, as its raw source water sample under the ground water rule. The standard operating procedure for the department will be to use E. coli as its fecal indicator; however, because the ground water rule lists two additional fecal indicators that the primacy agency may use, the requested amendment to the rules is not appropriate.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

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

Certified to the Secretary of State, October 5, 2009.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 20.7.507 pertaining to siting, establishment, and expansion of prerelease centers	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 13, 2009 the Department of Corrections published MAR Notice No. 20-7-42 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1363 of the 2009 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/ Valerie Wilson	/s/ Mike Ferriter
Valerie Wilson	Mike Ferriter
Rule Reviewer	Director
	Department of Corrections

Certified to the Secretary of State September 18, 2009.

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.181.402 licensing fee schedule	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 26, 2009, the Board of Private Alternative Adolescent Residential or Outdoor Programs (board) published MAR Notice No. 24-181-4 regarding the amendment of the above-stated rule, at page 339 of the 2009 Montana Administrative Register, issue no. 6. On May 28, 2009, the board published the notice of amendment of MAR Notice No. 24-181-4 at page 870 of the 2009 Montana Administrative Register, issue no. 10.

2. In preparing replacement pages for the third quarter of 2009, a numbering error was discovered in MAR Notice No. 24-181-4. The rule, as amended, reads as follows, deleted matter interlined, new matter underlined:

24.181.402 LICENSING FEE SCHEDULE (1) through ~~(4)~~ (3) remain as proposed.

~~(5)~~ (4) Additional standardized fees are specified in ARM 24.101.403.

3. The corrected replacement page was submitted to the Secretary of State's office on September 30, 2009.

BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS
JOHN SANTA, 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 5, 2009

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

In the matter of the amendment of ARM 24.207.401 fees and 24.207.402 USPAP	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 30, 2009, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-30 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1223 of the 2009 Montana Administrative Register, issue no. 14.

2. On August 20, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.207.401 and 24.207.402 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, CHAIRPERSON

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

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

Certified to the Secretary of State October 5, 2009

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

In the matter of the adoption of New Rules I through XXVII pertaining to behavioral health inpatient facilities (BHIF)	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On May 28, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-473 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 844 of the 2009 Montana Administrative Register, Issue Number 10.

2. The department has adopted New Rule III (37.106.1703), IV (37.106.1704), V (37.106.1705), VI (37.106.1708), VII (37.106.1709), VIII (37.106.1710), IX (37.106.1711), X (37.106.1717), XII (37.106.1718), XIII (37.106.1713), XIV (37.106.1719), XV (37.106.1720), XVI (37.106.1724), XVII (37.106.1730), XIX (37.106.1725), XX (37.106.1726), XXI (37.106.1735), XXII (37.106.1736), XXIII (37.106.1737), XXIV (37.106.1738), XXV (37.106.1739), XXVI (37.106.1740), and XXVII (37.106.1727) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (37.106.1701) SCOPE (1) A behavioral health inpatient facility (BHIF) is intended to provide secured inpatient psychiatric treatment for up to 16 persons, 18 years of age or older, involuntarily committed or detained, or to persons seeking treatment voluntarily. ~~A BHIF is not subject to hospital EMTALA regulations.~~ While a BHIF is defined at 53-21-102, MCA, as a mental health facility, a BHIF shall be subject to all health care facility/service standards found at Title 50, chapter 5, parts 1 and 2, MCA, in order to be licensed.

AUTH: 50-5-103, 53-21-194, MCA
IMP: 50-5-103, 53-21-101, 53-21-194, MCA

RULE II (37.106.1702) PURPOSE (1) The purpose of these rules is to establish minimum state health care facility/service licensing standards for secured nonhospital based~~, acute~~ inpatient psychiatric treatment for persons~~,~~ who may also have co-occurring substance use disorders; who are involuntarily committed or detained; or to persons seeking behavioral health treatment voluntarily. While a BHIF is not a hospital, it may be collocated with a hospital.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE XI (37.106.1712) DIRECT CARE AND OTHER EMPLOYEES

(1) through (5) remain as proposed.

(6) Ancillary services such as laboratory or radiological services must be available to BHIF patients. A BHIF may either provide ancillary services directly or contract with a facility licensed to provide such services. If the ancillary services are not provided in the BHIF, the BHIF must make arrangements with the ancillary service provider for each individual patient prior to the patient's ancillary services.

AUTH: 53-21-194, MCA
IMP: 53-21-161, 53-21-194, MCA

RULE XVIII (37.106.1731) TRANSFER/DISCHARGE TO ANOTHER FACILITY (1) A patient may be discharged and transferred to another facility pursuant to 53-21-111, MCA, at any time. ~~The facility will contact the receiving facility to determine if a bed is available and to provide information about the individual being transferred.~~ Transfer protocols include but are not limited to:

(a) transferring facility will contact the receiving facility to determine if a bed is available;

(b) transferring facility will contact the receiving facility to determine if appropriate staff are or will be available to treat incoming individual;

(c) transport will be provided through appropriate medical means; and

(d) an individual's available medical documentation will accompany the individual to the receiving facility.

(2) through (5) remain as proposed.

AUTH: 53-21-194, MCA
IMP: 53-21-111, 53-21-128, 53-21-129, 53-21-194, MCA

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

COMMENT #1: It was asked that the department amend the scope of Rule I (37.106.1701) to better specify how the facility standards comport to the typical treatment needs of persons involuntarily committed or detained and address concerns about acute care being delivered by a facility that does not meet hospital standards.

RESPONSE #1: Facility standards should not differentiate between persons involuntarily committed or detained and those seeking treatment voluntarily. The department is licensing the facility and has no jurisdiction on the treatment plan of the individual patients. Treatment plan variation may include dealing with issues associated with involuntary commitments if appropriate.

A behavioral health inpatient facility (BHIF) offers acute psychiatric services while a

hospital offers acute medical services, and may offer acute psychiatric services, therefore hospital standards necessary to provide acute medical care are not required in order to provide acute psychiatric care. (Also see response #6 below.)

COMMENT #2: Several commentors suggested in Rule I (37.106.1701) that the reference to EMTALA be removed. This is unnecessary language because EMTALA only applies to hospitals. If a nonhospital BHIF is a department of, or located at, a hospital or if a hospital has a license as a BHIF, EMTALA would apply.

RESPONSE #2: The department agrees with the commentors concerns regarding the reference to the EMTALA regulations and will remove the statement in Rule I(1) (37.106.1701). BHIFs do not require EMTALA compliance, but if a BHIF resides in a hospital as a distinct part, EMTALA would apply due to the nature of hospital regulations.

COMMENT #3: A commentor requested that in Rule I (37.106.1701) a statement on the application of EMTALA regulations as to when a hospital can appropriately transfer a patient to a BHIF. Also, concern was expressed that a BHIF not expect a local hospital to provide stabilization or medical screening exams prior to a person being admitted to a BHIF. The commentor states that "hospitals should not be expected to stabilize a patient or provide physical medical care, or assure detoxification prior to admission to the BHIF. The regulations appear to require this level of care from the BHIF".

RESPONSE #3: The department is seeking clarification in Rule I (37.106.1701) on the application of EMTALA regulations from the Centers for Medicare and Medicaid Services (CMS). However, once the hospital has complied with EMTALA regulations, it is appropriate for the hospital to transfer the patient. Hospitals routinely transfer or discharge patients to a lower level of care, i.e., nursing home, assisted living, or outpatient programs. A BHIF, mental health outpatient services, or the Montana State Hospital may provide the appropriate level of care services for a patient being transferred from the hospital setting. Hospitals are required under EMTALA to stabilize any patient in crisis, or attend to the immediate medical needs of anyone requiring treatment before a transfer is initiated by the hospital to any other level of care. (Also see response #10 below.)

COMMENT #4: A commentor questioned whether a hospital emergency room physician who deems a patient critical due to psychiatric reasons can transfer the patient to a nonhospital licensed facility and will the hospital be required to keep the patient until stable.

RESPONSE #4: Hospitals are expected to stabilize any patient in crisis, or attend to the medical needs of anyone requiring treatment. Under the provisions of Title 42 CFR, chapter IV, section 489.24, hospitals with an emergency department that participate in Medicare are required under EMTALA to provide for an appropriate transfer of the individual if the hospital does not have the capability or capacity to provide the treatment necessary to stabilize the emergency medical condition or the

capability or capacity to admit the individual. A BHIF is just one of the options available to the transferring hospital.

COMMENT #5: A commentor indicated that the rules are not clear about the level of care required. BHIFs can accept psychiatric patients in crisis, but there is no requirement for psychiatrists but that a nurse practitioner may fulfill the role. The commentor questions whether the nurse practitioner's scope of practice includes care of a patient with acute psychiatric illness. The commentor also questions whether a hospital can transfer an acutely ill psychiatric patient to a BHIF that is not staffed with physicians.

RESPONSE #5: The definition of mental health professional in 53-21-102, MCA, includes an advanced practice registered nurse, as provided for in 37-8-202, MCA, with a clinical specialty in psychiatric mental health nursing. Under the provisions of 42 CFR section 489.24, hospitals with an emergency department that participate in Medicare are required under EMTALA to provide for an appropriate transfer of the individual if the hospital does not have the capability or capacity to provide the treatment necessary to stabilize the emergency medical condition or the capability or capacity to admit the individual.

COMMENT #6: A commentor requested that in Rule II (37.106.1702) the term "acute" be removed because acute care is singularly a hospital service. The commentor also suggests that Rule XI (37.106.1712) requiring 24 hours a day, seven days per week nursing care delivered under the direction of physicians Rule VII (37.106.1709) indicate that these requirements are essentially those of a hospital. A nonhospital BHIF is a lower level of care and the commentor indicates that the rules should be crafted to assure the provider community understands the distinction.

RESPONSE #6: Section 53-21-102, MCA, allows a behavioral health inpatient facility to be either an integral part of a hospital or a free standing service, therefore a BHIF may be located within a hospital. A BHIF offers acute psychiatric services while a hospital offers acute medical services, and may offer psychiatric services. While the department agrees that 24 hours a day, seven days per week nursing care is a requirement for hospitals, the department disagrees that this requirement is exclusive to hospitals. The rules establish some hospital standards in BHIFs to ensure patient safety and that an adequate continuum of care is provided. However, the department understands the commentor's concerns and will remove the term "acute" from Rule II (37.106.1702).

COMMENT #7: A commentor recommended that in Rule VII (37.106.1709) the rule either specifies that the medical director may also be responsible to provide facility patient care or that Rule XI (37.106.1712) be amended to specify when a physician, physician assistant, or advanced practice registered nurse be available to provide needed care.

RESPONSE #7: The department believes that the commentor's concern is

addressed in Rule VII(2) (37.106.1709) in that the facility physician, psychiatrist, or advanced practice registered nurse may also serve as the facility medical director.

COMMENT #8: A commentor recommended that in Rule XI (37.106.1712) a section be added providing ancillary services or arranging for these services as a fundamental capacity requirement.

RESPONSE #8: The department agrees with the comment and will amend Rule XI (37.106.1712) to require that a BHIF provide directly or contract for ancillary services such as laboratory or radiological services. Coordination of care is required between a hospital and a BHIF for ancillary services. The department will require coordination of transfer or coordination of medical care to a patient receiving services in a BHIF.

COMMENT #9: A commentor indicated that in Rule XVIII (37.106.1731) the department specifies that a person voluntarily admitted to a BHIF may be discharged or transferred to another facility at any time and that a BHIF admittee should not be transferred unless the person is subsequently committed pursuant to 53-21-111(1)(b)(iii), MCA, to the Montana State Hospital. Since the BHIF has inpatient secure capacity, there should be no need to transfer the patient to another facility to receive the same care.

RESPONSE #9: The department believes that the effective treatment of a patient in a BHIF may reach a point where the patient's treatment needs may be better suited from a distinct part hospital offering psychiatric services or the Montana State Hospital.

COMMENT #10: A commentor indicated that a BHIF should not be allowed to engage in "patient dumping" such as when a BHIF patient requires emergency physical medical care at another facility, and that a "dial 911" policy should not be allowed for the BHIF. The commentor also indicates that the medical director and other physicians on staff or providing care at the BHIF should hold hospital privilege to provide seamless and continuous care to patients that might be treated in either or both facilities.

RESPONSE #10: Hospitals are expected to stabilize any patient in crisis, or attend to the medical needs of anyone requiring treatment. The department will modify the rule to require a coordinated transfer for emergent medical stabilization services. Whatever medical documentation that is available will accompany the individual. The department will require coordination of transfer or coordination of medical care to a patient receiving services in a BHIF.

/s/ Lisa Swanson
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 5, 2009.

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

In the matter of the amendment of ARM 37.86.4701, 37.86.4705, and 37.86.4706 pertaining to Medicaid covered organ and tissue transplantation	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 13, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-482 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1390 of the 2009 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 5, 2009.

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

In the matter of the adoption of New Rules I through V pertaining to state matching fund grants to counties for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs for individuals with mental illness	)))))))	NOTICE OF DECISION ON PROPOSED RULE ACTION

TO: All Concerned Persons

1. On September 24, 2009 the Department of Public Health and Human Services published MAR Notice No. 37-485 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1624 of the 2009 Montana Administrative Register, Issue Number 18.

2. The department has decided to cancel the public hearing on the notice of proposed adoption of the above-stated rules that was scheduled for October 15, 2009, at 9:30 a.m., at the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana,

3. The rules proposed at MAR 37-485 are being withdrawn because the department has added more specificity to the rules proposed and a more detailed rationale.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 5, 2009.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.2.202, 44.2.203, 44.5.121, and repeal of 44.5.111 regarding fees and procedures pertaining to the Business Services Division	)))))	CORRECTED NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 13, 2009, the Secretary of State published MAR Notice No. 44-2-155 pertaining to the proposed amendment and repeal of the above-stated rules at page 1401 of the 2009 Montana Administrative Register, Issue Number 15. On September 24, 2009, the Secretary of State published the notice of amendment and repeal at page 1687 of the 2009 Montana Administrative Register, Issue Number 18.

2. The corrected notice is necessary because the agency inadvertently used incorrect authority and implementation citations for ARM 44.5.111, which is the rule the agency is repealing. The correct authority and implementation citations for ARM 44.5.111 are as follows:

44.5.111 FORMS

AUTH: 35-1-1307
IMP: 35-1-1308

3. The replacement pages for this corrected notice were submitted on September 24, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 24th day of September, 2009.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.104, 1.3.307 and 1.3.309 pertaining to administrative rules	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 27, 2009, the office of the Secretary of State published MAR Notice No. 44-2-157 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1465 of the 2009 Montana Administrative Register, Issue Number 16.

2. The Secretary of State has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Jorge Quintana
Jorge Quintana
Rule Reviewer

/s/ Linda McCulloch
Linda McCulloch
Secretary of State

Dated this 5th day of October, 2009.

VOLUME NO. 53 OPINION NO. 3

COUNTIES - Authority to allocate funds in the Hard-Rock Mine Reserve Trust Account;
MINES AND MINING - Allocation of funds in the Hard-Rock Mine Reserve Trust Account;
SCHOOL DISTRICTS - Distribution of proceeds from Hard-Rock Mine Reserve Trust Account;
STATUTORY CONSTRUCTION - Statutes must be read in relationship to one another to effectuate the intent of the statutes as a whole;
TAXATION AND REVENUE - Authority to tax mine proceeds to fund Hard-Rock Mine Reserve Trust Account;
MONTANA CODE ANNOTATED - Sections 1-2-102, 7-6-2225, (2), (3), (a), (b), (c), (d), (e), (f), 15-37-101(1), -117, (1)(e), (ii), (B), (C), 90-6-307;
MONTANA LAWS OF 1989 - Chapter 672, sections 8, 9.

HELD: When funds are expended from the Hard-Rock Mining Reserve Trust Account due to closure of a hard-rock mine or a layoff of more than 50 percent of a hard-rock mine's average work force under the Mont. Code Ann. § 7-6-2225, the county governing body must allocate at least one-third of the funds to elementary and high school districts in the county that it determines have been affected by the mine closure or reduction in force, in the proportion that it determines in its discretion to be proper in response to the impacts of the closure or reduction in force. The county governing body then has the discretion to either give the affected districts additional money or to disburse the remaining funds not allocated to the school districts for the purposes provided in Mont. Code Ann. § 7-6-2225(3)(a) to (f).

October 2, 2009

Ms. Eileen Joyce
Butte-Silver Bow County Attorney
155 West Granite Street
Butte, MT 59701

Dear Ms. Joyce:

You have requested my opinion on the following question:

> How does a county allocate funds in the Hard-Rock Mine Reserve Trust Account (hereafter "the Account") between the county and the elementary and high school districts in the county, once a triggering event as set forth in Mont. Code Ann. § 7-6-2225(2) occurs?

The Metalliferous Mines License Tax (hereafter "the Tax") is the source of funds in the Account. The Tax is collected on the proceeds of metal and gem mining activity. Mont. Code Ann. § 15-37-101(1).

Montana Code Annotated § 15-37-117 governs allocation of the Tax proceeds. Under the statute, 75 percent of each year's tax collections are deposited to various state accounts. The Legislature has allocated the remaining 25 percent to the county, which must place at least 37.5 percent of its share of each year's tax revenue into the Account. Subject to an exception not pertinent to your questions, the statute then allocates any remaining portion of its yearly share as follows:

> (A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);
>
> (B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and
>
> (C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

Mont. Code Ann. § 15-37-117(1)(e).

The county must hold the funds in the Account--the aggregate of the county's yearly deposits to the Account--until a mining operation has permanently ceased all mining-related activity, or the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of full-time employees engaged in full-time mining activities during the preceding five-year period. Mont. Code Ann. § 7-6-2225(2). For purpose of this opinion, I refer to these as "triggering events."

Under Mont. Code Ann. § 7-6-2225(3), once a triggering event occurs "the governing body of the county must allocate at least one-third of the funds [in the Account] proportionally to affected high school districts and elementary school districts in the county." The governing body may then "use the remaining funds" from the account for county grants or loans to other local government units within the county, to stabilize mill levies, to retire local government debt, or to aid in private economic development in order to retain jobs or attract new industry, so that the detrimental impacts caused by the changes in mining activity are lessened. Mont. Code Ann. § 7-6-2225(3) (emphasis added).

Your questions are prompted by a disagreement between Butte-Silver Bow County and Butte School District No. 1 over the meaning of Mont. Code Ann. § 7-6-2225(3). Butte-Silver Bow interprets the statute to mean that when funds in the Account may be expended, a county receives up to two-thirds of the funds dedicated to the purposes set forth in Mont. Code Ann. § 7-6-2225(3)(a) to (f), and the high school and elementary school districts divide the remaining one-third of the funds

proportionally among the affected school districts. The school district interprets the statute to mean the funds should be distributed "proportionally" one-third to the county, one-third to Butte School District No. 1, and one-third to the affected elementary school district(s).

I have been informed that in some counties where mine closures triggered distribution of funds from the Accounts, the proceeds were distributed by the county commissioners two-thirds to the county and one-third to the affected high school and elementary school districts. In other counties, including Silver Bow County, past distributions due to mine closures were distributed one-third to the county, one-third to the affected high school districts, and one-third to the affected elementary school districts.

There have been no rulings from the Montana Supreme Court interpreting the statutes involved, nor is there any recorded legislative history that sheds light on legislative intent as to how a county should distribute its Account funds. When interpretation of a statute is a matter of first impression, courts rely upon the rules of statutory construction to interpret the statute in a manner that best implements the Legislature's intent. Mont. Code Ann. § 1-2-102.

Legislative intent is best determined by resort to the plain meaning of the words used in the statutes themselves. State v. Heath, 2004 MT 126, ¶¶ 24-25, 321 Mont. 280, 90 P.3d 426. Montana Code Annotated § 7-6-2225(3) states when a triggering event occurs, "the governing body of the county shall allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county and may use the remaining funds in the hard-rock mine account . . ." for purposes specified by the statute that relate to mitigation of effects of the triggering event. (Empasis added.) The meaning of the words "allocate," "at least," "remaining," "proportionally," and "affected" reveal the Legislature's intent as to how the funds should be distributed.

"Allocate" means "to apportion for a specific purpose or to particular persons or things." Webster's Ninth New Collegiate Dictionary at 72 (1991). "At least" indicates that the one-third distribution to the school districts is a floor, and not a ceiling, as to how much of the funds the affected school districts should receive. The term "remaining funds" is significant in context. The statute does not limit the amount of money that the county may allocate to the "remaining two-thirds of the funds," leaving open the possibility that something other than a straight division of the funds into thirds was intended.

The statute also does not define "proportionally" or "affected." However, the statutes relating to the Tax use these terms in other places, and the usage provides guidance as to the meaning of the terms here. See Skinner Enters. v. Lewis and Clark County Bd. of Health, 286 Mont. 256, 272, 967 P.2d 733, 742 (1997) ("[S]tatutes do not exist in a vacuum, [but] must be read in relationship to one another to effectuate the intent of the statutes as a whole") (citation omitted).

Montana Code Annotated § 15-37-117(1)(e) provides that as an alternative to allocating the entire 25 percent of the Account to the county, if a hard-rock mining impact plan has been adopted under Mont. Code Ann. § 90-6-307, the allocation should be to the county or counties experiencing impacts "in direct proportion" to the impacts determined in the plan. This usage suggests that in this context the term "proportionally" (the adverb form of "proportion") relates to an allocation of the funds among the high school and elementary school districts in relation to the impacts of the closure or layoff.

Further, as explained above, Mont. Code Ann. § 15-37-117(1)(e)(ii)(B) and (C) allocates funds the county does not place in the Account in thirds among the county and the high school and elementary school districts "affected by the development or operation of the metal mine." The use of the term "affected" in this context suggests that in Mont. Code Ann. § 7-6-2225(3) the term relates to impacts suffered by the school districts from the mining operation.

The only action Mont. Code Ann. § 7-6-2225(3) requires of the county is to "allocate"--that is, "to apportion"--one-third of the funds to affected high school districts and elementary school districts in the county. . . ." The remaining actions the statute authorizes, (1) deciding how to apportion the funds required to be allocated to the school districts in proportion to how they have been "affected," (2) deciding whether to increase the schools' portion to more than one-third, and, (3) deciding how to divide some portion of the funds among the functions set forth in Mont. Code Ann. § 7-6-2225(3)(a) to (f), have clearly been left to the discretion of the county governing body.

In Mont. Code Ann. § 15-37-117(1)(e)(ii), the Legislature also directed the allocation of Tax funds to a county and to school districts. In that context, it provided that the funds be allocated "33 1/3 % to the county . . . ; 33 1/3 % to the elementary districts . . . ; and 33 1/3 % to the high schools. . . ." This provision was enacted as an amendment to Mont. Code Ann. § 15-37-117 in 1989 Mont. Laws, ch. 672, § 8. The same bill, in the next succeeding section, adopted Mont. Code Ann. § 7-6-2225, the statute that contains the language at issue here. Id., § 9. Montana Code Annotated § 15-37-117(1)(e) does not allocate funds to the county for "proportional" distribution to the "affected" school districts. To the contrary, the Legislature has "allocated" the money by providing that the state will pay the county and the districts according to a strict formula set forth in the statute. Given the proximity of § 8 of the bill, amending Mont. Code Ann. § 15-37-117, and § 9, enacting Mont. Code Ann. § 7-6-2225, it can safely be presumed that if the Legislature had intended in Mont. Code Ann. § 7-6-2225 to allocate the Account funds one-third to the county, one-third to the high school district, and one-third to the elementary districts, it would have done so in specific language similar to that used in the allocation in Mont. Code Ann. § 15-37-117(1)(e)(ii).

THEREFORE IT IS MY OPINION:

> When funds are expended from the Hard-Rock Mining Reserve Trust Account due to closure of a hard-rock mine or a layoff of more than 50 percent of a hard-rock mine's average work force under the Mont. Code Ann. § 7-6-2225, the county governing body must allocate at least one-third of the funds to elementary and high school districts in the county that it determines have been affected by the mine closure or reduction in force, in the proportion that it determines in its discretion to be proper in response to the impacts of the closure or reduction in force. The county governing body then has the discretion to either give the affected districts additional money or to disburse the remaining funds not allocated to the school districts for the purposes provided in Mont. Code Ann. § 7-6-2225(3)(a) to (f).

Sincerely,

/s/ Steve Bullock
STEVE BULLOCK
Attorney General

sb/mmm/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is 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, 2009. This table includes those rules adopted during the period July 1, 2009, through September 30, 2009, 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, 2009, 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 2009 Montana Administrative Register.

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

(Teachers' Retirement Board)

I Determination of Incentives and Bonuses as Part of a Series of Annual Payments and Included in Earned Compensation, p. 1183

(Board of County Printing)

2.67.201 and other rules - Board of County Printing, p. 1187

AGRICULTURE, Department of, Title 4

4.9.401 Raising the Wheat and Barley Assessment, p. 2574, 264
4.12.1320 and other rules - Quarantines - Pest Management Standards, p. 118, 343
4.12.3402 Raising the Seed Laboratory Analysis Fees, p. 1319

STATE AUDITOR, Title 6

6.6.504 and other rules - Medicare Supplements, p. 506, 1107
6.6.2801 and other rules - Surplus Lines Insurance Transactions, p. 1191

COMMERCE, Department of, Title 8

I Administration of the 2009-2010 Federal Community Development Block Grant (CDBG) Program, p. 2408, 410
8.94.3725 Administration of the 2009-2010 Federal Community Development Block Grant (CDBG) Program, p. 1605
8.119.101 Tourism Advisory Council, p. 398, 862
8.119.101 Tourism Advisory Council, p. 1066, 1590

(Montana Coal Board)

8.101.201 and other rules - Policies of the Montana Coal Board - Applications for Montana Coal Board Grant Assistance, p. 2220, 344

(Board of Housing)

8.111.602 Low Income Housing Tax Credit Program, p. 952, 1589

EDUCATION, Department of, Title 10

(Board of Public Education)

I Sign Language Interpreters, p. 1205, 1659
10.54.4010 and other rules - Math Content Standards and Performance Descriptors, p. 767, 1201, 1657
10.57.102 and other rules - Educator Licensure, p. 30, 345
10.57.412 and other rule - Mentor Teachers, p. 789, 1259

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

12.6.1101 and other rules - Falconry Regulation in Montana, p. 792, 1470
12.11.2204 No Wake Zone on Echo Lake, p. 53, 863
12.11.6601 and other rules - Emergency Closures of Department Lands and Public Waters, p. 1208
12.14.101 and other rules - Commercial Use Rules in Montana, p. 1436

ENVIRONMENTAL QUALITY, Department of, Title 17

I-V Underground Storage Tanks - Underground Storage Tank Operator Training, p. 1529
17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326

(Board of Environmental Review)

17.4.101 and the Department - Model Rules, p. 129, 1011
17.8.102 Air Quality - Incorporation by Reference, p. 1, 411
17.8.102 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 954
17.8.501 and other rules - Air Quality - Definitions - Permit Application Fees - Operation Fees - Open Burning Fees, p. 958
17.30.201 Water Quality - Permit Fees, p. 1335
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324
17.30.702 and other rules - and the Department - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage Systems Requirements - CECRA Remediation - Department Circular DEQ-4 - Gray Water Reuse, p. 968
17.38.101 and other rules - Public Water and Sewage System Requirements - Plans for Public Water or Wastewater Systems - Treatment Requirements - Control Tests - Microbial Treatment - Sanitary Surveys - Chemical Treatment of Water - Ground Water - Initial Distribution System Evaluations - Stage 2 Disinfection Byproducts Requirements - Enhanced Treatment for Cryptosporidium - Licenses-Private Water Supplies - Disposal of Excrement - Barnyards and Stockpens, p. 1353
17.40.318 and other rule - and the Department - Water Treatment Systems and Operators - Public Water and Sewage System Requirements - State Revolving Fund and Public Water and Sewer Projects Eligible for Categorical Exclusion From MEPA Review, p. 55, 412
17.50.403 and other rule - Solid Waste - Definitions - Annual Operating License Requirements, p. 964
17.53.105 and other rules - Hazardous Waste - Incorporation by Reference - Standardized Permits, p. 1444

Panel - Architect Partnerships - Landscape Architect Licensure, p. 2545, 413

24.114.401 and other rules - Fee Schedule - Applications - Education and Experience - Examinations, p. 1457

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Applications - Display of License - Continuing Education - Unprofessional Conduct, p. 923

(Board of Dentistry)

24.138.508 and other rules - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education, p. 1068

(State Electrical Board)

24.141.301 and other rules - Definitions - Apprentice Registration - Fee Schedule - Electrician Applications - Examinations - Licensure - Contractor Licensing - Continuing Education - Unprofessional Conduct - Complaint Procedure - Electrician Qualifications, p. 1365, 1665

(Board of Medical Examiners)

I Medical Direction, p. 2238, 416

24.156.616 and other rules - Registry - Licenses - Testing Requirements - Registration, p. 1610

24.156.2719 Expired License, p. 2235, 415

(Board of Nursing)

24.159.1006 and other rules - Cosmetic Procedure Standards - Nonroutine Applications, p. 252, 1404

(Board of Nursing Home Administrators)

24.162.420 and other rules - Fee Schedule - Documentation for Licensure - Temporary Permit - Reciprocity Licenses - Continuing Education, p. 1072

(Board of Outfitters)

24.171.401 and other rules - Fees - Qualifications, p. 256, 1406

24.171.602 and other rules - Guide or Professional Guide License - Emergency Guide License - Unprofessional Conduct - Guide to Hunter Ratio, p. 1616

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Administration of Vaccines - Prescriptions - Transmission of Prescriptions - Objectives - Internship - Registration Requirements - Pharmacy Technician - Record Keeping - Registration Conditions - Emergency Drug Kit - Renewal - Unprofessional Conduct - Agent of Records, p. 1079

(Board of Physical Therapy Examiners)
24.177.405 and other rules - Physical Therapy Aides - Temporary Licenses - Out of State Applicants - Foreign Trained Applicants - Topical Medication Protocols - Continuing Education - Physical Therapists, p. 586

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
24.181.301 and other rules - Definitions - Fees - Private Alternative Adolescent Residential and Outdoor Programs, p. 303, 1478
24.181.401 and other rules - Registration Fee Schedule - Licensing Fee Schedule - Renewals - Private Alternative Adolescent Residential and Outdoor Programs, p. 339, 870

(Board of Professional Engineers and Professional Land Surveyors)
24.183.408 and other rules - Authorization - Applications - Examination Procedures - Continuing Education - Screening Panel, p. 1554

(Board of Radiologic Technologists)
24.204.501 and other rules - Permit Application Types - Practice Limitations - Course Requirements - Permit Examinations - Code of Ethics - Unprofessional Conduct, p. 1089

(Board of Real Estate Appraisers)
24.207.401 and other rule - Fees and USPAP, p. 1223

(Board of Realty Regulation)
24.210.301 and other rules - Definitions - Licensing - Renewals - Unprofessional Conduct - Continuing Education, p. 928
24.210.641 Unprofessional Conduct, p. 2580, 748

(Board of Sanitarians)
24.216.402 and other rule - Fees - Sanitarian in Training, p. 75, 455

(Board of Social Work Examiners and Professional Counselors)
24.219.301 and other rules - Definitions - Fees - Application - Licensure - Status Conversion - Application - Continuing Education - Unprofessional Conduct - Social Work Examiners and Professional Counselors, p. 2583, 812

(Board of Veterinary Medicine)
24.225.401 and other rules - Fee Schedule - Veterinarian Licensure - Embryo Transfer - Euthanasia Technicians and Agencies - Continuing Education Providers, p. 1561

LIVESTOCK, Department of, Title 32

32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1096, 1591