MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

STATE AUDITOR AND COMMISSIONER OF INSURANCE, Title 6

6-186 Notice of Public Hearing on Proposed Amendment, Amendment and Transfer, and Adoption - Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements. 2394-2415

COMMERCE, Department of, Title 8

8-94-79 Notice of Public Hearing on Proposed Adoption - Administration of the 2010-2011 Federal Community Development Block Grant (CDBG) Program. 2416-2418

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-359 Notice of Public Hearing on Proposed Amendment - Noncontrolled Species. 2419-2420

ENVIRONMENTAL QUALITY, Department of, Title 17

17-297 (Board of Environmental Review) (Public Water and Sewage System Requirements) Notice of Public Hearing on Proposed Amendment - Fees. 2421-2425

ENVIRONMENTAL QUALITY (continued)

17-298 (Board of Environmental Review) (Montana Strip and Underground Mine Reclamation Act) Notice of Proposed Amendment - Bonding Letters of Credit. No Public Hearing Contemplated. 2426-2428

17-299 (Board of Environmental Review) (Air Quality) Notice of Public Hearing on Proposed Amendment and Adoption - Definitions - Fees - Permits - Temporary Greenhouse Gas Emission Rules. 2429-2445

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-496 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Emergency Medical Services (EMS). 2446-2454

37-497 Notice of Proposed Amendment - Components of Quality Assessment Activities. No Public Hearing Contemplated. 2455-2460

RULE ADOPTION SECTION

ENVIRONMENTAL QUALITY, Department of, Title 17

17-289 (Hazardous Waste) Notice of Amendment and Adoption - Incorporation by Reference - Standardized Permits. 2461

17-290 (Board of Environmental Review) (Water Quality) Notice of Amendment - Permit Fees. 2462-2476

17-295 (Subdivisions) Notice of Amendment - Fee Schedules - Changes in Subdivision. 2477-2479

JUSTICE, Department of, Title 23

23-16-214 Notice of Amendment - Definitions - Transfer of Interest Among Licensees - Transfer of Interest to a New Owner - Loans - Other Forms of Financing - Change of Liquor License Type - Change of Location - Approved Variations of Keno - Quarterly Reporting Requirements - Reporting Frequency for Approved Automated Accounting Systems-Exceptions - General Requirements of Operators - Manufacturers - Manufacturers of Illegal Devices - Distributors - Route Operators of Video Gambling Machines or Producers of Associated Equipment - Live Keno and Bingo Record Keeping. 2480-2481

LABOR AND INDUSTRY, Department of, Title 24

24-29-240 Notice of Amendment - Workers' Compensation Medical Fee Schedules. 2482

LABOR AND INDUSTRY (continued)

24-225-34 (Board of Veterinary Medicine) Notice of Amendment and Adoption - Veterinarian Licensure - Embryo Transfer - Euthanasia Technicians and Agencies - Continuing Education Providers. 2483-2484

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-492 Notice of Amendment - Medicaid Reimbursement for Audiology Services - Hearing Aids - Durable Medical Equipment (DME). 2485

37-493 Notice of Amendment - Medicaid Reimbursement for Psychiatric Residential Treatment Facility (PRTF) Services. 2486-2493

37-494 Notice of Amendment - Medicaid Eligibility. 2494

REVENUE, Department of, Title 42

42-2-811 Notice of Amendment and Repeal - Coal Severance. 2495-2496

42-2-813 Notice of Amendment - Property Taxes - Trend Tables for Valuing Property. 2497-2498

42-2-816 Notice of Amendment - Property Tax Assistance Program - Tax Exemptions for Disabled Veterans. 2499-2500

Office of the Secretary of State, Title 44

44-2-162 Notice of Amendment - Fees Charged by Business Services Division. 2501

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2502-2503

How to Use ARM and MAR. 2504

Accumulative Table. 2505-2514

Boards and Councils Appointees. 2515-2516

Vacancies on Boards and Councils. 2517-2522

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

In the matter of the amendment of ARM 6.6.3501, 6.6.3502, 6.6.3503, 6.6.3504, 6.6.3505, 6.6.3506, 6.6.3507, 6.6.3508. 6.6.3509, 6.6.3510, 6.6.3511, and 6.6.3512, the amendment and transfer of 6.6.3513 and 6.6.3514, and the adoption of NEW RULES I through III, pertaining to Annual Audited Reports and Establishing Accounting Practices and Procedures to be Used in Annual Statements	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, AND ADOPTION

TO: All Concerned Persons

1. On January 21, 2010, at 10:00 a.m., the Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment, amendment and transfer, and adoption of the above-stated rules.

2. The Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing, or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., January 14, 2010, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.3501 DEFINITIONS For the purposes of this subchapter, the following terms shall have the following meanings:

(1) ~~"Audited financial report" means and includes those items specified in ARM 6.6.3504~~ "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA), and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) ~~"Accountant" and "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American institute of CPAs (AICPA) and in all states in which they are licensed to~~

~~practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.~~ An "affiliate" of, or person "affiliated" with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) ~~"Insurer" means a licensed insurer as defined in 33-1-201 and 33-2-1501, MCA, or an authorized insurer as defined in 33-1-201, MCA.~~ "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer, or group of insurers, and audits of financial statements of the insurer, or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to [NEW RULE I(6)] for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in ARM 6.6.3504.

(5) "Indemnification" means an agreement of indemnity, or a release from liability, where the intent or effect is to shift, or limit, in any manner the potential liability of the person, or firm, for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer, or its representatives.

(6) "Independent board member" has the same meaning as described in [NEW RULE I(4)].

(7) "Insurer" means an insurer as defined in 33-1-201 and 33-2-1501, MCA, or an authorized insurer as defined in 33-1-201, MCA.

(8) "Group of insurers" means those licensed insurers included in the reporting requirements of 33-2-1101, MCA, et seq., or a subset of such insurers as identified by management for the purpose of assessing the effectiveness of internal controls over financial reporting.

(9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management ,and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3), and includes those policies and procedures that:

(a) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3), and that receipts and expenditures are being made only in accordance with authorizations of management, and directors; and

(c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3).

(10) "SEC" means the United States Securities and Exchange Commission.

(11) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(12) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC, and the related attestation report of the independent certified public accountant as described in ARM 6.6.3501.

(13) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);

(b) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and

(c) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3502 PURPOSE AND SCOPE (1) The purpose of this rule is to improve the surveillance of the financial condition of insurers by the department of insurance of the state of Montana by requiring:

(a) an annual audit of financial statements reporting the financial position, and the results of operations of insurers examinations by independent certified public accountants; of the financial statements reporting the financial position and the results of operations of insurers.

(b) communication of internal control related matters noted in an audit; and

(c) management's report of internal control over financial reporting.

(2) Except as specifically provided herein, every insurer shall be subject to these rules. Insurers having direct premiums written in this state of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from these rules for such year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities). Insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be exempt.

(3) Foreign or alien insurers filing the audited financial reports in another state, pursuant to that such other state's requirement for filing of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from these rules ARM 6.6.3503 through 6.6.3512 if:

(a) a copy of the audited financial report, communication of internal control related matters noted in an audit, report on significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with such other state are filed with the commissioner in accordance with the filing dates specified in ARM 6.6.3503, 6.6.3509, and 6.6.3510, and 6.6.3511, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance Office of the Superintendent to Financial Institutions, Canada).

(b) A copy of any notification of adverse financial condition report filed with such other state is filed with the commissioner within the time specified in ARM ~~6.6.3507~~ 6.6.3509. ~~This rule does not prohibit, preclude or in any way limit the commissioner from ordering and/or conducting and/or performing examinations of insurers under the rules, regulations, practices, and procedures of the department.~~

(4) Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements, and the report is filed with the commissioner of the other state within the time specified.

(5) This rule does not prohibit, preclude, or in any way limit the commissioner from ordering and/or conducting and/or performing examinations of insurers under the rules, regulations, practices, and procedures of the department.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3503 GENERAL REQUIREMENTS RELATED TO FILING AND EXTENSIONS FOR FILING OF ANNUAL AUDITED FINANCIAL REPORTS AND AUDIT COMMITTEE APPOINTMENT (1) and (2) remain the same.

(3) If an extension is granted in accordance with the provisions in ARM 6.6.3503(2), a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to this subchapter shall designate a group of individuals as constituting its audit committee, as defined in ARM 6.6.3501. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this subchapter at the election of the controlling person.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

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

(d) statement of cash flow~~s~~;

(e) remains the same.

(f) notes to financial statements;~~.~~

(i) These notes shall be those required by the appropriate 200~~8~~9 NAIC Annual Statement Instructions and the March 200~~8~~9 NAIC Accounting Practices and Procedures Manual, which are adopted and incorporated by reference, and may be obtained by writing to the NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. The notes shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 33-2-701, 33-4-313, 33-7-118, 33-30-107, 33-31-211, MCA, with a written description of the nature of these differences.

(3) remains the same.

AUTH: 33-1-313, 33-2-1517, ~~33-5-413,~~ MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3505 DESIGNATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) Each insurer required by these rules to file an annual audited financial report must, within 60 days after becoming subject to such requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit required by these rules. Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(2) and (3) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3506 QUALIFICATIONS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant if the person, or firm:

(a) ~~that~~ is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant;~~,~~ or

(b) has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as "indemnification") with respect to the audit of the insurer.

(2) remains the same.

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

~~(a) number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;~~

~~(b) premium volume of the insurer; and~~

~~(c) number of jurisdictions in which the insurer transacts business.~~ A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under the Insurers Supervision, Rehabilitation and Liquidation Act at 33-2-1301, et

seq., MCA, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) ~~The insurer shall file, with its annual statement filing, the approval for relief from (3) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.~~ Following the effective date of these rules, no partner or other member of a firm responsible for rendering a report may act in that capacity for more than five consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. This does not preclude other partners or members of any accounting firm from succeeding to the responsibility for rendering reports. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining whether relief should be granted:

(a) number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

(b) premium volume of the insurer; and

(c) number of jurisdictions in which the insurer transacts business.

(5) ~~The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report prepared in whole or in part, by any natural person who:~~

~~(a) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;~~

~~(b) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or~~

~~(c) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.~~ The insurer shall file, with its annual statement filing, the approval for relief from (4) with the states that it is licensed in, or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(6) ~~The commissioner may hold a hearing pursuant to 33-1-701, MCA, to determine whether an independent certified public accountant is qualified and, after considering the evidence and arguments presented, may decide whether the accountant is qualified to express his opinion on the financial statements in the annual audited financial report filed pursuant to these rules and may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of these rules.~~ The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept any annual audited financial report prepared in whole or in part, by any natural person who:

(a) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(c) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

(7) The commissioner may hold a hearing pursuant to 33-1-701, MCA, to determine whether an independent certified public accountant is qualified and, after considering the evidence and arguments presented, may decide whether the accountant is qualified to express his opinion on the financial statements in the annual audited financial report filed pursuant to these rules, and may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of these rules.

(8) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(9) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole, or in part, by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

(a) bookkeeping, or other services, related to the accounting records, or financial statements of the insurer;

(b) financial information systems design, and implementation;

(c) appraisal or valuation services, fairness opinions, or contribution in-kind reports;

(d) actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

(i) neither the accountant nor the accountant's actuary has performed any management functions, or made any management decisions;

(ii) the insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and

(iii) the accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves.

(e) internal audit outsourcing services;

(f) management functions, or human resources;

(g) broker or dealer, investment adviser, or investment banking services;

(h) legal services, or expert services unrelated to the audit; or

(i) any other services that the commissioner determines, by regulation, are impermissible.

(10) Insurers having direct written and assumed premiums of less than $100,000,000 in any calendar year may request an exemption from (9). The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(11) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in (9) or that do not conflict with (8), only if the activity is approved in advance by the audit committee, in accordance with (12).

(12) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity, or a direct or indirect wholly-owned subsidiary of a SOX compliant entity; or

(a) the aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

(b) the services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

(c) the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(13) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by (12). The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(14) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant, and participated in the audit of that insurer during the one year period preceding the date that the most current statutory opinion is due. Section (14) shall only apply to partners and senior managers involved in the audit.

(15) An insurer may make application to the commissioner for relief from (14) on the basis of unusual circumstances. The insurer shall file, with its annual statement filing, the approval for relief from (14) with the states that it is licensed in, doing business in, and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-1-701, 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3507 CONSOLIDATED OR COMBINED AUDITS (1) remains the same.

(a) A~~a~~mounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;~~.~~

(b) A~~a~~mounts for each insurer subject to this section shall be stated separately;~~.~~

(c) N~~n~~oninsurance operations may be shown on the worksheet on a combined or individual basis;~~.~~

(d) E~~e~~xplanations of consolidating and eliminating entries shall be included;~~.~~ and

(e) A~~a~~ reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3508 SCOPE OF ~~EXAMINATION~~ AUDIT AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) Financial statements furnished pursuant to ARM 6.6.3504 shall be examined by an independent certified public accountant. The ~~examination~~ audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to [NEW RULE III], the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration should also be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the NAIC, as the independent certified public accountant deems necessary.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3509 NOTIFICATION OF ADVERSE FINANCIAL CONDITION (1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner, as of the balance sheet date currently

under audit ~~examination~~, or that the insurer does not meet the minimum capital and surplus requirement of 33-2-109, 33-2-110, 33-4-401, 33-5-401, 33-~~20~~30-201, and 33-31-216(9), MCA, as of that date. An insurer who has received a report pursuant to this rule shall forward a copy of the report to the commissioner within five business days of receipt of such report, and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive such evidence within the required five-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

(2) An independent certified public accountant shall not be liable in any manner to any person for any statement made in connection with ~~ARM 6.6.3509~~(1) if such statement is made in good faith in compliance with ~~6.6.3509~~(1).

(3) remains the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3510 ~~REPORT ON SIGNIFICANT DEFICIENCIES IN~~ COMMUNICATION OF INTERNAL CONTROLS RELATED MATTERS NOTED IN AN AUDIT (1) In addition to the annual audited financial ~~statements~~ report, each insurer shall furnish the commissioner with a written ~~report prepared by the accountant, describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit, in accordance with SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit" Section AU 324 of the professional standards of the AICPA, which requires an accountant to communicate significant deficiencies (called "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report must be filed annually by the insurer with the department within 60 days after the filing of the annual audited financial statements.~~ communication as to any unremediated material weaknesses in its internal controls over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, communication of internal control related matters noted in an audit, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in ARM 6.6.3503(1)) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses ~~significant deficiencies~~, if ~~such~~ the actions are not described in the accountant's communication ~~report~~.

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

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

6.6.3511 ACCOUNTANT'S LETTER OF QUALIFICATIONS (1) remains the same.

(a) that the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the code of professional ethics and pronouncements of the AICPA and the rules of professional conduct of the Montana board of public accountants or its applicable counterpart in a sister state.;

(b) the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement, and whether each is an independent certified public accountant. Nothing within these rules shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.;

(c) that the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with these rules and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;.

(d) that the accountant consents to the requirements of ARM 6.6.3512 and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the workpapers, as defined in ARM 6.6.3512.;

(e) a representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.; and

(f) remains the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3512 DEFINITION, AVAILABILITY, AND MAINTENANCE OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS' CPA WORKPAPERS

(1) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his/her examination audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his/her or her examination audit of the financial statements of an insurer and which support his or /her opinion thereof.

(2) Every insurer required to file an audited financial report pursuant to these rules shall require the accountant to make available for review by department examiners, all workpapers prepared in the conduct of his/her or her examination audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department, or at any other reasonable

place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department has filed a report on examination covering the period of the audit, but no longer than seven years from the date of the audit report.

(3) remains the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

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

6.6.3513 (6.6.3520) EXEMPTIONS AND EFFECTIVE DATES (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of these rules if the commissioner finds, upon review of the application, that compliance ~~with this rule~~ would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption ~~from this rule~~, such insurer may make a written request for a hearing on its application for an exemption. Such hearing shall be held in accordance with 33-2-701, MCA.

(2) Domestic insurers retaining certified public accountants on the effective date of this rule who qualify as independent shall comply with these rules for the year ending December 31, ~~1993~~ 2009, and each year thereafter unless the commissioner permits otherwise.

(3) remains the same.

(a) as of December 31, ~~1993~~ 2009 file with the commissioner an audited financial report~~:~~.

~~(i) a report of an independent certified public accountant;~~

~~(ii) audited balance sheets; and~~

~~(iii) notes to audited balance sheet.~~

(b) for the year ending December 31, ~~1994~~ 2010, and each year thereafter, such insurers shall file with the commissioner all reports and communications required by these rules.

(4) Foreign insurers shall comply with these rules for the year ending December 31, ~~1993~~ 2009, and each year thereafter, unless the commissioner permits otherwise.

(5) The requirements of ARM 6.6.3506(4) shall be in effect for audits of the year beginning January 1, 2010, and thereafter.

(6) The requirements of [NEW RULE I] are to be in effect January 1, 2010. An insurer, or group of insurers, that is not required to have independent audit committee members, or only a majority of independent audit committee members (as opposed to a supermajority), because the total written and assumed premium is below the threshold, and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one

of the independence requirements as a result of a business combination shall have one calendar year following the date.

(7) The requirements of [NEW RULE III] and ARM 6.6.3510 are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer, or group of insurers, that is not required to file a report because the total written premium is below the threshold, and subsequently becomes subject to the reporting requirements, shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-1-701, 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

6.6.3514 (6.6.3521) CANADIAN AND BRITISH COMPANIES (1) In the case of Canadian and British insurers, the annual audited financial report must be defined as the annual statement of total business on the form filed by such companies with their ~~domiciliary~~ supervision authority, duly audited by an independent chartered accountant.

(2) For such insurers, the letter required in ARM 6.6.3505 must state that the accountant is aware of the requirements relating to the annual audited ~~statement~~ financial report filed with the commissioner pursuant to ARM 6.6.3503, and must affirm that the opinion expressed is in conformity with such requirements.

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

5. The new rules proposed to be adopted provide as follows:

NEW RULE I REQUIREMENTS FOR AUDIT COMMITTEES (1) This rule shall not apply to foreign or alien insurers licensed in this state, an insurer that is a SOX compliant entity, or an insurer that is a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(2) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this subchapter. Each accountant shall report directly to the audit committee.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to [NEW RULE I(6)], and ARM 6.6.3501(3).

(4) In order to be considered independent for purposes of this rule, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated

person of the entity, or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail, and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer, or employee of the insurer, or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity, or one year from the occurrence of the event that caused the member to be no longer independent.

(6) To exercise the election of the controlling person to designate the audit committee for purposes of this subchapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(7) The audit committee shall require the accountant that performs for an insurer any audit required by this subchapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

(a) all significant accounting policies and material permitted practices;

(b) all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(c) other material written communications between the accountant and the management of the insurer, such as any management letter, or schedule of unadjusted differences.

(8) If an insurer is a member of an insurance holding company system, the reports required by (7) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(9) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums. See Note C.		
$0 - $300,000,000	Over $300,000,000 - $500,000,000	Over $500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than $500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(10) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500,000,000 may make application to the commissioner for a waiver from the [NEW RULE I] requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from [NEW RULE I] with the states that it is licensed in, doing business in, and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

NEW RULE II CONDUCT OF INSURER IN CONNECTION WITH THE PREPARATION OF REQUIRED REPORTS AND DOCUMENTS (1) No director or officer of an insurer shall, directly or indirectly:

(a) make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this subchapter; or

(b) omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this subchapter.

(2) No officer, or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this subchapter if that person knew, or should have known, that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of (2), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant:

(a) to issue, or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(b) not to perform audit, review, or other procedures required by generally accepted auditing standards, or other professional standards;

(c) not to withdraw an issued report; or

(d) not to communicate matters to an insurer's audit committee.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

NEW RULE III MANAGEMENT'S REPORT OF INTERNAL CONTROL OVER FINANCIAL REPORTING (1) Every insurer required to file an audited financial report pursuant to this subchapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in ARM 6.6.3501. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under ARM 6.6.3510. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in (1), the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition pursuant to ARM 6.6.3401 and 6.6.3402.

(3) An insurer or a group of insurers that is directly subject to Section 404; part of a holding company system whose parent is directly subject to Section 404; not directly subject to Section 404, but is a SOX compliant entity; or a member of a holding company system whose parent that is not directly subject to Section 404, but is a SOX compliant entity, may file its, or its parent's Section 404 Report and an addendum in satisfaction of this rule requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in ARM 6.6.3504(2)(b) through 6.6.3504(3)) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in ARM 6.6.3504(2)(b) through 6.6.3504(3) of this subsection) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements, and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may file:

(a) a [NEW RULE III] report; or

(b) the Section 404 Report and [NEW RULE III] report for those internal

controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's report of internal control over financial reporting shall include:

(a) a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(d) a statement that briefly describes the scope of work that is included, and whether any internal controls were excluded;

(e) disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) a statement regarding the inherent limitations of internal control systems; and

(g) signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in (4), are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of, or reference to, existing documentation. Management's report on internal control over financial reporting, required by (1), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance - Office of the State Auditor, Monica J. Lindeen, (commissioner) is the state-wide elected official responsible for administering the Montana Insurance Department and regulating insurers. The commissioner is a member of the National

Association of Insurance Commissioners (NAIC). The NAIC is an organization of insurance regulators from the 50 states, the District of Columbia, and the five U.S. territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate.

Insurer solvency and financial reporting is a principal area in which uniformity is efficient and effective for insurers and regulators. Multi-state insurers are able to use the same financial reporting in all jurisdictions and avoid the additional expense of tailoring their financial reporting to different requirements in each jurisdiction. Regulators across jurisdictions are able to have the same understanding of the financial reporting and terminology which aids them in monitoring the financial condition of insurers to protect insurance consumers.

The NAIC has promulgated model regulations regarding financial reporting for insurers which promote uniformity and also increase the transparency and reliability of the financial reporting. The commissioner is proposing to amend existing administrative rules regarding insurer annual financial reporting, and to adopt new rules based on the NAIC Annual Financial Report Model Regulation, adopted in 2006. These rule changes are reasonably necessary to increase the transparency and reliability of financial reporting by insurers. Additionally, these rule changes will allow the commissioner to achieve more uniformity with insurance regulators in other jurisdictions, and for the agency to be accredited through the NAIC Financial Regulation Standards and Accreditation Program. The Accreditation Program provides a process to monitor and regulate solvency of multi-state insurers. To be accredited, each jurisdiction must demonstrate adequate solvency laws and regulation to protect consumers and guarantee funds, and also effective and efficient financial analysis and examination processes.

Amendments to ARM 6.6.3501 are reasonably necessary to define new terms used in the subsequent rule changes. These terms and their definitions are consistent with the NAIC Model.

It is reasonably necessary to amend ARM 6.6.3502 to update the purpose and scope in regard to audits by independent certified public accountants by requiring communication of internal control related matters noted in an audit and management's report of internal control of financial reporting.

It is reasonably necessary to amend ARM 6.6.3503, regarding possible extensions for insurer reporting, to provide for possible extensions for new reporting requirements in other amendments. The amendments also require insurers to designate an audit committee, responsible for accounting and financial reporting, with the commissioner which will increase effectiveness in financial regulation because the independent certified public accountant will be responsible to the audit committee rather than the management of the insurer.

The contents of the annual audited financial report are set out in ARM 6.6.3504. It is reasonably necessary to amend ARM 6.6.3504 to reference and require compliance

with the 2009 NAIC Annual Statement Instructions, and the March 2009 NAIC Accounting Practices and Procedures Manual by insurers completing annual audited financial reports. The current rule references and requires compliance with the 2008 versions.

It is reasonably necessary to amend ARM 6.6.3505 to clarify that the certified public accountant retained must be independent.

The necessary qualifications for an independent certified public accountant are set out in ARM 6.6.3506. Several amendments address the independence of the certified public accountant, and identify circumstances and activities that impair the accountant's independence. The amendments provide that insurers may request exemption from disqualification of an accountant in certain circumstances. The amendments also provide that the commissioner may hold a hearing regarding an accountant's qualifications, including independence, and require the insurer to replace an accountant found to be unqualified (under the subchapter). Further, the amendments provide that the insurer must also preapprove all auditing services, and nonauditing services, provided by the independent certified public accountant. It is reasonably necessary to amend ARM 6.6.3506 to provide guidance to insurers and accountants regarding circumstances and activities that impair the accountant's independence. It is also reasonably necessary to allow insurers to request exemptions in certain circumstances, and to specify that the commissioner may hold a hearing regarding the qualifications of an accountant identified by an insurer. The amendments provide more assurance that the independent certified public accountant used by an insurer is qualified and that the accountant's work is not affected by a conflict of interest or other lack of independence.

It is reasonably necessary to amend ARM 6.6.3507 pertaining to consolidated or combined audits to correct punctuation and grammar.

The scope of audit and report of the independent certified public accountant are described in ARM 6.6.3508 which requires compliance with generally accepted auditing standards. It is reasonably necessary to amend ARM 6.6.3508 to reference specific professional standards, such as the Professional Standards of the AICPA, to provide guidance for independent certified public accountants in regard to audits of insurer financial statements and to achieve more uniformity in the conduct of the audits provided to the commissioner.

It is reasonably necessary to amend ARM 6.6.3509 to correct a reference to a statute, and to clarify that the accountant performing the audit must be a certified public accountant.

ARM 6.6.3510 requires insurers to report to the commissioner any material weaknesses in internal controls over financial reporting noted during an audit. It is reasonably necessary to amend ARM 6.6.3510 to clarify the reference to specific professional standards for the independent certified public accountant performing the audit and to use the language from those standards (i.e., amending "significant

deficiencies" to "material weaknesses"). Additionally, if no unremediated material weaknesses were noted, the amendments require the independent certified public accounting to specifically so state which will aid the agency in its review.

It is reasonably necessary to amend ARM 6.6.3511 pertaining to the accountant's letter of qualifications to correct punctuation and grammar.

It is reasonably necessary to amend ARM 6.6.3512 to correct the terminology used from "examination" to "audit" for clarity and uniformity.

ARM 6.6.3513 is being transferred, renumbered, and amended. This rule pertains to the effective dates for insurer compliance with the rules in the subchapter or any exemptions therefrom. The changes are reasonably necessary to clarify when (which reporting period) insurers must begin complying with the proposed rule changes and new rules regarding audits. Additionally, the changes provide that insurers previously exempt from certain reporting requirements due to premium volume must come into compliance within a specified time after reaching the threshold premium volume. The grace period for compliance upon reaching the threshold premium volume is reasonably necessary to allow for efficient administration and reporting for insurers. The renumbering is necessary for consistency with the rule sequence in the NAIC Model and for ease in reading and administration.

ARM 6.6.3514, pertaining to financial reports for Canadian and British insurers, is being transferred, renumbered, and amended. The changes are reasonably necessary to correct the terminology in the rule. The renumbering is necessary for consistency with the rule sequence in the NAIC Model and for ease in reading and administration.

NEW RULE I applies to domestic insurers and establishes the requirements for members of audit committees, including the number of members that must be independent and how independence is determined. Also, NEW RULE I makes audit committees responsible for the selection and oversight of an independent certified public accountant, provides an exemption for SOX compliant entities (Sarbanes-Oxley Act of 2002 compliant entities) and their wholly-owned subsidiaries, and allows insurers to request a waiver from the audit requirements in certain circumstances. NEW RULE I is reasonably necessary for effective solvency and financial regulation of insurers by requiring a certain minimum number of independent audit committee members, depending on the insurer's premium volume, and making the audit committee responsible for the selection of and communication with the independent certified public accountant performing the audit. Additionally, NEW RULE I is consistent with the NAIC Model which will promote uniformity in financial regulation of insurers across jurisdictions, and thereby increase efficiency and effectiveness for insurers and regulators.

NEW RULE II governs the conduct of the insurer in regard to the preparation of the financial audit, review, or other communication required by this subchapter, and

prohibits any material misstatements or omissions. Also, NEW RULE II prohibits the insurer from directly, or indirectly, engaging in any action that could result in making the insurer's financial statements materially misleading. NEW RULE II is reasonably necessary to ensure the accuracy of the insurer's financial audit and other financial statements.

NEW RULE III provides that insurers in certain circumstances must file a report regarding management's internal control over financial reporting. The report includes acknowledgments that management is responsible for establishing and maintaining adequate internal control over financial reporting, has established internal control over financial reporting, and, after diligent inquiry, the internal controls are effective to provide reasonable assurance that the financial statements are reliable and in accordance with statutory accounting principles. The insurer must have supporting documentation (i.e., internal audit work papers) for its assertions in the report and make the supporting documentation available in a financial examination. The report must also disclose any inherent limitations of the internal control system and any unremediated material weaknesses in the internal control exercised. The report and any supporting documentation provided by an insurer during the course of a financial condition examination will be kept confidential by the commissioner and the insurance department. NEW RULE III is reasonably necessary to require effective internal control by management to ensure the accuracy of the insurer's financial audit and other financial statements.

All the proposed rule changes are consistent with the NAIC Model and necessary to maintain the current NAIC accreditation of the agency.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jennifer Massman, Staff Attorney, Commissioner of Securities and Insurance, Office of the State Auditor, Monica Lindeen, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail jmassman@mt.gov, and must be received no later than 5:00 p.m., January 28, 2010.

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

8. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3497; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

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. Pursuant to 2-4-302, MCA, the bill sponsor contact requirements do not apply.

/s/ Christina L. Goe	/s/ Robert W. Moon
Christina L. Goe	Robert W. Moon
Rule Reviewer	Deputy Insurance Commissioner

Certified to the Secretary of State December 14, 2009.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the administration of the 2010-2011 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 14, 2010, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. on January 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Gus Byrom, Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; fax (406) 841-2771; TDD (406) 841-2702; or e-mail gbyrom@mt.gov.

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

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

(2) The rules incorporated by reference in (1) relate to the following:
(a) policies governing the program;
(b) requirements for applicants;
(c) procedures for evaluating applications;
(d) procedures for local project start up;
(e) environmental review of project activities;
(f) procurement of goods and services;
(g) financial management;
(h) protection of civil rights;

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

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this new rule because the federal regulations governing the state's administration of the FFY 2010 and FFY 2011 CDBG program and 90-1-103, MCA, require the department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, planning, housing and neighborhood renewal, public facility, and neighborhood stabilization projects.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; fax (406) 841-2771; e-mail gbyrom@mt.gov; or to the Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2744; fax (406) 841-2731; e-mail nguccione@mt.gov, and must be received no later than 5:00 p.m., January 21, 2010.

5. Gus Byrom, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

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

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

Certified to the Secretary of State December 14, 2009.

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

In the matter of the amendment of ARM 12.6.2205 regarding noncontrolled species	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 14, 2010 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment of the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than January 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

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

12.6.2205 EXOTIC WILDLIFE: LIST OF NONCONTROLLED SPECIES
(1) remains the same.
(2) The following amphibians are classified as noncontrolled species:
(a) Hyperoliidae family; ~~and~~
(b) Leptodactylidae family~~.~~;
(c) Eritrea clawed frog - *Xenopus clivii; and*
(d) Cameroon volcano frog - *Xenopus amieti.*
(3) remains the same.
(4) The following crustaceans are classified as noncontrolled species:
(a) Terrestrial hermit crabs - *Coenobita sp.*

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

4. The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or

prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes.

The committee recommended the addition of three species of exotic wildlife to the list of noncontrolled species. These additions made revisions to ARM 12.6.2205 necessary. After evaluating these species the committee found that they pose a minimal threat to Montana's native wildlife or plant species, livestock, horticultural, forestry, agricultural production, or human health and safety.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: FWP Exotics, Fisheries, P.O. Box 200701, Helena, MT 59620-0701, fax (406) 444-4952, or e-mail them to fwpexotics@mt.gov. Any comments must be received no later than January 21, 2010.

6. Eileen Ryce or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

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

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

/s/ Shane Colton
Shane Colton
Chairman
Fish, Wildlife and Parks Commission

/s/ Bill Schenk
Bill Schenk
Rule Reviewer
Department of Fish, Wildlife and Parks

Certified to the Secretary of State December 14, 2009

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.106 pertaining to fees	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On January 13, 2010, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 4, 2010, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.38.106 FEES (1) remains the same.

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

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

SCHEDULE I

Policies			
ultra violet disinfection	$	~~400~~	700
point-of-use/point-of-entry treatment	$	~~200~~	700
Section 1.0 Engineering Report	$	~~200~~	280
Section 3.1 Surface water			
quality and quantity	$	~~200~~	700
structures	$	~~100~~	700
Section 3.2 Ground water	$	~~600~~	840
Section 4.1 Clarification			
standard clarification	$	~~500~~	700
solid contact units	$	~~1,000~~	1,400

Item		Old	New
Section 4.2 Filtration			
rapid rate	$	~~1,250~~	1,750
pressure filtration	$	~~950~~	1,400
diatomaceous earth	$	~~950~~	1,400
slow sand	$	~~950~~	1,400
direct filtration	$	~~950~~	1,400
biologically active filtration	$	~~950~~	1,400
membrane filtration	$	~~600~~	1,400
micro and ultra filtration	$	~~600~~	1,400
bag and cartridge filtration	$	~~300~~	420
Section 4.3 Disinfection	$	~~400~~	700
Section 4.4 Softening	$	~~500~~	700
Section 4.5 Aeration			
natural draft	$	~~200~~	280
forced draft	$	~~200~~	280
spray/pressure	$	~~200~~	280
packed tower	$	~~500~~	700
Section 4.6 Iron and manganese	$	~~200~~	700
Section 4.7 Fluoridation	$	~~300~~	700
Section 4.8 Stabilization	$	~~300~~	420
Section 4.9 Taste and odor control	$	~~400~~	560
Section 4.10 Microscreening	$	~~200~~	280
Section 4.11 Ion exchange	$	~~500~~	700
Section 4.12 Adsorptive media	$	~~500~~	700
Chapter 5 Chemical application	$	~~700~~	980
Chapter 6 Pumping facilities	$	~~700~~	980
Section 7.1 Plant storage	$	~~500~~	980
Section 7.2 Hydropneumatic tanks	$	~~200~~	420
Section 7.3 Distribution storage	$	~~500~~	980
Section 7.4 Cisterns	$	~~200~~	420
Chapter 8 Distribution system			
per lot fee	$	~~30~~	70
non-standard specifications	$	~~300~~	420
transmission distribution (per lineal foot)	$	~~0.10~~	0.25
Chapter 9 Waste disposal	$	~~250~~	700
Appendix A			
new systems	$	~~200~~	280
modifications	$	~~100~~	140

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

SCHEDULE II

Item		Old	New
Chapter 10 Engineering reports and facility plans			
engineering reports (minor)	$	~~200~~	280
comprehensive facility plan (major)	$	~~1,000~~	1,400
Chapter 30 Design of sewers			

Item		Old	New
per lot fee	$	~~30~~	70
non-standard specifications	$	~~300~~	420
collection system (per lineal foot)	$	~~0.10~~	0.25
Chapter 40 Sewage pumping station			
force mains (per lineal foot)	$	~~0.10~~	0.25
1000 gpm or less	$	~~400~~	700
greater than 1000 gpm	$	~~800~~	1,400
Chapter 60 Screening grit removal			
screening devices and comminutors	$	~~300~~	420
grit removal	$	~~300~~	420
flow equalization	$	~~500~~	700
Chapter 70 Settling	$	~~800~~	1,120
Chapter 80 Sludge handling	$	~~1,600~~	2,240
Chapter 90 Biological treatment	$	~~2,400~~	3,360
nonaerated treatment ponds	$	~~800~~	1,120
aerated treatment ponds	$	~~1,400~~	1,960
Chapter 100 Disinfection	$	~~500~~	900
Appendices A, B, C, & D (per design)	$	~~700~~	980

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

SCHEDULE III

Item		Old	New
Section 3.2 Ground water	$	~~600~~	840
Chapter 6 Pump facilities	$	~~250~~	420
Chapter 7 Finished storage/hydropneumatic tanks	$	~~200~~	420
Chapter 8 Distribution system	$	~~300~~	420

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

SCHEDULE IV

Item		Old	New
Chapter 7 Septic Tanks	$	~~100~~	280
Chapters 8, 10, 11, 12, 13 Absorption Trenches	$	~~100~~	280
Chapter 9 Dosing System	$	~~100~~	280
Chapter 14 Elevated Sand Mounds	$	~~100~~	280
Chapters 15, 16, 17 Filters	$	~~200~~	280
Chapters 17, 18 ETA and ET Systems	$	~~200~~	700
Chapter 20 Aerobic Treatment	$	~~200~~	700
Chapter 21 Chemical Nutrient-Reduction Systems	$	~~50~~	700
Chapter 24, 25, 26, 27 Holding Tanks, Pit Privy, Seepage Pits	$	~~100~~	280
Appendix D	$	~~200~~	280
Non-degradation Review	$	~~200~~	420

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

SCHEDULE V

Spring box and collection lateral...$ ~~250~~ 350

(3) Fees for review of plans and specifications not covered under (2) are established by the department based on a charge of $~~60~~ 105 per hour multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications will be determined by the review engineer and documented with time sheets.

(4) The fee for review of plans and specifications previously denied, for staff time over two hours, is $~~60~~ 105 per hour, assessed in half-hour increments, multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications must be determined by the review engineer and documented with time sheets.

(5) through (7) remain the same.

AUTH: 75-6-108, MCA
IMP: 75-6-108, MCA

REASON: The Legislature requires the department to collect fees commensurate with the cost of reviewing plans and specifications for public water supply and public sewer systems. Section 75-6-108(3), MCA, states: "The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department for reviewing the plans and specifications." Past legislative audits identified that the department was not recovering the costs for engineering review. In 2005, at the request of the department, the board revised its engineering review fees. In an effort to minimize impact to the regulated community, the department proposed, and the board adopted, the fees with the understanding that additional fee increases may be required in the future to ensure that the fees would be commensurate with the costs of review. In 2007, the department again proposed, and the board adopted, fee increases to accommodate funding shortages. However, those increases did not take into account overhead costs, such as utilities and rent, attributable to engineering reviews, and other increased program costs, including inflation. When overhead and other costs attributable to engineering reviews are considered, the department projects, based on fiscal year 2009 revenues, a minimum budget shortage of $254,000 for fiscal year 2010. The department anticipates that the fee increases proposed in this rule amendment would provide additional fee revenue in the amount of $254,000 to remedy this funding shortage in fiscal year 2011 and in the immediately succeeding fiscal years. There are approximately 2,100 public water supplies and approximately the same number of wastewater treatment facilities that would be affected by the fee increase. They would not be affected on a yearly basis, however. The increased fees would affect them only in years in which they submit design plans and specifications to the department's Public Water Supply and Subdivisions Bureau for approval.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 21, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; 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 the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:	BOARD OF ENVIRONMENTAL REVIEW
/s/ *James M. Madden*	BY: /s/ *Joseph W. Russell*
JAMES M. MADDEN	JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer	Chairman

Certified to the Secretary of State, December 14, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.1109 pertaining to bonding letters of credit	NOTICE OF PROPOSED AMENDMENT (MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 25, 2010, the Board of Environmental Review proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 4, 2010, to advise us of the nature of the accommodation 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.24.1109 BONDING: LETTERS OF CREDIT (1) Letters of credit are subject to the following conditions:

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

(iii) capital or stockholders' equity must be at least 5.5% of total assets ((total stockholders' equity [~~shareholders equity~~ capital stock + capital surplus + retained earnings])/total assets = 0.055 or more).

~~(f) Under a general financial health category, from either Sheshunoff Information Services, Moody's (Mergent Ratings Service) or Standard and Poor's, the bank must have a b+ or better rating for the current and previous two quarters.~~

(g) through (j)(iii) remain the same, but are renumbered (f) through (i)(iii).

AUTH: 82-4-204, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: In (1)(e)(iii), the proposed amendment substitutes "capital stock" for "shareholders equity" to tailor the definition of "total stockholders' equity" to the banking industry. According to the Division of Banking and Financial Institutions of

the Montana Department of Administration, the current definition is in error; capital stock, capital surplus, and retained earnings are the components of stockholders' equity usually reflected on the balance sheet of a bank.

The proposed amendment deletes the criterion to evaluate the financial strength of a bank issuing a letter of credit set forth in (1)(f). Use of this criterion has proved difficult for a number of reasons. First, the credit rating agencies that the U.S. Securities and Exchange Commission considers as reliable and credible, such as those currently listed in (1)(f), change over time. For example, Sheshunoff Information Services no longer provides ratings and additional credit rating agencies not listed in (1)(f) have been recognized by the SEC. In addition, not all credit rating agencies use the rating scale that includes the b+ rating referred to in this provision. Finally, the credit rating agencies rate national banks, not state chartered banks. Thus, (1)(f) precludes acceptance of letters of credit issued by state chartered banks.

The remaining three criteria set forth in (1)(e) are sufficient to assess the financial strength of a bank for the purpose of determining whether to accept a letter of credit issued by the bank. The proposed amendment is made in consultation with the Division of Bank and Financial Institutions of the Montana Department of Administration.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than January 21, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to 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, no later than January 21, 2010.

6. If the board or department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be two based on the four active prospecting and 15 active mining permits in Montana.

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

mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; 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 the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

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

Certified to the Secretary of State, December 14, 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, 17.8.601, 17.8.740, 17.8.743, 17.8.744, 17.8.745, 17.8.801, 17.8.901, 17.8.1201, pertaining to definitions, fees, and permits, and the adoption of New Rules I through XX pertaining to temporary greenhouse gas emission rules	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (AIR QUALITY)

TO: All Concerned Persons

1. On January 22, 2010, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 11, 2010, 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. New Rules I through XX consist of five sets of four rules that would be placed in ARM Title 17, chapter 8, subchapters 6, 7, 8, 9, and 12.

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

17.8.501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Municipal solid waste landfill" has the meaning given in 75-10-203, MCA.

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

(6) "Publicly owned treatment works" (POTW) has the meaning given in ARM 17.30.1304(48).

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

AUTH: 75-2-111, MCA
IMP: 75-2-211, MCA

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) An applicant submitting a Montana air quality permit application, as required in ARM Title 17,

chapter 8, subchapters 7, 8, 9, or 10, shall submit an application fee as provided in (1)(a), (b), and (c):

(a) the following table sets forth source types and associated fees:

Source Type	New Source	Modified Source
NSR/PSD-except municipal solid waste landfill and POTW	$15,000	$500
NSR/PSD - municipal solid waste landfill and POTW	$500	$500
A	$1,200	$500
S/SM	$1,000	$500
B	$800	$500

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

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

(2) "Carbon dioxide equivalent," or "CO_2e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO_2e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(2) through (4)(d) remain the same, but are renumbered (3) through (5)(d).

(6) "Greenhouse gas," or "GHG," means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO_2e.

~~(5)~~ (7) "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide, ~~or~~ 25,000 tons per year or more of GHG, or 50 tons per calendar year of any other pollutant regulated under this chapter, except hydrocarbons.

(6) through (11) remain the same, but are renumbered (8) through (13).

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

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) and (2) remain the same.

(3) "Carbon dioxide equivalent," or "CO_2e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO_2e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(3) through (8) remain the same, but are renumbered (4) through (9).

(10) "Greenhouse gas," or "GHG," means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO_2e.

(9) through (21)(b) remain the same, but are renumbered (11) through (23)(b).

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, MCA

17.8.743 MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in ARM 17.8.744, 17.8.745, and 17.8.1602, a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) remains the same.

(b) asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit 25,000 tons per year or more of GHG [or an amount of GHG that is between 15 and 50,000 tons per year] or more than 15 tons per year of any other airborne pollutant, other than lead, that is regulated under this chapter;

(c) any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA;

(d) any facility or emitting unit upon which construction commenced, or that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by 25,000 tons per year or more of GHG [or an amount of GHG that is between 25 and 50,000 tons per year] or by more than 25 tons per year of any other airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under ARM 17.8.744, and that has the potential to emit 25,000 tons per year or more of GHG [or an amount of GHG that is between 25 and 50,000 tons per year] or more than 25 tons per year of any other airborne pollutant, other than lead, that is regulated under this chapter.

(2) through (5) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, MCA

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

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

(a) through (i) remain the same.

(j) drilling rig stationary engines and turbines that do not have the potential to emit 25,000 tons per year or more of GHG [or an amount of GHG that is between 100 and 50,000 tons per year] or more than 100 tons per year of any other pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;

(k) through (m) remain the same.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

17.8.745 MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES (1) A Montana air quality permit is not required under ARM 17.8.743 for de minimis changes as specified below:

(a) Construction or changed conditions of operation at a facility for which a Montana air quality permit has been issued that do not increase the facility's potential to emit by more than the significance level for GHG, as defined by ARM 17.8.801(29), or by more than 15 tons per year of any other pollutant except:

(i) through (2) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (7) remain the same.

(8) "Carbon dioxide equivalent," or "CO_2e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO_2e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(8) through (14) remain the same, but are renumbered (9) through (15).

(16) "Greenhouse gas," or "GHG," means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO_2e.

(15) through (21)(d) remain the same, but are renumbered (17) through (23)(d).

~~(22)~~ (24) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any of the following stationary sources of air pollutants which emits, or has the potential to emit, 25,000 tons per year or more of GHG or 100 tons per year or more of any other pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA: fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) notwithstanding the stationary source size specified in ~~(22)~~ (24)(a)(i), any stationary source which emits, or has the potential to emit, 25,000 tons per year or more of GHG or 250 tons per year or more of any other air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA; or

(iii) any physical change that would occur at a stationary source not otherwise qualifying under ~~(22)~~ (24)(a)(i) or (ii), as a major stationary source if the change would constitute a major stationary source by itself.

(b) through (c)(xxvii) remain the same.

(23) through (26) remain the same, but are renumbered (25) through (28).

~~(27)~~ (29) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
15 tpy of PM-10 emissions
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy

Reduced sulfur compounds (including H_2S): 10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 * 10^{-6} megagrams per year (3.5 * 10^{-6} tpy)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)
Greenhouse gas: [an amount to be determined by the board that is within the range of 10,000 to 25,000 tpy]

(b) "significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the FCAA, that ~~(27)~~ (29)(a) does not list any emissions rate. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(c) Notwithstanding ~~(27)~~ (29)(a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than one $\mu g/m^3$ (24-hour average), except for GHG.

(28) and (29) remain the same, but are renumbered (30) and (31).

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) through (4) remain the same.

(5) "Carbon dioxide equivalent," or "CO_2e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO_2e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(5) through (9) remain the same, but are renumbered (6) through (10).

(11) "Greenhouse gas," or "GHG," means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO_2e.

(10) through (11)(b)(vii) remain the same, but are renumbered (12) through (13)(b)(vii).

~~(12)~~ (14) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any stationary source of air pollutants which emits, or has the potential to emit, 25,000 tons per year or more of GHG [or an amount of GHG that is between 100 and 50,000 tons per year] or 100 tons per year or more of any other pollutant

subject to regulation under the FCAA; or

(ii) remains the same.

(iii) any physical change that would occur at a stationary source not qualifying under ~~(12)~~ (14)(a)(i) or (ii) as a major stationary source, if the change would constitute a major stationary source by itself.

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

(13) through (17) remain the same, but are renumbered (15) through (19).

~~(18)~~ (20) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emission Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions
or	15 tpy of PM-10 emissions
Lead:	0.6 tpy
Greenhouse Gas:	[an amount to be determined by the board that is within the range of 10,000 to 25,000 tpy]

(19) and (20) remain the same, but are renumbered (21) and (22).

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

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

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

(11) "Carbon dioxide equivalent," or "CO_2e," means a metric used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWPs and guidance on how to calculate a source's GHG emissions in tons per year CO_2e can be found in EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

(11) through (20) remain the same, but are renumbered (12) through (21).

(22) "Greenhouse gas," or "GHG," means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs) as CO_2e.

(21) through (22)(b) remain the same, but are renumbered (23) through (24)(b).

~~(23)~~ (25) "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are

described in ~~(23)~~ (25)(a) through (c). For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

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

(b) A major stationary source of air pollutants that directly emits or has the potential to emit, 25,000 tons per year or more of GHG [or an amount of GHG that is between 100 and 50,000 tons per year] or 100 tons per year or more of any other air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(i) through (c) remain the same.

(24) through (33) remain the same, but are renumbered (26) through (35).

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

5. The proposed new rules provide as follows:

NEW RULE I EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 6] are effective on the earliest of the following dates:

(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

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

NEW RULE II RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 6] apply retroactively to the earliest of the following dates:

(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

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

IMP: 75-2-203, MCA

NEW RULE III GREENHOUSE GAS EMISSION REGULATION CONTINGENT UPON FEDERAL REGULATION (1) If EPA stays, withdraws, or reconsiders its "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter [Title 17, chapter 8, subchapter 6] are void as of the date of such administrative or judicial action and shall have no further force and effect.

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

NEW RULE IV TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 6] terminate on December 31, 2011.

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

NEW RULE V EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 7] are effective on the earliest of the following dates:
(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;
(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or
(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

NEW RULE VI RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 7] apply retroactively to the earliest of the following dates:
(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;
(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or
(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

NEW RULE VII GREENHOUSE GAS EMISSION REGULATION CONTINGENT UPON FEDERAL REGULATION (1) If EPA stays, withdraws, or reconsiders its "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter [Title 17, chapter 8, subchapter 7] are void as of the date of such administrative or judicial action and shall have no further force and effect.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

NEW RULE VIII TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 7] terminate on December 31, 2011.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

NEW RULE IX EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 8] are effective on the earliest of the following dates:

(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE X RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 8] apply retroactively to the earliest of the following dates:

(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XI GREENHOUSE GAS EMISSION REGULATION CONTINGENT UPON FEDERAL REGULATION (1) If EPA stays, withdraws, or reconsiders its "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter [Title 17, chapter 8, subchapter 8] are void as of the date of such administrative or judicial action and shall have no further force and effect.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XII TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 8] terminate on December 31, 2011.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XIII EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 9] are effective on the earliest of the following dates:
(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;
(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or
(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XIV RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 9] apply retroactively to the earliest of the following dates:
(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XV GREENHOUSE GAS EMISSION REGULATION CONTINGENT UPON FEDERAL REGULATION (1) If EPA stays, withdraws, or reconsiders its "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter [Title 17, chapter 8, subchapter 9] are void as of the date of such administrative or judicial action and shall have no further force and effect.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XVI TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 9] terminate on December 31, 2011.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE XVII EFFECTIVE DATE FOR GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 12] are effective on the earliest of the following dates:

(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

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

NEW RULE XVIII RETROACTIVITY OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 12] apply retroactively to the earliest of the following dates:

(a) the date that compliance with EPA's final "Light-Duty Vehicle Greenhouse

Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), is required;

(b) the date that compliance with the new source review requirements of the Federal Clean Air Act is required for GHGs; or

(c) the date that compliance with the Title V permitting requirements of the Federal Clean Air Act is required for GHGs.

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

NEW RULE XIX GREENHOUSE GAS EMISSION REGULATION CONTINGENT UPON FEDERAL REGULATION (1) If EPA stays, withdraws, or reconsiders its "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards," proposed at 74 Fed. Reg. 49454 (September 28, 2009), and its "Prevention of Significant Deterioration and Title V Greenhouse Gas Rule," proposed at 74 Fed. Reg. 55292 (October 27, 2009), or a court of competent jurisdiction issues an order vacating or otherwise invalidating EPA's regulation of GHG for any reason, all GHG provisions in this subchapter [Title 17, chapter 8, subchapter 12] are void as of the date of such administrative or judicial action and shall have no further force and effect.

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

NEW RULE XX TERMINATION OF GREENHOUSE GAS EMISSION REGULATION (1) All GHG provisions in this subchapter [Title 17, chapter 8, subchapter 12] terminate on December 31, 2011.

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

REASON: Pursuant to 75-2-203(1), MCA, the board has authority to establish limits on emissions of air pollutants from any air pollutant source necessary to prevent, abate, or control air pollution. According to the U.S. Environmental Protection Agency's (EPA's) "Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) Under Section 202(a) of the Clean Air Act" ("Proposed Endangerment Finding"), 74 Fed. Reg. 18886 (April 24, 2009), "GHGs are gases that effectively trap some of the Earth's heat that would otherwise escape to space. GHGs are both naturally occurring and anthropogenic. The primary greenhouse gases of concern directly emitted by human activities include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride."

GHG emissions were established as meeting the definition of "air pollutant" under the FCAA in the April 2, 2007, decision of the U.S. Supreme Court in Massachusetts v. EPA, 549 U.S. 497 (2007), a challenge to EPA's denial of a petition for rulemaking with respect to regulating GHG from motor vehicles. The Court stated: "Because greenhouse gases fit well within the Act's capacious

definition of 'air pollutant,' EPA has statutory authority to regulate emissions of such gases from new motor vehicles. That definition – which includes '<u>any</u> air pollution agent …, including <u>any</u> physical, chemical, … substance … emitted into … the ambient air ... ' (emphasis added) – embraces all airborne compounds of whatever stripe. Moreover, carbon dioxide and other greenhouse gases are undoubtedly 'physical [and] chemical … substances.'" In 75-2-103(3), MCA, the Clean Air Act of Montana refers to pollutants regulated under the FCAA as follows: "'Air pollutants' means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S. Code (U.S.C.) 7401, et seq." Air contaminants are defined under 75-2-103(2) as "dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof."

Before EPA may issue standards addressing emissions of greenhouse gases from new motor vehicles or engines under Section 202(a) of the FCAA, the Administrator of EPA must satisfy a two-step test. First, the Administrator must decide whether, in her judgment, the air pollution under consideration may reasonably be anticipated to endanger public health or welfare. Second, the Administrator must decide whether, in her judgment, emissions of an air pollutant from new motor vehicles or engines cause or contribute to this air pollution. In its Endangerment Finding, EPA made both of these findings and stated: "The administrator has considered how elevated concentrations of the well-mixed greenhouse gases and associated climate change affect public welfare by evaluating numerous and far-ranging risks to food production and agriculture, forestry, water resources, sea level rise and coastal areas, energy, infrastructure, and settlements, and ecosystems and wildlife ... the evidence provides compelling support for finding that greenhouse gas air pollution endangers the public welfare of both current and future generations. The risk and the severity of adverse impacts on public welfare are expected to increase over time."

On September 28, 2009, EPA followed its Proposed Endangerment Finding with a "Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards" ("Light-Duty Vehicle Rule"), 74 Fed. Reg. 49454. EPA is addressing the regulation of GHG emissions from major stationary sources in a proposed EPA regulation, issued October 27, 2009, titled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 74 Fed. Reg. 55292. If EPA finalizes either its Light Duty Vehicle Rule or Tailoring Rule, GHG will become a regulated pollutant under the FCAA and the Clean Air Act of Montana. This will occur on the date that compliance for GHG is required for either the Light Duty Vehicle Rule, Major New Source Review, or Title V permitting requirements, whichever occurs earlier. On that date air quality permitting provisions under the Major New Source Review and Title V major source permitting programs, as well as under Montana's minor source permitting program, will apply to GHG in Montana.

If permitting requirements become applicable to GHG emissions at the applicability levels provided under the FCAA and adopted by the board under the existing state rules, minor and major source permitting requirements will apply for the first time to thousands of relatively small emission sources for which permits are not currently required. For example, many home furnaces, currently not subject to

minor source permitting under the residential heating use exemption, exceed the existing potential emissions threshold of 25 tons per year of GHG for minor source permitting. In addition, the department will be required to process permit applications in numbers that are orders of magnitude greater than current administrative resources can accommodate. The proposed rules would be temporary in an effort to quickly make rule changes to avoid the consequences of permitting GHG sources at the current permit thresholds but allow for a stakeholder process in later rulemaking to establish permanent GHG permit thresholds for both major and minor source air quality permitting.

Therefore, the board is proposing rule amendments and new rules to establish appropriate permitting thresholds for regulation of GHG emissions. The board is proposing temporary rules to establish the permitting threshold for GHG for both the major and minor source permitting programs at 25,000 tons per year of carbon dioxide equivalent (CO_2e) emissions, which is the threshold level in EPA's October 27, 2009, proposal for GHG major source permitting under Major New Source Review and Title V. In the alternative, as seen in the bracketed and underlined language, the board is proposing a range of permitting threshold levels up to 50,000 tons per day in order to allow the board to set the thresholds at the level set by EPA if it is different than 25,000 tons per year. This threshold change would be incorporated in revisions to Title 17, chapter 8, subchapters 6, 7, 8, 9, and 12. Major New Source Review permitting requirements also are triggered if a major stationary source undertakes a modification that is projected to increase emissions of a regulated New Source Review pollutant above an emissions threshold, characterized as the "significance level." For any particular pollutant, this level is zero unless EPA establishes a significance level on the basis of de minimis emissions or administrative necessity. Thus for any major source, any minor change that increases GHG emissions by any amount would, as a result, potentially require PSD review. This would result in thousands of modification projects that would have to comply with the PSD program. Therefore, to maintain consistency with EPA's proposed rules and out of administrative necessity, the board is proposing to establish significance levels in Title 17, chapter 8, subchapters 8 (Prevention of Significant Deterioration or PSD) and 9 (Nonattainment Area New Source Review or NSR), within the range of 10,000 to 25,000 tons per year, and is requesting comment on the appropriate level within that range. The proposed range is the same as the significance level range in EPA's October 27, 2009, proposal and is intended to provide the board with the flexibility to consider public comments and any final EPA significance level that is promulgated prior to final board action.

To alleviate the impact of a new regulatory program on currently unregulated municipal solid waste landfills and publicly owned treatment works (POTW), the board is proposing to reduce the application fee on new NSR/PSD permits for those facilities under Title 17, chapter 8, subchapter 5, from $15,000 to $500. Based on the relative low level of complexity of emission sources at landfills and POTWs, the level of department resources required to issue an initial NSR or PSD permit for that type of a facility would be no greater than the level of department resources required to issue an NSR or PSD permit modification for an existing source, for which the department currently charges a $500 application fee.

Under New Rules I, V, IX, XIII, and XVII, the proposed rule amendments and

new rules would become effective on the earlier of the dates that compliance is first required with the Light Duty Vehicle Rule, new source review requirements, or Title V permitting requirements.

Under New Rules II, VI, X, XIV, and XIX, the proposed rule amendments and new rules would apply retroactively on the earlier of the dates that compliance is first required with the Light Duty Vehicle Rule, new source review requirements, or Title V permitting requirements, so that minor source permits issued in the interim would not be issued with inappropriate major source GHG permitting provisions.

Under New Rules III, VII, XI, XV, and XIX, to maintain consistency with federal regulation of GHG, if EPA stays, withdraws, or reconsiders its Light-Duty Vehicle Rule and its Tailoring Rule, or if both regulations are vacated by a court of competent jurisdiction, all of the GHG rule provisions adopted in this rulemaking would become void.

Under New Rules IV, VIII, XII, XVI, and XX, the proposed rule revisions would be temporary and would terminate on December 31, 2011, to achieve the immediate administrative goals of reducing the permitting burden on the regulated community, on the currently nonregulated entities that would be affected, and on the department and allow for a later stakeholder process to address GHG permitting specifically for Montana.

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 5:00 p.m., February 4, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406)

444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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, December 14, 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, II, and III, amendment of ARM 37.104.101, 37.104.105, 37.104.109, 37.104.203, 37.104.213, 37.104.218, and 37.104.316, and repeal of ARM 37.104.221 pertaining to emergency medical services (EMS)	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On January 13, 2010, 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 adoption, amendment, and repeal 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 January 4, 2010, 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 adopted provide as follows:

RULE I PERSONNEL, EMT-INTERMEDIATE GROUND AMBULANCE SERVICE (1) An intermediate life support ground ambulance service must:

(a) meet the personnel requirements of a basic life support ground ambulance service as provided in ARM 37.104.316; and

(b) when transporting a patient at the intermediate life support level, ensure that one of the required personnel is an intermediate life support EMT.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

RULE II PERSONNEL, EMT-INTERMEDIATE LIFE SUPPORT AIR AMBULANCE SERVICE (1) In addition to the pilot, one immediate life support EMT is required.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

RULE III PERSONNEL, EMT-INTERMEDIATE LIFE SUPPORT NONTRANSPORTING UNIT (1) An intermediate life support nontransporting unit must:

(a) meet the personnel requirements of a basic life support nontransporting unit as provided in ARM 37.104.401; and

(b) when responding at the intermediate life support level, ensure that at least one advanced level EMT is on the call.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

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

37.104.101 DEFINITIONS The following definitions apply in subchapters 1 through 4:

(1) through (5) remain the same.

(6) "Authorization for limited ALS" means the authorization for an ambulance service or nontransporting medical unit licensed at the basic life support level to provide limited advanced life support as provided in ARM 37.104.109.

(7) through (20) remain the same.

(21) "First responder ~~with an~~ ambulance ~~endorsement~~" means an individual licensed by the board as an EMT-F with ambulance endorsement ~~(EMT-F3)~~ as listed in ARM 24.156.2751.

~~(22) "Grandfathered advanced first aid" means a person:~~

~~(a) certified in American Red Cross emergency response;~~

~~(b) certified in cardiopulmonary resuscitation according to current American Heart Association standards; and~~

~~(c) who was continuously a member of a licensed emergency medical service and was certified in American Red Cross advanced first aid and emergency care from July 1, 1992 through December 31, 1992.~~

(22) "Intermediate life support service" means an ambulance service or nontransporting medical unit that has the capacity and is licensed by the department to provide care at the EMT-intermediate equivalent level 24 hours a day, seven days a week.

(23) and (24) remain the same.

~~(25) "Online medical direction" means online medical direction as defined in ARM 24.156.2701.~~

(26) remains the same but is renumbered (25).

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

(28) and (29) remain the same but are renumbered (26) and (27).

~~(30)~~ (28) "Service medical director" means a person who meets the requirements of a service medical director as provided in ARM 24.156.2701 and

provides offline medical director for an emergency medical service as defined in 50-6-302, MCA.

~~(31) "Service plan" means a written description of how an ambulance service or NTU service plans to provide response within its normal service area.~~

(32) through (36) remain the same but are renumbered (30) through (34).

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.105 LICENSE TYPES AND LEVELS (1) A license will be issued for, and authorize performance of, emergency medical services of a specific type and at a basic, intermediate, or advanced life support level.

(2) Except as specifically provided in this chapter, an emergency medical service may be licensed at an intermediate or advanced life support level only if they can reasonably provide such service 24 hours a day, seven days a week.

AUTH: 50-6-323, MCA
IMP: 50-6-306, 50-6-323, MCA

37.104.109 BASIC LIFE SUPPORT SERVICE LICENSING (1) An ambulance service or nontransporting medical unit (NTU) capable of providing service only at the basic life support level will be licensed at the basic life support level.

(a) An ambulance service or NTU that provides advanced life support but cannot reasonably provide it 24 hours per day, seven days per week due to limited personnel, will receive a basic life support license with authorization for limited ALS.

~~(b)~~ (2) Ambulance services or NTUs ~~shall request authorization for (1)(a) by submitting a service plan on forms provided by the department.~~ requesting authorization for (1)(a) shall:

(a) request approval for each ALS level and endorsement the service plans to provide; and

(b) submit documentation of the level and endorsement(s) each emergency medical technician is authorized by the service medical director to provide.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.203 EQUIPMENT (1) remains the same.

(2) ~~When a~~ A transportation equipment kit ~~or safety and extrication kit is required, it~~ must be physically in each ground ambulance at all times and available to each air ambulance on every call.

(3) A safety and extrication kit must be physically in each ground ambulance at all times and available to each rotor wing air ambulance on every call.

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

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.213 PERSONNEL REQUIREMENTS (1) Each emergency medical service must meet the following personnel standards:

(a) All personnel functioning on the emergency medical service must have current certificates, licenses, proof of training, or evidence of legal authorization to function~~;~~.

(b) Emergency medical services personnel may use only that equipment and perform those skills for which they are trained, certified, or licensed and legally permitted to use~~;~~.

(c) When functioning under the conditions defined in ARM 24.156.2771, a licensed service may use EMTs licensed in another state ~~to provide basic life support; and~~.

(d) remains the same.

(2) All ambulances must have at least one of the required personnel as set forth in ARM 37.104.316, 37.104.319, 37.104.326, 37.104.329, 37.104.401, and 37.104.404 attending the patient, and, when providing care at an advanced life support level, the person ~~certified~~ licensed at the corresponding level must attend the patient.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.218 ~~MEDICAL CONTROL: SERVICE MEDICAL DIRECTOR~~ OFFLINE AND ONLINE MEDICAL DIRECTION (1) Each emergency medical service ~~that provides service at the advanced life support level~~ approved for a BLS license with authorization for limited ALS, or licensed at the intermediate life support or advanced life level shall have a service medical director.

(2) The requirements and responsibilities of the service medical director shall be ~~as defined in ARM 24.156.2701~~ to provide offline medical direction as defined in 50-6-302, MCA.

(3) ~~As provided in ARM 24.156.2701, a designated service medical director must be a physician or physician assistant who is responsible professionally and legally for overall medical care provided by a licensed ambulance service.~~ An emergency medical service defined under (1) must have a two-way communications system, approved by the department, which enables online medical direction.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.316 PERSONNEL REQUIREMENTS: BASIC LIFE SUPPORT GROUND AMBULANCE SERVICE (1) ~~A~~ Except as provided for in 50-6-322, MCA, a basic life support ground ambulance service must ensure that at least two of the following individuals are on board the ambulance when a patient is loaded or transported, with the proviso that having only two ~~EMT-Fs with ambulance endorsements~~ first responder ambulance personnel on a call is not allowed:

(a) ~~a grandfathered person certified in advanced first aid~~ a first responder ambulance EMT;

(b) through (2) remain the same.

(3) Persons utilized as drivers of ambulances shall complete training equivalent to the emergency vehicle operation objectives in a board approved EMT-basic course.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

5. The department proposes to repeal the following rule:

37.104.221 MEDICAL CONTROL: ADVANCED LIFE SUPPORT, is found on page 37-25656 of the Administrative Rules of Montana.

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

6. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rules I, II, and III, the amendment of ARM 37.104.101, 37.104.105, 37.104.109, 37.104.203, 37.104.213, 37.104.218, and 37.104.316, and the repeal of ARM 37.104.221, pertaining to emergency medical services (EMS). The proposed changes are reasonably necessary to implement changes made during the 2009 Montana Legislative Session, to clarify issues raised in a 2008 legislative performance audit, and to modify various rules which are outdated or confusing.

Rule I

This proposed new Rule I is reasonably necessary to clarify the personnel requirements for a service licensed an intermediate level service. The proposed new rule allows the department to consistently evaluate applications for a service with/of an intermediate life support as well as to facilitate regulatory and enforcement activities by the department.

Rule II

This proposed new Rule II is reasonably necessary to clarify the personnel requirements for a service licensed an intermediate level service. The proposed new rule allows the department to consistently evaluate applications for a service with/of an intermediate life support as well as to facilitate regulatory and enforcement activities by the department. Consistent with personnel requirements specified in ARM 37.104.326 and 37.104.329, an air ambulance must be staffed with both a pilot and a licensed EMT and staffing by a single pilot/EMT would not be allowed.

Rule III

This proposed new Rule III is reasonably necessary to clarify the personnel requirements for a service licensed an intermediate level service. The proposed

new rule allows the department to consistently evaluate applications for a service with/of an intermediate life support as well as to facilitate regulatory and enforcement activities by the department.

ARM 37.104.101

The proposed rule amendment to ARM 37.104.101(6) "authorization" for advance life support (ALS) has been interpreted as a separate level of service licensure and is confusing. The proposed rule amendment is necessary to clarify that this is an authorization to provide limited ALS approved for services that are licensed at a basic life support level.

The proposed amendment to ARM 37.104.101(2) clarifies how the term "first responder ambulance" is commonly used in practice. The department proposes the deletion of EMT-F3 as the Board of Medical Examiners has deleted that connotation in their rules and is no longer necessary in these rules.

The department proposes the deletion of ARM 37.104.101(22) "grandfathered advanced first aid" as it is an outdated definition and is no longer needed. In conversion of EMS service licensing records to an electronic system over the last months, none of the providers were identified on service rosters. While there are several references to intermediate life support in current rules, it is not clearly included in definitions like basic life support and advanced life support. This proposed addition to rules clarifies what an intermediate life support service is and is necessary for the department to more clearly make decisions about whether or not to approve an application for an intermediate life support license.

The department proposes the deletion of ARM 37.104.101(25) as House Bill 93 (HB 93) passed by the 2009 Montana Legislature deletes this definition from 50-6-101, MCA and is no longer necessary in the rules.

The department is proposing a new definition to ARM 37.104.101, "service medical director". This proposed new definition clarifies that a service medical director must meet requirements for being an EMT medical director under rules promulgated by the Board of Medical Examiners and is necessary to enable the department to use the board's regulations as a basis for approving EMS service medical directors. This also references the new definition of medical direction as passed by the 2009 Montana Legislature in HB 93.

The department proposes the deletion of ARM 37.104.101(31), "service plan". With information collected in the new electronic EMS service licensing software, the need for a separate service plan to describe service operation is no longer necessary.

ARM 37.104.105

While intermediate life support is defined as a level of service in ARM 37.104.101, the term "intermediate" must also be added to ARM 37.104.105(1). This is

necessary in order to clarify that the department has authority to issue a license at this level.

The proposed amendment to ARM 37.104.105(2) by adding the word "intermediate" helps clarify that an intermediate service must be reasonably able to provide that level of care 24 hours a day, seven days a week in order for the department to issue such a license. This is necessary in order to clarify the level of service licensure that the department may issue.

ARM 37.104.109

"Authorization for limited ALS" is clarified under proposed amendment to ARM 37.104.101(6). The proposed amendment to ARM 37.104.109 clarifies information that needs to be submitted by services in the electronic service licensure software in order to receive this authorization for limited ALS and is necessary so that the department has authority to approve EMS service applications requesting such authorization.

Information previously collected in a written application for a service license is now effectively handled in the new electronic licensing software. As such, the need for a written "service plan" is no longer necessary.

ARM 37.104.203

In a previous version of these rules, a table was used to specify what kits need to be on or available to each type of service. This proposed amendment clarifies which services are required to have the transportation and the safety and extrication kits and is necessary so that the department has authority to regulate the inspection of these kits on EMS services.

ARM 37.104.213

ARM 24.156.2771 outlines how out-of-state EMTs may be authorized to provide either basic or advanced life support during declared emergencies. Without the proposed amendment to ARM 37.104.213, EMTs authorized by the Board of Medical Examiners under ARM 24.156.2771 to provide advanced life support would not be able to provide advanced life support services while functioning on a licensed EMS service.

The proposed amendment to ARM 37.104.213(2) is necessary to correspond with language in EMT licensing statutes.

ARM 37.104.218

EMS services which provide advanced life support services must have an offline medical director. The proposed amendment to ARM 37.104.218(1) is necessary to

define the services that are licensed to provide ALS and therefore required to have a service medical director.

The proposed amendment to ARM 37.104.218(2) is necessary in order to reference a new definition for offline medical direction that was adopted by the 2009 Montana Legislature in HB 93. The language for ARM 37.104.218(3) incorporated into 50-6-101, MCA by HB 93, definition for offline medical direction, therefore is duplicative and unnecessary in rule. The proposed amendment to ARM 37.104.218(3) is necessary to allow the department to consider the approval of a variety of methods for a service to receive medical direction (e.g. radio, cell phone, satellite phone).

ARM 37.104.221

With the adoption of language in HB 93, definitions for medical control were deleted from statutes and are no longer necessary in ARM 37.104.221. The department proposes to repeal ARM 37.104.221.

7. 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., January 21, 2010.

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

9. 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 7 above or may be made by completing a request form at any rules hearing held by the department.

10. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by letter on May 21, 2009, sent postage prepaid via USPS, and by telephone and e-mail December 4, 2009.

/s/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State December 14, 2009.

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

In the matter of the amendment of ARM 37.108.507 pertaining to components of quality assessment activities	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 23, 2010, the Department of Public Health and Human Services proposes to amend 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 January 15, 2010, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES
(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2009~~ 2010 measures:
(a) through (3) remain the same.
(4) The department adopts and incorporates by reference the HEDIS year ~~2009~~ 2010 measures for the categories listed in (1)(a) through (e). The HEDIS year ~~2009~~ 2010 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2009~~ 2010 measures are available from the National Committee for Quality Assurance, 1100 13th St. NW, Suite 1000, Washington, D.C. 20005 or on the internet at www.ncqa.org.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-302, MCA

4. The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA) established standards for health carriers offering managed care plans and for the implementation of quality assurance standards in

administrative rules. ARM 37.108.501, et seq. were adopted in 2001 to establish mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using healthcare effectiveness data and information set (HEDIS) measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from adopted 2009 measures to the proposed 2010 measures are quoted below:

"Changes to HEDIS 2010

Childhood Immunization Status

a) Added hepatitis A, rotavirus and influenza vaccines.

b) Added Combinations 4–10.

c) Clarified that pneumococcal conjugate vaccinations administered prior to 42 days after birth should not be counted as a numerator hit.

Breast Cancer Screening. No changes to this measure.

Cervical Cancer Screening

a) Removed the Hybrid Method of data collection for the commercial product line.

b) Clarified documentation of "no endocervical cells".

Comprehensive Diabetes Care

a) Clarified that HbA1c control (<7.0%) is only reported for the commercial and Medicaid product lines.

b) Deleted CPT codes 99261–99263, 99301–99303, 99311–99313, 99321–99323, 99331–99333 from Table CDC-C.

c) Deleted CPT Category II code 3047F from Tables CDC-D, CDC-E, CDC-F and CDC-Q.

d) Clarified that a calculated or direct LDL may be used for LDL-C screening and control.

e) Deleted LOINC code 24331-1 from Table CDC-H.

f) Deleted LOINC code 34535-5, 53525-2 from Table CDC-J.

g) Added CPT codes 90957–90962, 90965, 90966, 90969, 90970 to Table CDC-K "Evidence of treatment for nephropathy" description.

h) Added LOINC code 53525-2 to Table CDC-K.

i) Deleted LOINC codes 24356-8, 24357-6, 50556-0, 50564-4 from Table CDC-K.

j) Deleted CPT code 90939 from Tables CDC-K, CDC-P.

k) Deleted CPT Category II code 3076F from Table CDC-N.

l) Clarified that member-reported BP readings are not acceptable.

m) Added ICD-9-CM Diagnosis code 249 to Table CDC-O "Steroid induced" description.

n) Added CPT codes 90957–90962, 90965, 90966, 90969, 90970 to Table CDC-P "ESRD" description.

HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for Adults

a) This measure is collected using survey methodology. Detailed specifications and summary of changes are contained in HEDIS 2010, Volume 3: Specifications for Survey Measures.

Corrections, policy changes and clarifications to HEDIS 2010, Volume 2, Technical Specifications

Updated Random Number Table for Measures Using the Hybrid Method
Childhood Immunization Status

- Table CIS-A

    Add CPT1 code 90670 to the "Pneumococcal conjugate" description.

Cervical Cancer Screening

- Table CCS-B

    Add ICD-9-CM Diagnosis codes V88.01, V88.03.

Comprehensive Diabetes Care

- Throughout the measure specification

Replace "HbA1c Control <7.0%" with "HbA1c Control <7.0% for a Selected Population".

- Required exclusions for the HbA1c Control <7.0% for a Selected Population indicator

  Replace the first bullet with:

  65 years of age and older as of December 31 of the measurement year.

- Table CDC-H

  Add LOINC code 55440-2.

- Hybrid Specification—Denominator

  Add the following text to the end of the first paragraph.

  The HbA1c Control <7% for a selected population indicator is not collected or reported for the Medicare product line. Organizations should use a sample size of 411 for the Medicare product line.

- Required exclusions for the HbA1c Control <7.0% for a Selected Population—Medical Record

  Replace the first bullet with:

  65 years of age and older as of December 31 of the measurement year.

- Hybrid Specification—Numerators: LDL-C screening

  Replace the second sentence in the Medical record section with the following text.

  The organization may use a calculated or direct LDL for LDL-C screening and control indicators."

The option of not updating the HEDIS measure was considered and rejected because these are national quality measures which allow comparison among health plans. If the measures are not kept current, this function is lost.

5. The department intends the proposed rule amendments to be applied retroactively to January 1, 2010. There is no negative impact to the affected health insurance companies by applying the rule amendment retroactively.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 21, 2010. Comments may also be faxed to (406) 444-1970 or e-mailed to dphhslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Rhonda Lesofski at the above address no later than 5:00 p.m., January 21, 2010.

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

9. 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.

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

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

/s/ Lisa Swanson	/s/ Mary Dalton for
Rule Reviewer	Anna Whiting Sorrell, Director Public Health and Human Services

Certified to the Secretary of State December 14, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.105, 17.53.112, 17.53.1201, 17.53.1202, 17.53.1303, and the adoption of New Rules I and II pertaining to incorporation by reference and standardized permits	))))))	NOTICE OF AMENDMENT AND ADOPTION (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On August 27, 2009, the Department of Environmental Quality published MAR Notice No. 17-289 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1444, 2009 Montana Administrative Register, issue number 16.

2. The department has amended ARM 17.53.105, 17.53.112, 17.53.1201, 17.53.1202, and 17.53.1303, and adopted New Rules I (17.53.1501) and II (17.53.1502) exactly as proposed.

3. No public comments or testimony were received.

Reviewed by:	DEPARTMENT OF ENVIRONMENTAL QUALITY
<u>/s/ David Rusoff</u> DAVID RUSOFF Rule Reviewer	By: *<u>/s/ Richard H. Opper</u>* RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, December 14, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.201 pertaining to permit fees	)))	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On August 13, 2009, the Board of Environmental Review published MAR Notice No. 17-290 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1335, 2009 Montana Administrative Register, issue number 15.

2. The board has amended ARM 17.30.201 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) through (5) remain as proposed.

(6) The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, are set forth below as Schedules I.A, I.B, I.C, and I.D. Fees must be paid in full at the time of submission of the application. For new applications under Schedule~~s~~ I.A, the annual fee from Schedule III.A for the first year must also be paid at the time of application. For new applications under Schedule I.B and I.C, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) Under Schedules I.A and I.B, the department shall assess a fee for each outfall, except that MS4 permit fees under Schedule I.A are based on population as provided in (6)(h). An application fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.

(b) remains as proposed.

(c) The department may assess an administrative processing fee under Schedule I.D when a permittee makes substantial alterations or additions, requiring significant additional review, to a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan.

(d) through (m) remain as proposed.

(n) A facility with a construction storm water no-exposure certification from the department must apply for and receive a new certification every five years in order to maintain a no-exposure status.

Schedule I.C Application Fee for Storm Water General Permits

Category	Renewal Amount	New Permit Amount (includes initial annual fee)
Storm water associated with construction		
1 to 5 acres	$ 900	$ 900
more than 5 acres, up to 10 acres	1,000	1,000
more than 10 acres, up to 25 acres	1,200	1,200
more than 25 acres, up to 100 acres	2,000	2,000
more than 100 acres	3,500	3,500
Storm water associated with industrial activities		
small - 5 acres or less	1,200	1,500
medium - more than 5 acres, up to 20 acres	1,500	1,800
large - more than 20 acres	1,800	2,000
Storm water associated with mining, oil, and gas		
small - 5 acres or less	1,200	1,500
medium - more than 5 acres, up to 20 acres	1,500	1,800
large - more than 20 acres	1,800	2,000
Traditional storm water municipal separate storm sewer system (MS4)		
population greater than 50,000	7,000	10,000
population 10,000 to 50,000	6,000	8,000
population less than 10,000	5,000	6,000
County MS4 permit	4,000	5,000
Non-traditional MS4 permit	2,000	3,000
Storm water no-exposure certification required once every five years	300	500
Storm water construction waiver		400

(o) The minimum application fee under Schedule I.D for federal Clean Water Act section 401 certification is $~~4,000~~ 400 or 1% of the gross value of the proposed project, whichever is greater, and the maximum fee may not exceed $20,000. If a fee is submitted for a 401 certification and the department waives certification, without review, because the project will require a department permit or authorization identified in ARM 17.30.105(2)(b), the department will credit the fee towards the cost of the applicable permit or authorization.

Schedule I.D remains as proposed.

(7) and Schedule II remain as proposed.

(8) The annual permit fees are set forth in Schedules III.A, III.B, and III.C. No annual fee is required for activities listed in Schedule I.D.

(a) Under Schedules III.A and III.B, the department shall assess a fee for each outfall<u>, except that MS4 permit fees under Schedule III.A are based on population as determined by the latest decennial census from the United States Census Bureau</u>. An annual fee for multiple outfalls is not required if there are multiple outfalls from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or the discharges result in multiple or variable (flow dependent) effluent limits or monitoring requirements. For ground water permits, the department shall assess a fee based on the annual average daily flow in gallons per day for each outfall.

Schedules III.A and III.B remain as proposed.

(b) through (d) remain as proposed.

Schedule III.C Annual Fee for Storm Water General Permits

Category	Amount
Storm water associated with construction	
1 to 5 acres	$ ~~700~~ <u>650</u>
more than 5 acres, up to 10 acres	~~800~~ <u>750</u>
more than 10 acres, up to 25 acres	~~1,200~~ <u>1,150</u>
more than 25 acres, up to 100 acres	~~2,000~~ <u>1,800</u>
more than 100 acres	~~3,000~~ <u>2,800</u>
Storm water associated with industrial activities	
small - 5 acres or less	1,000
medium - more than 5 acres, up to 20 acres	1,200
large - more than 20 acres	1,500
Storm water associated with mining, oil, and gas	
small - 5 acres or less	1,000
medium - more than 5 acres, up to 20 acres	1,200
large - more than 20 acres	1,500
Traditional storm water municipal separate storm sewer system (MS4)	
population greater than 50,000	5,000
population 10,000 to 50,000	4,000
population less than 10,000	2,500
County MS4 permit	1,200
Non-traditional MS4 permit	1,200

(e) remains as proposed.

(f) The annual permit fee is assessed for each calendar year or portion of the calendar year in which the permit is effective. ~~The fee for the previous calendar year must be received by the department not later than 30 days after the invoice date. The fee must be paid by a check or money order made payable to the state of Montana, Department of Environmental Quality.~~

(9) through (9)(b) remain as proposed.

(10) The department shall give written notice to each person assessed a fee under this rule of the amount of the fee that is assessed and the basis for the department's calculation of the fee. The fee is due 30 days after ~~receipt~~ the date of the written notice. The fee must be paid by a check, money order, or electronic transfer payable to the state of Montana, Department of Environmental Quality.

(11) through (11)(b) remain as proposed.

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

COMMENT NO. 1: The public comment period should be extended because the regulated community did not have time to respond.

RESPONSE: Starting about three months prior to publication of the proposed rule notice in this rulemaking, the department conducted informal meetings with stakeholder groups. The department showed the groups the cost and revenue projections for the discharge permit program and showed proposed specific fee adjustments that would cover the costs. Informal comments were received from the stakeholder groups at that time, and the department made some changes to the fee proposal. The proposed fees were then made available for general public comment in the published proposed rule notice. Copies of the rule notice were mailed to all permittees and to parties, including all stakeholder groups, who had expressed an interest in rules pertaining to water quality. The board believes that the informal and formal comment periods gave affected parties adequate time to review and respond to the proposed fee changes.

COMMENT NO. 2: In ARM 17.30.201(1), the definition of "outfall" is different than in the draft municipal separate storm sewer system (MS4) general permit. The definitions should be the same.

RESPONSE: The definition of "outfall" in the MS4 general permit is based on the definition in the storm water permit rules at ARM 17.30.1102(14). That definition governs the meaning of "outfall" for purposes of MS4 permits. The definition of "outfall" in the revised fee rules is slightly different, but, because fees for MS4 permits are not based on the number of outfalls, there is no conflict with the definition in ARM 17.30.1102(14).

COMMENT NO. 3: Proposed Schedules I.A, I.C, III.A and III.C make it difficult to determine whether an MS4 would fall under the individual or general permit fee schedule.

RESPONSE: The fee rule does not contain the criteria for determining whether an MS4 falls under general or individual permit coverage. The fee rule simply sets out the applicable fees for each type of permit. The criteria for determining whether storm water discharges fall under general or individual permit coverage are set out in the storm water permit rules at ARM 17.30.1105(2).

COMMENT NO. 4: The proposed rules have deleted a footnote that limits fees for storm water outfalls to a maximum of five outfalls. The maximum outfall

language should be reinserted. Language should be added to clarify how the per-outfall fee applies to MS4s under the proposed fee schedule.

RESPONSE: The footnote was eliminated in the proposed rules because application and annual fees for MS4 discharges will no longer be based on the number of outfalls. For MS4 permits, the fees will be based on the MS4 population size. See proposed ARM 17.30.201(6)(h). Fees for construction storm water permits will also no longer be based on the number of outfalls. Industrial activities and mining and oil and gas activities that have an individual storm water permit or with a storm water outfall integrated with an individual permit will continue to be assessed fees on a per-outfall basis. ARM 17.30.201(6)(g). In response to this comment, ARM 17.30.201(6)(a) and (8)(a) will be modified to clarify that the per-outfall charges in Schedules I.A and III.A do not apply to MS4 permits.

COMMENT NO. 5: A commentor opposes the fee increase for MS4s if it is based on outfalls, and believes that the fees are excessive given that the majority of the effort for carrying out the program rests with local jurisdictions. The commentor also requests a reevaluation of construction-related permit fees, because the burden for inspection and compliance falls to the local jurisdiction with minimum involvement of the state.

RESPONSE: Under the revised fee rule, fees for MS4 permits are not based on the number of outfalls. See Response to Comment 4. Although the state MS4 permit requires cities to develop a storm water program, the department will continue to administer the state MS4 permit program. Administration of the construction storm water permit program will also continue to be the responsibility of the department. Consequently, the department still incurs significant costs for these programs. However, as discussed in the Response to Comment No. 6, some of the proposed fees have been reevaluated and reduced.

COMMENT NO. 6: A number of commentors expressed concern about the substantial fee increase being proposed for permits. It appears difficult for the department to justify the proposed increases.

RESPONSE: The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program. For fiscal year 2010, the Legislature authorized a budget of approximately $2.4 million for personnel and operations of the water quality discharge permit program. This amount is for expenses expected to be incurred in reviewing permit applications, review of modifications and renewals, monitoring permit compliance, providing compliance assistance, enforcing Water Quality Act requirements, developing water quality permit rules and guidance documents, file maintenance, and public information duties. The Legislature appropriated $71,053 of state general fund monies for the program. The remainder of the program costs must be met through other sources. The program receives federal funding from the EPA Performance Partnership Grant (PPG) and nonpoint source grant funds of approximately $423,912. The Water Quality Act requires the board to prescribe fees that are sufficient to cover the remainder of program costs. Section 75-5-516(1), MCA. For fiscal year 2010, the department projected that approximately $1.9 million would need to be raised through annual fees.

As proposed, the fee rules would have generated $1.9 million in annual fee revenue, based on FY 2008 data. This amount would have been an overall program funding increase of 40% compared to the previous year. However, based on comments received, some of the proposed fee amounts have been revised and decreased to reflect an overall funding increase of approximately 25%. The projected revenue from the revised fees will be $1.5 million, based on FY 2009 data. This may not be enough to meet projected program costs, and the department will have to reevaluate the fees next fiscal year to determine if another fee increase is necessary. However, this approach will provide some relief to fee payers by phasing in the fee increase.

COMMENT NO. 7: In the notice of proposed rulemaking, it was stated that it was not known if the $60,000 that the Legislature appropriated in state general fund for this program would be available. The commentor noted that these funds were subsequently reinstated and are now available.

RESPONSE: At the time the notice of proposed rulemaking was issued, the department estimated that its general fund appropriation would be approximately $60,000, based on the appropriation for 2008. At the time, the actual amount of the appropriation was not known and it was not known if it would be available for use by the permit program. Subsequently the department learned that a general fund appropriation in the amount of $71,053 would be available. However, even with the general fund appropriation, fees must raise approximately $1.6 million to meet program costs.

COMMENT NO. 8: Several commentors objected to the proposed fee increase for holders of construction storm water permits. The fees associated with larger projects would see a fourfold increase in fees. These fees are excessive. The level of services provided has decreased in recent years. In the case of storm water permits, storm water pollution prevention plans (SWPPPs) are no longer reviewed by the department. Notice of Intent (NOI) forms are no longer reviewed for content, but only completeness. The majority of construction sites do not even receive a department inspection.

RESPONSE: Because the new construction permit fees are based on acreage rather than on the number of outfalls, it is difficult to directly compare the new fees with the old. However, based on a review of current storm water permit holders that have identified an area of disturbance of one to five acres, 94% will see a fee increase of 44% and 6% will see a fee decrease of 28 to 71%. Of current storm water permit holders that have identified an area of disturbance of five to ten acres, 91% will see a fee increase of 75% and 9% will see a fee decrease of 15 to 78%. Of current storm water permit holders that have identified an area of disturbance of 10 to 25 acres, 93% will see a fee increase of 28 to 156% and 7% will see a fee decrease of 15 to 49%. Of current storm water permit holders that have identified an area of disturbance of 25 to 100 acres, 95% will see a fee increase of up to 300%, and 8% will see a fee decrease of 20%. For current storm water permit holders that have identified an area of disturbance of over 100 acres, 100% will see a fee increase of 24 to 522%.

The board is required by statute to establish fees that are commensurate with program costs. See Response to Comment No. 6. The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program, and specific permit fees are not necessarily based on the time required to administer that particular permit. In general, the increases in storm water construction permit fees reflect the fact that this is the largest single group in the discharge permit program, having approximately 52% of the total permits. The reason for the larger increase in fees for larger construction projects is that there is a direct correlation between the number of acres disturbed and the amount of sediment that can be released from a site. Although the department cost is not higher for issuing permits for the larger projects than for the smaller projects, subsequent department costs for compliance review and enforcement tend to be higher for larger projects.

One commentor's fee calculations show that the schedule for storm water construction permit fees needs clarification. Under the current rules, the application fee for a new storm water construction permit with one outfall is $450, with an additional annual fee of $450 for the first and each subsequent year of permit coverage. Under the current rules, the first year annual fee, which is due at the time of application, is shown in a separate schedule. Under the proposed fee rule changes, Schedule I.C established an application fee of $900 for a one to five acre storm water construction permit. This amount in Schedule I.C includes the first year annual fee. The result is, for small construction projects, the initial fees (application and first year) are the same under the current and proposed fee schedules. Subsequent annual fees for these projects are increasing from $450 to $650. The rule will be revised to clarify that the "New Permit Amount" column in Schedule I.C includes the initial annual fee. Proposed ARM 17.30.201(6) will also be revised to clarify that the initial annual fee is included in the new permit amount.

COMMENT NO. 9: Because sediment is normally the only pollutant of concern for construction activities, it appears that fees for construction permits are bearing an unfair burden, compared with activities that involve numerous pollutants of concern.

RESPONSE: The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program, and reflect the fact that construction storm water dischargers are the largest single group in the discharge permit program. See Response to Comment No. 8. The fact that sediment is the primary pollutant of concern in construction storm water does not reduce the severity of potential impacts. Currently approximately 400 rivers and lakes are listed as impacted by sediment in Montana.

COMMENT NO. 10: A commentor asks whether the revenue shortfall has been distributed equitably across all permit fee payers. To increase revenue by 40%, we would expect to see a 40% increase in the fees for all payers. Instead, our analysis shows that transportation-related permit fees will increase by up to 2.7 times. It appears that the transportation industry's contribution to the funding shortfall is disproportionate when compared to other industries. The commentor

requests to see background data showing the distribution of the fee increase among permit holders.

RESPONSE: As discussed in the Response to Comment No. 6, the fee increase will be lowered to seek an overall program funding increase of 25% instead of 40%. The proposed fee rule distributes the fee increase throughout 26 different categories of department permits and authorizations. Because of statutory fee caps, not all fee payers are subject to the increase. The fees for 8% of current permit holders would remain unchanged because they have been capped by statute at a maximum amount. The groups with statutory fee caps include concentrated animal feeding operations (CAFOs), suction dredges, and major dischargers that are currently at the statutory maximum of $3,000 per million gallons of discharge. Another reason that increases are not distributed equally among fee payers is that some adjustment within categories has been proposed. For example, for storm water and ground water permits, varied fee rates are proposed based on the size of the potential discharge. Those adjustments are intended to have higher fees for permit holders with a greater potential to discharge pollutants.

The board is required by statute to establish fees that are commensurate with program costs. The proposed fee increases are based on costs to administer the entire discharge permit program, and specific fees are not necessarily based on the costs to administer that particular permit. Fees must recover overall department costs for reviewing permit applications, review of modifications and renewals, monitoring permit compliance, providing compliance assistance, enforcing Water Quality Act requirements, developing water quality permit rules and guidance documents, file maintenance, and public information duties.

The permits most often obtained by the transportation industry are for construction storm water discharges under the general permit fee Schedule I.C. The extent of the increases and the reason for them are discussed in the Response to Comment No. 8. In general, the increased fees for construction storm water permits reflect the fact that this group is the largest single group in the discharge permit program, having approximately 52% of the total permits.

The information showing the distribution of fee increases among permit holders has been tabulated and is available for review as part of the department records, but will not be included in this Response.

COMMENT NO. 11: A commentor stated that if construction work was conducted on her 2.5 acre homestead she would be required to pay $1,600 for a storm water construction permit for the soil disturbance for a hay corral.

RESPONSE: The department recommends that a construction storm water permit be obtained whenever there is a reasonable possibility that a discharge of storm water may occur from a construction project. However, the permit is only required if the area of disturbed land is one acre or more and a discharge is proposed. In this example, a permit would not be required if the clearing and grading for the hay corral project impacted less than one acre. If coverage under the construction storm water general permit were obtained, the application fee, which includes the annual fee for the year the authorization is issued, would be $900, which is the same as under the current rule. Under the proposed rules, the annual fee for subsequent years will increase from $450 to $650. The rule has been

revised to clarify that the application fee and first year annual fee are combined in the New Permit Amount in Schedule I.C. See Response to Comment No. 8.

COMMENT NO. 12: The construction storm water program is difficult for industry to use in the planning and development of oil and gas wells. It is impossible to predict the exact number of wells required for maximum extraction. The addition or subtraction of a well to or from a plan should not require a reapplication for a new permit with a new fee. Drilling fewer wells in a plan should not be considered a significant modification of a permitted project. The commentor also requested definitions for the following terms: major/minor modification; flow dependent; major facility; significant additional review; stream segments; and substantial changes, alterations, and additions.

RESPONSE: The addition or subtraction of a well would not, in itself, require a modification to the construction storm water permit. Under the proposed rule, the fees for these permits are based on the area of disturbed land. The addition of wells would increase the actual acreage of disturbance, but the acreage categories for storm water construction permits are broad enough to allow for several additional wells before a permit modification would be required. The categories are: 1 to 5 acres; >5 to 10 acres; >10 to 25 acres; >25 to 100 acres; and >100 acres. If the addition of a well does not change the acreage category, the permittee would simply need to modify the SWPPP at the project site to reflect the current site conditions.

The proposed rule also added ARM 17.30.201(6)(l) to address the concerns of the commentor. This provision allows the modification of a construction storm water authorization within the first six months to be handled as a minor modification for a fee of $500, instead of the new permit amount shown in Schedule I.C. This provision offers permit holders a simpler way to address unforeseen changes in the early phases of natural resource development.

The term "minor modification" in Schedule I.D refers to a minor modification under ARM 17.30.1362. All other permit modifications are considered "major." The term "flow dependent" does not have a technical definition. As used in ARM 17.30.201(6)(a), it refers to effluent limits or monitoring requirements that vary based upon flow. The term "major facility" is used in the definition of "major permit" in ARM 17.30.201(2)(d). A "major facility" is defined in ARM 17.30.1304(30) as a facility classified as such by the department in conjunction with the regional administrator. This is consistent with the federal definition at 40 CFR 122.2. A major facility is one that has a design flow greater than one million gallons/day (MGD), or a treatment facility that scores 80 or more points on the NPDES Permit Rating Worksheet, or a facility that is otherwise given this designation by EPA in consultation with the state permitting authority. The term "significant additional review" is used in ARM 17.30.201(6)(b) to clarify when a resubmitted application will be assessed an additional review fee under Schedule I.D. The term is not new, but is carried over from the current rules. The term cannot be defined quantitatively. In general, the resubmittal review fee will not be charged for processing clerical corrections, but will be charged where a resubmitted application requires substantive review. The term "substantial changes" in ARM 17.30.201(6)(b) refers to changes that will require significant additional review. The term "stream segment" means any segment of a stream as defined by intervening tributaries or other identifying landmark. The term

"substantial alterations or additions" is used in ARM 17.30.201(6)(c) to clarify when an administrative processing fee under Schedule I.D will be assessed for department review of a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan. In response to comments, this provision will be revised to clarify that the fee will be assessed where significant department review is required. See Response to Comment No. 26.

COMMENT NO. 13: A commentor requested justification for assessing construction storm water permit fees by acreage rather than by the number of outfalls. A small project that directly impacts surface water should be charged more than a large project that is miles from a perennial stream. Why do minor modifications require such a substantial increase in fees? Would a change in project ownership require a permit modification?

REPONSE: The actual size of the disturbed acreage is directly related to the amount of sediment that could be discharged from the construction site during a storm event. See Response to Comment No. 8. The same processing steps involved in issuing permits are also required for permit modifications, even modifications that are minor as described in ARM 17.30.1362. Under ARM 17.30.1362(1)(d), a change in project ownership is a minor modification.

COMMENT NO. 14: A commentor expressed concern about the apparent raise in fees for CAFOs.

REPONSE: During the 2005 Legislative session the Water Quality Act was amended to include fees for CAFOs. Pursuant to 75-5-803, MCA, the fees for CAFO general and individual permits are $600 for the application fee and $600 for the annual fee. Since 2005 CAFO permit holders have been assessed the fee specified in the statute, and the lower fees shown in the current fee rule have not been applicable. The proposed amendments to the CAFO fees in the fee rule simply incorporate the amount specified in statute.

COMMENT NO. 15: The large fee increases proposed will have a chilling effect on the natural resource industries.

RESPONSE: The impact of the fee increase on the natural resource industries varies depending on how the current economic climate affects the particular industry. In general, the amount of the fee increase should not be so large as to significantly impact a facility's financial status. Some of the natural resource industries are not subject to the increases due to statutory fee caps. In other cases the impact of the fees may be reduced because fees are based on discharge flows, which are less in times of low production.

COMMENT NO. 16: Permit fees should not be increased for the aluminum refinery. Aluminum is a commodity whose price is set in the marketplace, and the facility has no control over it. The proposed fee increase for this facility is contrary to the Governor's stated goal to protect quality jobs.

RESPONSE: The current fee rules were last revised in 2002 and have remained unchanged for more than seven years. For this permittee, assuming three outfalls and the same annual average flow, the proposed rule would increase annual

fees from $2,267 to $3,375. The renewal fee, which is due about every five years, will increase by about 20% from $10,000 to $12,000. This facility is current on its renewal fee and will not have to pay the increased fee for at least five years. These fee increases, while not insignificant, should not in themselves significantly impact the facility's financial status.

COMMENT NO. 17: Permit application fees for sand and gravel mines are increasing from $450 to $1,200, and annual fees are increasing also. This is excessive, especially for dry sites that do not pose a threat to water quality. If fees are supposed to reflect pollutant loading, sediment particles are not "pollutants" unless they enter water.

RESPONSE: The proposed fee increases are necessary to account for an increase in overall costs to administer the discharge permit program. See Response to Comment No. 6. Sand and gravel operations have a significant potential to cause pollution. In addition to sediment, the general permit for sand and gravel mines addresses discharges of wash water, transport water, scrubber water, pit dewatering water, and other process water to state waters. Pollutants of concern in process water include oil and grease, pH, and turbidity.

COMMENT NO. 18: A small wastewater district commented that the fees are too high and penalize the smaller communities to the point where users may no longer be able to afford the system. Larger cities with more connections have a lower cost per connection than smaller towns. A user in a system with 50 connections would pay $50 per year in permit fees alone, while a user in a large system (10,000 connections) may pay only $.50 per year for permit fees. The fee schedule discriminates against smaller districts in Montana. The department should abandon this type of fee schedule and research other means of producing money.

RESPONSE: Application fees for larger systems are higher than for smaller systems, and larger systems also pay more in annual fees based on volume of the discharge. However, the commentor is correct that the annual cost per user can be significantly higher for small systems with few users, when compared with systems with more users. The per-user inequity cannot be completely eliminated without imposing disproportionate costs on other categories of fee payers. Eliminating the permit fee system altogether is not an option absent legislative change. The amount of the per-user fee increase in small systems should not be prohibitive, however. The annual fees for small public systems are increasing from $1000 to $1,500. For a system with 50 users, this amounts to an increase of $10 per year per user.

COMMENT NO. 19: In an earlier draft version of the proposed rule, the term "determination of no significance" was used in ARM 17.30.201(3) and Schedule I.A. This is changed in the current proposal to "determination of significance." The commentor questions whether this has a substantive effect.

RESPONSE: The term "determination of significance" was used in the more recent draft because it is consistent with the terminology used in ARM 17.30.715, which establishes the criteria for determining nonsignificant changes in water quality. The change does not have a substantive effect.

COMMENT NO. 20: Under the proposed Schedule I. D, the fee for Clean Water Act section 401 certifications is $4,000 or 1% of the value of the proposed project not to exceed $20,000. How does the value of the project relate to DEQ's costs? Fees should be tied to potential risk and administrative burden, not value of project.

RESPONSE: Review of 401 certifications can require significant staff time within the department and can involve several different work units within the agency. Because there is no annual fee for 401 certifications, the application fee must address the costs of initial and any follow-up review. Project value is the simplest method to reflect the complexity of the review and the corresponding review costs. The rule will be revised to reduce the proposed $4,000 minimum fee to $400.

COMMENT NO. 21: A commentor requests clarification of whether the fees for Clean Water Act section 401 certifications will be assessed if certification is waived under ARM 17.30.105(2).

RESPONSE: The proposed ARM 17.30.201(6)(o) will be revised to clarify that if a fee is submitted for a 401 certification and the department waives certification, without review, because the project will require a permit or authorization identified in ARM 17.30.105(2)(b), the 401 fee will be credited toward the cost of the applicable permit or authorization.

COMMENT NO. 22: Under the proposed ARM 17.30.201(6) the new permit fee for certain permits covers the annual fee for the calendar year that the permit coverage becomes effective. An applicant could pay for a new permit in December of one year and then be subject to an annual fee the next month.

RESPONSE: The commentor is correct. Applicants are advised to time their applications to avoid unnecessary fees. This comment is most pertinent to construction storm water authorizations, which are usually short-term. Applications for these authorizations are usually received between February and June, coinciding with the construction season.

COMMENT NO. 23: A commentor requests clarification of what was intended in proposed ARM 17.30.201(6)(a), which refers to "multiple or variable (flow dependent) effluent limits or monitoring requirements."

RESPONSE: This language is in the current rules at ARM 17.30.201(5)(a). It was moved to reflect the amended rule's new format, resulting in the language being underlined as new text. The intent of the section is to provide a means to consolidate, for fee purposes, multiple outfalls that discharge to the same stream segment, require identical review and analysis, and result in the same effluent limits. The outfalls in these cases, although identified as separate in the permit, will be consolidated for fee purposes, resulting in lower annual fees for the permit holder.

COMMENT NO. 24: Please define how you determine a different outfall per stream segment pursuant to ARM 17.30.201(6)(a).

RESPONSE: Outfalls are initially identified by the permit applicant in the application form. The department permit reviewer analyzes the identified outfalls in terms of wastewater characteristics, process flow diagrams, and water quality data

in the receiving stream segment, which is the part of the stream extending between designated tributary junctions. A stream segment may have varying water quality characteristics requiring separate analysis to develop effluent limits, and each segment can be impaired for a variety of pollutants, which requires an analysis for each parameter. The permit protects water quality by requiring effluent limits and monitoring for each receiving stream segment. If the analysis results in identical effluent limits for two or more outfalls, and the outfalls discharge into the same receiving stream segment, the outfalls are grouped for fee assessment purposes. The process of "grouping" outfalls has been in effect since 1994 and is consistent with 75-5-516(2), MCA.

COMMENT NO. 25: In proposed ARM 17.30.201(6)(b), it is not clear why it would be necessary to charge an additional application fee if an application is denied for more than one year.

RESPONSE: If an amended application is submitted after 12 months or more of inactivity, the application would need extensive rereview. Even if there were no operational changes to the facility, new data about the water quality of the receiving stream would need to be obtained and evaluated in order to set effluent limitations for the permit.

COMMENT NO. 26: Proposed ARM 17.30.201(6)(c) authorizes the department to assess an administrative processing fee when a permittee makes substantial alterations or additions to a sediment control plan, waste management plan, nutrient management plan, or storm water pollution prevention plan. How much is the fee and what constitutes "substantial alteration?" The department encourages permittees to actively monitor and amend these plans. Charging them administrative fees for doing so is a deterrent to doing the right thing.

RESPONSE: The administrative processing fee, set out in Schedule I.D, is $500. The fee will be charged when a change to a plan requires significant additional review time by the department. Although "significant" additional review cannot be quantified, in general this fee will not be charged for processing of clerical corrections. It will be charged where a resubmitted plan requires substantive review by the department. For example, the administrative processing fee will generally not be assessed for processing voluntary updates of construction SWPPPs. However, if the department identifies deficiencies in a SWPPP during a compliance inspection, the processing fee may be charged for review of the resubmitted SWPPP. The fee will usually be charged when the department identifies a deficiency in a plan and reviews the corrected plan. Department review of voluntary amendments of nonconstruction storm water plans may also trigger this fee if significant review time is required. Nutrient management plan resubmittals for CAFOs will generally be charged this fee because the department must provide a public comment process for these plans. In response to comments, the rule will be revised to clarify that the fee will be assessed where significant department review is required.

COMMENT NO. 27: ARM 17.30.201(6)(g) appears to be in conflict with ARM 17.30.201(6)(a). Can they be combined to avoid confusion?

RESPONSE: The proposed ARM 17.30.201(6)(a) states that fees associated with individual permits and non-storm water general permits under Schedules I.A and I.B are assessed based on the number of outfalls. ARM 17.30.201(6)(a) also provides that outfalls may be grouped, for fee purposes, in certain situations. See Response to Comment 24. ARM 17.30.201(6)(g) states that discharges composed entirely of storm water from industrial activities and mining and oil and gas activities may be incorporated into a facility permit under Schedule I.A, and in that event the storm water fees would be on a per-outfall basis. There is not a conflict between these two provisions.

COMMENT NO. 28: In Schedule III.A the fee for non-contact cooling water appears to be limited to minor privately-owned treatment works. This will result in higher fees for major dischargers of non-contact cooling water.

RESPONSE: The lower fee for "non-contact cooling water" was intended to apply to both public and private, major and minor, treatment works, as is the case under the current rules. This was a formatting error, and Schedule III.A will be revised to make this change.

COMMENT NO. 29: In the proposed rule, ARM 17.30.201(8)(f) states that the annual fee is due "not later than 30 days after the invoice date." Section ARM 17.30.201(10) states that the "fee is due 30 days after receipt of the written notice." The commentor requests clarification as to which provision controls. The commentor states that 30 days is not enough time to process payments from municipalities, and suggests 45-60 days.

RESPONSE: The current fee rule requires that annual permit fees be paid on March 1. The proposed ARM 17.30.201(8)(f) eliminates the March 1 due date and requires payment not later than 30 days after the date of an invoice. The "invoice" referenced in ARM 17.30.210(8)(f) was intended to be the same as the "notice" in ARM 17.30.210(10). In response to this comment, the rule will be revised to eliminate inconsistency and duplication. The term "notice" will be used instead of "invoice," and the 30 days for payment will run from the date on the notice, rather than the date of receipt. The provisions regarding fee notices and due dates will also be consolidated into ARM 17.30.201(10). Under both the current and proposed rule, interest and late fees begin to accrue after 30 days, but ARM 17.30.210(9) defers imposition of interest and late fees for 90 days after the due date. See 75-5-516(5), MCA. The additional 90-day grace period should address the commentor's concern about municipal payment processing times.

COMMENT NO. 30: ARM 17.30.201(8)(f) requires payment by check or money order, which is not consistent with the department electronic payment known as eBill.

RESPONSE: EBill is not currently available to the entire department. The rule will be modified to incorporate electronic payments when it becomes available.

Reviewed by:	BOARD OF ENVIRONMENTAL REVIEW
<u>/s/ James M. Madden</u>	By: *<u>/s/ Joseph W. Russell</u>*
JAMES M. MADDEN	JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer	Chairman

Certified to the Secretary of State, December 14, 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 AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On October 15, 2009, the Department of Environmental Quality published MAR Notice No. 17-295 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1725, 2009 Montana Administrative Register, issue number 19.

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

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

COMMENT NO. 1: The building industry and Association of Realtors are concerned about the impact that increased DEQ fees, on top of other increasing fees and costs, will have on the future of housing affordability in Montana. The Montana housing market is facing the largest decline in state history. Adding extra fees to subdivision development is counterproductive and may compound the problems facing the industry as well as the problems facing the subdivision bureau. The commentor requests that the department seek other means to solve its current budget troubles.

RESPONSE: By statute, the department's subdivision review program is required to be funded entirely by application fees. Section 76-4-105, MCA. The statute requires that fees be set at a level sufficient to recover department costs, and the costs of local reviewing authorities, for reviewing subdivision applications, conducting inspections, and conducting enforcement activities. Without legislative change, alternative funding mechanisms are not an option. The department has recently reduced staff based on the drop in applications received in recent years. Current staff is at the minimum level necessary to conduct essential functions, but current fees are not sufficient to fund those functions. The department recognizes that the proposed fee increases are significant, but the increases should not in themselves deter subdivision development if the market economy improves.

COMMENT NO. 2: An engineering firm commented in opposition to the proposed fee increases. Many of their clients are struggling financially, and higher fees would impose an undue hardship. One client is elderly and wants to create an additional lot for her daughter. The existing fee of approximately $250 is already a burden for her. Fees are increasing not just by 40% but by up to 67%. Since we are in the middle of a recession, fees should be lowered or eliminated. The commentor would support supplementing department funding through the state general fund.

RESPONSE: The review fee for the commentor's example of a single-lot subdivision with an on-site well and septic system will increase by $40 or about 15%. Fees for larger subdivisions will increase by a larger percentage. The department recognizes that fee increases adversely affect family transfers because they may not be able to pass review costs along to home purchasers. However, without the proposed fee increases, the department will be unable to continue its essential functions for reviewing subdivisions. Department review is important to ensure that sanitation facilities in subdivisions are protective of public health and the environment. Support from the state general fund is not available absent legislative change. See Response to Comment No. 1.

COMMENT NO. 3: Higher fees may lead developers to forego engineering services, resulting in potential harm to the environment and increased enforcement.

RESPONSE: If a developer's application is not professionally prepared, the department reviewers will identify any deficiencies and prevent installation of noncompliant facilities.

COMMENT NO. 4: The 60-day review period for subdivisions is unreasonably long. A 30-day review period is more reasonable. Additional department personnel would be needed to implement this, but it could be funded through tax revenues.

RESPONSE: The 60-day review period is established in statute at 76-4-125(1)(b), MCA. As the commentor notes, the department would need additional staff to accomplish review in a shorter period. As stated in the Response to Comment No. 1, revenue from application fees has dropped significantly in recent years, and, even with the fee increase, revenue will not be sufficient to increase staff levels. Absent legislative changes, tax revenue is not available to support the department subdivision review program.

COMMENT NO. 5: The people of this state can not afford any more fee increases. If the department wants to save money, it could drop some of its high-paid staff.

RESPONSE: See Response to Comment No. 1. The department has already reduced its subdivision review staff to reflect the lower volume of applications in recent years. The department cannot further reduce staff and still maintain essential review functions.

COMMENT NO. 6: A local health department requests that the department consider costs to county programs, not just the state program, when deciding on fee increases. Local costs have gone up significantly since 2002, when the fees were last increased. The local share of the department's subdivision lot fee is only $25, as set by ARM 17.36.804(2)(a). Because that rule is not being amended in this rulemaking, the commentor requests that the lot fee be raised from $75 to $125 rather than $100, or that a new site visit fee be established at $25 per lot, payable to local reviewers.

RESPONSE: The department recognizes that costs for local reviewing authorities also have risen. In order to increase fees beyond what was proposed in

this rulemaking, a new rule notice would need to be published and an additional opportunity for public comment provided. The department will work with local agencies to assess ways to address local funding shortages through amendments to state or local rules.

COMMENT NO. 7: A local health department notes that, for multiuser water systems and new pressure-dosed drainfield systems, the base review fee is not increasing but the hourly review fee is increasing. It is difficult to track review time in this manner, and it is preferable to have as many charges known and paid up front. This fee structure could also lengthen the time to approve a subdivision, if the reviewer has to wait for payment of additional review fees. The base review fees for these systems should be increased.

RESPONSE: The proposed fees cannot be increased further without initiating a new proposed rule notice and providing an additional opportunity for public comment. See Response to Comment No. 6. The department will work with local agencies to assess ways to make the subdivision review fee structure more efficient.

COMMENT NO. 8: A local health department notes that the department currently does not charge a lot fee for lots in subdivisions that are exempted from review. Local reviewers often need to evaluate exempt lots to determine whether a claimed exemption is appropriate. Applicants should either pay the lot fee for exempt lots, or a new exempt lot fee should be established. However it is done, local reviewers should be reimbursed $50 per lot for this review.

RESPONSE: Creation of a new exempt lot fee, or amending ARM 17.36.804(2)(a) to raise the local reimbursement rate, is outside the scope of this rulemaking. See Response to Comment No. 6. The department will work with local agencies to assess ways to address local funding shortages through amendments to state or local rules.

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, December 14, 2009.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of amendment of ARM 23.16.101, 23.16.116, 23.16.117, 23.16.120, 23.16.125, 23.16.126, 23.16.1304, 23.16.1826, 23.16.1826A, 23.16.1828, 23.16.2402, concerning definitions, transfer of interest among licensees, transfer of interest to a new owner, loans and other forms of financing, change of liquor license type, change of location, approved variations of keno, quarterly reporting requirements, reporting frequency for approved automated accounting systems - exceptions, general requirements of operators, manufacturers, manufacturers of illegal devices, distributors, and route operators of video gambling machines or producers of associated equipment, and live keno and bingo record keeping	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2009, the Department of Justice published MAR Notice No. 23-16-214, regarding the public hearing on the proposed amendment of the above-stated rules at page 2078, 2009 Montana Administrative Register, Issue Number 21.

2. The Department of Justice has amended ARM 23.16.101, 23.16.116, 23.16.120, 23.16.125, 23.16.126, 23.16.1304, 23.16.1826A, and 23.16.2402 exactly as proposed.

3. The department amends the remaining rules with the following changes, stricken matter interlined, new matter underlined:

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (9) remain as proposed.

AUTH: 23-5-115, MCA
IMP: ~~16-4-414,~~ 23-5-115, 23-5-118, 23-5-176, MCA

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) through (6) remain as proposed.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA
IMP: 23-5-115, 23-5-136, ~~23-5-605,~~ 23-5-610, 23-5-621, 23-5-637, MCA

23.16.1828 GENERAL REQUIREMENTS OF OPERATORS, MANUFACTURERS, MANUFACTURERS OF ILLEGAL DEVICES, DISTRIBUTORS, AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (1) through (4) remain as proposed.

AUTH: 23-5-115, ~~23-5-605,~~ MCA
IMP: 23-5-115, ~~23-5-605,~~ 23-5-611, 23-5-614, 23-5-621, 23-5-625, ~~23-5-626,~~ 23-5-631, MCA

4. A public hearing was held on December 3, 2009. Oral comments were received from Neil Peterson, executive director, Gaming Industry Association of Montana, Inc. (GIA). Oral testimony was also received from Mark Staples, Montana Tavern Association (MTA). Written comments were received from Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA). No adverse comments or suggestions were offered at the public hearing or in writing. However, upon review of the proposed amendments, the division, noted that the implementation cited in 23.16.117 needed to be changed to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks. In addition, the division noted other repealed statutes still being cited as authority and implementation citations and the amendments correct those references.

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State December 14, 2009.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.29.1533 and 24.29.1538 related to the workers' compensation medical fee schedules	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2009, the Department of Labor and Industry (department) published MAR Notice No. 24-29-240 regarding the proposed amendment of the above-stated rules at page 2086 of the 2009 Montana Administrative Register, Issue Number 21.

2. On December 4, 2009, the department held a public hearing in Helena concerning the proposed amendments. No public comments or testimony were received by the closing date of December 11, 2009.

3. The department has amended ARM 24.29.1533 and 24.29.1538 exactly as proposed. These amendments will be applied on January 1, 2010.

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader	Keith Kelly, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 14, 2009

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.225.401 fee schedule, 24.225.501, 24.225.503, 24.225.504, 24.225.507, and 24.225.511 pertaining to veterinarian licensure, 24.225.704 and 24.225.709 pertaining to embryo transfer, 24.225.904, 24.225.910, 24.225.920, and 24.225.930 pertaining to euthanasia technicians and agencies, and the adoption of NEW RULE I pertaining to continuing education providers	)	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 10, 2009, the Board of Veterinary Medicine (board) published MAR Notice No. 24-225-34 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1561 of the 2009 Montana Administrative Register, issue no. 17.

2. On October 1, 2009, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. One comment was received by the October 9, 2009 deadline.

3. The board has thoroughly considered the comment received. A summary of the comment received and the board's response is as follows:

<u>COMMENT 1</u>: A comment was received in response to the proposed amendment to ARM 24.225.930, which added two sedation drugs to the drugs allowed to be used by euthanasia technicians in the euthanasia procedure. The commenter stated that use of these two sedation drugs causes cats to vomit before the sedative is effective which is both inhumane and emotionally difficult for the person performing the euthanasia. The commenter acknowledged the potential dangers of adding Schedule II sedation drugs and the need to train technicians in the proper use of the drugs, but asked the board to consider adding the drugs ketamine and telazol to the list as more compassionate choices.

<u>RESPONSE 1</u>: The board is statutorily mandated to protect the public and while the compassionate and humane euthanasia of unwanted or injured animals is a concern of all veterinarians, euthanasia technicians, and agencies, adding Schedule II narcotics to the list of board-approved sedatives increases the risk of drug diversion and harm to the public. The board is aware that ketamine is a popular street-drug

that could be misused. Furthermore, adding Schedule II drugs without requiring proper training in their use could jeopardize euthanasia agencies' DEA licensing. The board is therefore amending ARM 24.225.930 exactly as proposed, but intends to gather information from euthanasia agencies, technicians, and veterinarians about the need for adding more sedative drugs.

4. The board has amended ARM 24.225.401, 24.225.501, 24.225.503, 24.225.504, 24.225.507, 24.225.511, 24.225.704, 24.225.709, 24.225.904, 24.225.910, 24.225.920, and 24.225.930 exactly as proposed.

5. The board has adopted NEW RULE I (24.225.513) exactly as proposed.

BOARD OF VETERINARY MEDICINE
JOAN MARSHALL, DVM, 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 December 14, 2009

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

In the matter of the amendment of ARM 37.86.705, 37.86.802, 37.86.805, 37.86.1802, and 37.86.1807 pertaining to Medicaid reimbursement for audiology services, hearing aids, and durable medical equipment (DME)	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-492 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2099 of the 2009 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

4. The department intends to apply these rules effective January 1, 2010.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State December 14, 2009.

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

In the matter of the amendment of ARM 37.87.1217, 37.87.1222, and 37.87.1223 pertaining to Medicaid reimbursement for psychiatric residential treatment facility (PRTF) services	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-493 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2106 of the 2009 Montana Administrative Register, Issue Number 21.

2. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

<u>37.87.1217 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, TREATMENT REQUIREMENTS</u> (1) through (4) remain as proposed.

(5) In addition to the requirements in (4) that pertain to discharge planning the following activities are required. The PRTF must:

(a) develop a discharge plan within 30 days of admission that identifies the youth and family's needed services and supports upon discharge:

~~(i) the discharge plan must be comprehensive; and~~

~~(ii)~~ <u>(i)</u> the discharge plan must address ~~all~~ psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency treatment needs<u>, as appropriate</u>.

(b) through (d) remain as proposed.

(6) If ~~comprehensive and adequate~~ <u>appropriate</u> arrangements for services upon discharge are not made as required in (5) the PRTF may be at risk of losing its enrollment in the Montana Medicaid program.

(7) As part of the discharge planning requirements, PRTFs shall ensure the youth has a seven-day supply of <u>needed</u> medication and a written prescription for medication to last through the first outpatient visit in the community with a prescribing provider. Prior to discharge, the PRTF must identify a prescribing provider in the community and schedule an outpatient visit. Documentation of the medication plan and arrangements for the outpatient visit must be included in the youth's medical record. If medication has been used during the youth's PRTF treatment but is not needed upon discharge, the reason the medication is being discontinued must be documented in the youth's medical record.

AUTH: <u>53-2-201</u>, <u>53-6-113</u>, MCA

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

37.87.1222 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, INTERIM RATE AND COST SETTLEMENT PROCESS (1) through (4)(c) remain as proposed.

(5) Emergency medical conditions treated by providers outside the PRTF will be reimbursed using state funds at the prevailing Montana Medicaid rate, and must be billed by an enrolled provider directly to the Montana Medicaid program. Emergency services must be authorized by the department or its designee within 24 hours of the emergency service being provided or the next business day (Monday through Friday) Emergency medical conditions treated outside the PRTF may be reimbursed when provided in a hospital emergency room. If the youth's condition requires admission to a hospital, the youth must be discharged from the PRTF for Medicaid or state funded reimbursement to be available for the hospitalization.

(6) For purposes of this rule "emergency medical condition" means:

(a) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(ii) and (iii) remain as proposed.

(7) Additional outside services that may be reimbursed using state funds to pay the prevailing Montana Medicaid rate for youth in a PRTF are:

(a) emergency dental services in accordance with the Montana Medicaid Dental Program as identified in ARM 37.86.1006 for adults ages 21 and over with basic Medicaid;

(b) eyeglasses and vision examinations;

(c) durable medical equipment; and

(d) hearing aids and hearing examinations.

(7) through (11) remain as proposed but are renumbered (8) through (12).

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

37.87.1223 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, REIMBURSEMENT (1) through (4) remain as proposed.

(5) Emergency medical conditions treated by providers in a hospital emergency room outside the PRTF will not be included in the out-of-state PRTF's usual and customary rate, and must be billed by an enrolled provider directly to the Montana Medicaid program. Emergency medical services provided outside the PRTF will be reimbursed the prevailing Montana Medicaid rate using state funds. See ARM 37.87.1222 for the definition of emergency medical conditions, additional outside services that may be reimbursed using state funds at the prevailing Montana Medicaid rate and where services must be provided to be reimbursed and authorization requirements.

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

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

3. 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: In ARM 37.87.1217(1) "PRTF services must include active treatment designed to achieve the youth's discharge to a less restrictive level of care at the earliest possible time", we recommend that language be added specifying that discharge to less restrictive level of care also be based on the youth's ability to be safe from self-harm, harm to others, and placement in a setting that assists them to achieve successful treatment outcomes.

RESPONSE #1: The department disagrees. The language in ARM 37.87.1217(1) is from a federal regulation from 42 CFR, part 441, subpart D.

COMMENT #2: Several commentors recommended removing the terms "comprehensive" and "all" from ARM 37.87.1217(4)(b) so the language would read "the discharge plan must address psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency needs;".

RESPONSE #2: The commentors are referring to ARM 37.87.1217(5)(a)(ii). The department will remove the term "all". The term "comprehensive" is used in 37.87.1217(5)(a)(i) and (6) to describe discharge planning requirements. The term "comprehensive" will also be removed. PRTFs will be monitored more closely by the department to assure discharge planning is occurring as appropriate under federal regulation and national accreditation standards (42 CFR, part 441, subpart D; Joint Commission on Accreditation of Health Care Organizations, Council on Accreditation, and Commission on Accreditation of Rehabilitation Facilities.)

COMMENT #3: Several commentors asked about ARM 37.87.1217(5)(a), the requirement to "develop a discharge plan within 30 days of admission that identifies the youth and family's needed services and supports upon discharge;". Although discharge plans begin at the time of admission, a concise plan that can be implemented within 30 days of admission may need to be frequently modified to reflect information derived from the resident and the family treatment sessions. This is particularly important with the requirement in ARM 37.87.1217(4)(b), that the discharge plan must be "comprehensive" and identify "all" psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency needs.

RESPONSE #3: The terms "comprehensive" and "all" will be removed from ARM 37.87.1217(5) and (6). A discharge plan developed within 30 days of admission may change during the course of the youth's treatment in the PRTF. The department is stressing the importance of good discharge planning, involving the youth, parent, or guardian and making timely referrals for needed services upon discharge.

COMMENT #4: Because PRTFs are required to provide comprehensive discharge plans and identify needed services for youth discharging from their facility, if comprehensive and adequate arrangements for services upon discharge are not made per ARM 37.87.1217(5) the PRTF may be at risk of losing their enrollment in the Montana Medicaid program.

What does "comprehensive and adequate arrangements for services" mean? There are examples where services are not available or payable by the family or Medicaid or when circumstances change that the PRTF cannot control. The threat of losing enrollment in the Montana Medicaid program is very disconcerting.

To target providers in this rule without recognizing that comprehensive discharge planning also requires the full cooperation of parents, funding sources, agencies, other providers, and communities is not appropriate or reasonable.

RESPONSE #4: "Comprehensive" will be taken out of ARM 37.87.1217(5) and (6). "Adequate" will be replaced by the word "appropriate" in these rules. "Appropriate" is used in the Council on Accreditation Case Closing and Aftercare Standards, "case closing is a planned orderly process, and aftercare occurs when possible and appropriate." As the commentors indicated there are circumstances in which services upon discharge will be limited. See Response #2 regarding discharge planning requirements. This does not alleviate the provider from addressing the discharge or aftercare needs of the youth, with the youth, parent, or guardian.

The intent of this rule is to reiterate the PRTF discharge planning requirements, stress the importance of appropriate discharge planning, and to provide the department with the ability to take action with a provider who has a persistent pattern of inappropriate discharge plans. To take action, the pattern of inappropriate discharge plans would place youth at serious risk of harm to self and/or others. The department would take into consideration the unique set of circumstances surrounding each youth's discharge.

COMMENT #5: Under proposed ARM 37.87.1217 (7), "as part of the discharge planning requirements, PRTFs shall ensure the youth has a seven day-supply of medication . . ." would be amended to a "three-day supply of medications and a written prescription for medication . . ." The seven-day requirement is an increase from the present standard of three days and is not calculated in our ancillary rate. If the seven-day requirement is implemented then we request that the department include that increased cost in the ancillary add-on rate.

RESPONSE #5: The department will include a seven-day supply of discharge medication as an allowable expense in the PRTF cost report. The department plans to update the facility-specific ancillary add-on rate for in-state PRTFs in March 2010, after the department has analyzed the 3/1/09 - 6/30/09 cost report. The seven-day supply of medication requirement will not be effective until January 1, 2010. PRTFs will need to complete a revised cost report for 1/1/10 – 6/30/10, to capture the

additional costs associated with this rule change. ARM 37.87.1222(7) (to be renumbered ARM 37.87.1222(8)) allows interim payments for unusually expensive medical conditions that require a higher ancillary rate prior to the cost settlement process.

COMMENT #6: In ARM 37.87.1217(7), the third line, we propose that the word "needed" be inserted before "medicine" in the phrase "a seven-day supply of medicine".

RESPONSE #6: The department agrees and will add the word "needed" as suggested.

COMMENT #7: Several commentors recommended removing the requirement in ARM 37.87.1222(1)(c) that the facility-specific ancillary add-on rate include only those services provided "in and by" the PRTF.

One commentor indicated the Regional Centers for Medicare and Medicaid Services (CMS) director told them in a December 7, 2009 conference call that medical services provided outside the PRTF would be eligible for federal financial participation (FFP) if the PRTF had a contract with the provider.

In ARM 37.87.1222 (1)(c) "a facility-specific ancillary add-on rate for Medicaid services provided in and by the PRTF, not already included in the base psychiatric services rate in (1)(a)", would read "a facility-specific ancillary add-on rate for Medicaid services provided by the PRTF. . ." This language would allow the PRTF to contract with providers outside their facility to provide the Medicaid services.

RESPONSE #7: The department disagrees and has received written information from CMS indicating services must be provided "onsite". The "in and by" language has been approved by CMS and was used in the June 2009 Kansas Departmental Appeal Board decision to indicate which medical services are eligible to receive FFP. CMS has made it clear to the department that medical and ancillary services provided "outside" the PRTF are not eligible for FFP and if allowed would put the department's FFP at risk. The department confirmed our interpretation of the Kansas decision with CMS officials in a December 11, 2009 phone conversation.

COMMENT #8: Several commentors had questions about the authorization of emergency services in ARM 37.87.1222(5). "Emergency medical conditions treated by providers outside the PRTF will be reimbursed the prevailing Montana Medicaid rate, and must be billed by an enrolled provider directly to the Montana Medicaid program. Emergency services must be authorized by the department or its designee within 24 hours of the emergency service being provided or the next business day (Monday through Friday)."

This rule modification returns us to practices before the January 1, 2009 administrative rule changes with the added stipulation that "emergency services" must be approved by the department. Since emergency services will likely be

provided before the department rules on their eligibility, will the PRTF be liable for all costs if the department deems these services unnecessary? Please clarify what is needed, who in the department authorizes this, and what the procedure will be?

Although ARM 37.87.1222(6) in this rule attempts to define "emergency medical condition", it is vague in nature and leaves much to the discretion of the reviewing entity. We would ask the department to more specifically define their intent with this rule.

RESPONSE #8: The rule change in-part returns providers to the billing procedures in place prior to January 1, 2009. However, prior to January 1, all Medicaid state plan services could be billed while a youth was in a PRTF. The department is limiting services for youth in a PRTF to emergency medical conditions.

The department has decided not to require authorization for emergency services and will allow emergency room services to be reimbursed by the department with state general funds, when provided "outside" the PRTF. In addition, the department will reimburse the following services with state general funds: emergency dental procedures in accordance with the Montana Medicaid Dental Program for adults ages 21 and over with basic Medicaid; eyeglasses and vision examinations; durable medical equipment; and hearing aids and hearing examinations.

The intent of the "emergency medical condition" language is to indicate only emergency medical conditions and procedures are covered by state general funds and not less serious conditions and routine procedures. Based on provider comments, additional services have been added to the list of covered services provided outside the PRTF. If the service is not listed above, the provider will not be reimbursed for the service.

MMIS has not been changed to pay for these service claims. Until further notice, these claims will need to be submitted to the Children's Mental Health Bureau. Claims must be submitted to the bureau the same way they would be submitted to ACS to be reimbursed. All Medicaid requirements for billing apply. Medicaid fee schedules in place at the time the service is provided will be used for reimbursement.

COMMENT #9: We recommend changing ARM 37.87.1222(6) to "medically necessary services" rather than "emergency medical condition" and in ARM 37.87.1222(5) outline and define the acceptable services.

RESPONSE #9: All state plan services must be "medically necessary" per ARM 37.82.102(18) to be reimbursed by the Montana Medicaid program. The department will not reimburse for all Medicaid state plan services for youth in a PRTF. See services to be reimbursed in Response #8.

COMMENT #10: It appears that the department's definition of "emergency medical condition" in ARM 37.87.1222(6) is based on the definition of "emergency medical

condition" in the federal Emergency Medical Treatment and Labor Act which provides standards for medical treatment at hospital emergency rooms. We are concerned that this definition is too narrow and will restrict services provided to patients in PRTFs.

Can the department lawfully restrict ancillary services to emergency medical conditions, as proposed in the amendment to ARM 37.87.1222? This concern is based on statements made in the Departmental Appeals Board (DAB) Decision No. 2255, to the effect that Section 1905(h)(2) of Title XIX of the Social Security Act requires that the states "must maintain efforts prior to 1971 to fund either such services or outpatient services to eligible mentally ill children from nonfederal funds". This holding seems to imply that states are required to fund the types of ancillary services that historically have been provided and that are currently listed ARM 37.87.1222(4). If that in fact is the meaning and intent of the DAB decision, our concern is that the state may have no authority to restrict ancillary services to "emergency medical conditions" as proposed in the amendments to ARM 37.87.1222(4), (5), and (6).

Additionally, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) requirements of the federal Medicaid statute require the department to provide all covered services to children who need them. Has the department talked to the federal government about the legality of restricting services as proposed?

RESPONSE #10: Yes, the definition of "emergency medical condition" is based on the Emergency Medical Treatment and Labor Act (EMTALA). Based on feedback from in-state PRTF providers the department will also include for reimbursement the services in Response #8.

The specific language in the Kansas DAB decision indicates that subsection (h)(2) provides, essentially, that states must maintain efforts "prior to 1971" to fund either such services or outpatient services to eligible mentally ill children from nonfederal funds. The department is confident that state expenditures have increased significantly since 1971 and the department meets the maintenance of effort requirements in limiting services as outlined in Response #8.

The DAB indicated in the Kansas decision that several states made similar arguments against restricting services for youth in a PRTF citing the Early, Periodic, Screening, Diagnosis and Treatment (EPSDT) regulations, which they indicated did not apply to Institutions for Mental Diseases (IMD) exclusions. They cited a 1991 policy statement issued by the director of CMS's Medicaid Bureau that said the "fact that a need for the services determined through an EPSDT screen would not provide a basis for paying for services for which we otherwise could not pay because of the IMD exclusion".

COMMENT #11: We are concerned that services to treat what we consider to be an emergency medical condition will not be paid for because Medicaid may determine after the fact that it was not an emergency. We would then feel we had to pay the

outside medical provider ourselves. We need further guidance from the department in regard to what will be considered an emergency medical condition. For example, would the treatment of serious dental decay, dental abscesses, hearing, or visual problems or motor skill or language development delays be considered treatment of an emergency medical condition that would be reimbursed if provided by an outside provider? What about treatment of an accidental injury that typically would not be treated by going to an emergency room?

If an outside medical provider furnished services while a child was at an in-state PRTF and a determination was made that there was no emergency medical condition, would the outside medical provider be allowed to bill Medicaid for the services?

RESPONSE #11: The department has decided not to require authorization for emergency services. See the response and services listed in Response #8 that will be reimbursed by the department with state funds. Youth must be discharged from the PRTF when they are admitted to a hospital in order to receive state or Medicaid funded reimbursement. If occupational and speech therapy services are provided "in and by" the PRTF, whether or not the services are contracted for or provided by an employee of the PRTF, they will be reimbursed by Medicaid.

COMMENT #12: One commenter asked if targeted youth case management services will be allowed for youth in a PRTF?

RESPONSE #12: When these rules go into effect, PRTFs will no longer be reimbursed for providing any TCM activities to youth in their facility, directly or through a contract with a mental health center. Discharge planning is a PRTF requirement. The department will monitor more closely the appropriateness of discharge planning by the PRTFs.

4. The department intends to apply these rules effective January 1, 2010.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State December 14, 2009.

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

In the matter of the amendment of ARM 37.82.101 and 37.82.701 pertaining to Medicaid eligibility	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-494 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2114 of the 2009 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

4. The department intends to apply these rules effective January 1, 2010.

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State December 14, 2009.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.25.501, 42.25.511, 42.25.512, 42.25.515, 42.25.1701, 42.25.1706, 42.25.1707, 42.25.1708 and repeal of ARM 42.25.1702, 42.25.1703, 42.25.1704 relating to coal severance	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-811 regarding the proposed amendment and repeal of the above-stated rules at page 1904 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 18, 2009, to consider the proposed amendment and repeal. Oral testimony was received at the hearing and is summarized as follows along with the response of the department:

COMMENT NO. 1: Bud Clinch, representing the Montana Coal Council stated that the amendment rules appear to reflect the intent of the statutory changes made by the 2009 Legislature.

RESPONSE NO. 1: The department thanks Mr. Clinch for his comments and participation in this important process.

3. The department amends ARM 42.25.501, 42.25.511, 42.25.512, 42.25.515, 42.25.1701, 42.25.1706, 42.25.1707, 42.25.1708, and repeals ARM 42.25.1702, 42.25.1703, and 42.25.1704 as proposed.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State December 14, 2009

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.125, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.158, 42.21.159, 42.21.160, 42.21.162, and 42.22.1311 relating to property taxes and the trend tables for valuing property	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-813 regarding the proposed amendment of the above-stated rules at page 1932 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 24, 2009, to consider the proposed amendment. No one appeared at the hearing to testify. Written comment was received and is summarized as follows along with the response of the department:

COMMENT NO. 1: Patty Lovass, Missoula, Montana stated that the rule proposals are an attempt to provide some legal authority for the manipulation of values and limit mitigation rights following the legislative session ex post facto (retroactively).

RESPONSE NO. 1: The amendment of these rules has nothing to do with retroactive applicability of an enacted statute. As stated in the reasonable necessity for the rules contained in MAR 42-2-813, these amendments are made annually to show how the department arrives at market value as required by 15-8-111, MCA. These annual amendments provide information to taxpayers of the current percentages used by the department when valuing and taxing their property.

These annual amendments have been made to this set of rules since 1986, when the First Judicial District Court ruled that the department must publish these trend tables annually. Prior to that time the trend tables were made available to taxpayers upon request.

This rule action is in compliance with that district court order and the requirements of the Montana Administrative Procedure Act.

COMMENT NO. 2: Patty Lovass stated that the Revenue and Transportation Interim Committee should require an economic impact statement of proposed rules.

RESPONSE NO. 2: The Revenue and Transportation Interim Committee reviews all rulemaking actions of the department and the department welcomes any input from this committee regarding the rulemaking actions of the agency.

3. The department amends ARM 42.21.113, 42.21.123, 42.21.125, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.158, 42.21.159, 42.21.160, 42.21.162, and 42.22.1311 as proposed.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State December 14, 2009

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401 and 42.19.501 relating to the property tax assistance program and tax exemptions for disabled veterans	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-816 regarding the proposed amendment of the above-stated rules at page 1993 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 24, 2009, to consider the proposed amendment. No one appeared at the hearing to testify. Written comments were received and are summarized as follows along with the response of the department:

COMMENT NO. 1: Patty Lovass, Missoula, Montana stated that the rule proposals are an attempt to provide some legal authority for the manipulation of values and limit mitigation rights following the legislative session ex post facto (retroactively).

RESPONSE NO. 1: The amendment of these rules has nothing to do with retroactive applicability of an enacted statute. As stated in the reasonable necessity for the rules contained in MAR 42-2-816, these amendments are made annually to show how the department arrives at market value as required by 15-8-111, MCA. These annual amendments provide information to taxpayers of the current percentages used by the department when valuing and taxing their property.

These annual amendments have been made to this set of rules since 1986, when the First Judicial District Court ruled that the department must publish these trend tables annually. Prior to that time the trend tables were made available to taxpayers upon request.

This rule action is in compliance with that district court order and the requirements of the Montana Administrative Procedure Act.

COMMENT NO. 2: Patty Lovass stated that the Revenue and Transportation Interim Committee should require an economic impact statement of proposed rules.

RESPONSE NO. 2: The Revenue and Transportation Interim Committee reviews all rulemaking actions of the department and the department welcomes any input from this committee regarding the rulemaking actions of the agency.

3. The department amends ARM 42.19.401 with the following change:

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) through (5)(c) remain as proposed.

~~(6) An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.~~

AUTH: 15-1-201, MCA
IMP: 15-6-134, MCA

4. The department amends ARM 42.19.501 as proposed.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State December 14, 2009

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.121 pertaining to fees charged by the Business Services Division	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2009, the Secretary of State published MAR Notice No. 44-2-162 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2143 of the 2009 Montana Administrative Register, Issue Number 21.

2. The Secretary of State has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ JORGE QUINTANA	/s/ LINDA MCCULLOCH
Jorge Quintana	Linda McCulloch
Rule Reviewer	Secretary of State

Dated this 14th day of December, 2009.

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 September 30, 2009. This table includes those rules adopted during the period October 1, 2009, through December 31, 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 September 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.

GENERAL PROVISIONS, Title 1

1.2.104 and other rules - Administrative Rules, p. 1465
1.2.419 Scheduled Dates for the 2010 Montana Administrative Register, p. 1586, 2031

ADMINISTRATION, Department of, Title 2

2.2.101 Department of Administration's Procedural Rules, p. 1180, 1777
2.59.302 and other rules - Schedule of Charges - Change of Location - Application Procedure for Approval to Merge Affiliated Banks - Satellite Terminals, p. 2067
2.59.308 and other rule - Examination Fees - Dollar Amounts To Which Consumer Loan Rates Are To Be Applied, p. 1826
2.59.1603 and other rules - State, County, and Municipal Issues, Corporate Bonds - Other Approved Investments, p. 2182
2.59.1701 and other rules, Licensing and Regulation of Mortgage Brokers - Mortgage Lenders - Mortgage Loan Originators - License Renewals for Mortgage Lenders as of July 1, 2009 - New Applicants for a Mortgage Loan Originator License – Temporary Licenses - New Applicants for a Mortgage Broker or Mortgage Lender License – Temporary Licenses - Net Worth Requirement for Mortgage Brokers - Unacceptable Assets - Proof of Net Worth - Records to be Maintained by Mortgage Lenders - Financial Responsibility, p. 1292

2.59.1801 and other rule - Residential Mortgage Lenders, p. 2064
2.60.203 and other rules - Application Procedure for a Certificate of Authorization for a State-Chartered Bank - Procedural Rules for Discovery and Hearing - Capital Adequacy of Proposed New Banks - Foreign Capital Depositories, p. 2186

(Public Employees' Retirement Board)
2.43.3502 and other rule - (Public Employees' Retirement Board) Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 394, 1010

(Teachers' Retirement Board)
I Determination of Incentives and Bonuses as Part of a Series of Annual Payments and Included in Earned Compensation, p. 1183, 1778

(State Compensation Insurance Fund)
2.55.320 and other rule - Classifications of Employments - Retrospective Rating Plans, p. 2179

(Board of County Printing)
2.67.201 and other rules - Board of County Printing, p. 1187, 1782

AGRICULTURE, Department of, Title 4

4.5.202 and other rules - Noxious Weeds, p. 2071
4.12.1427 and other rules - Produce, p. 1829, 2365
4.12.3402 Raising the Seed Laboratory Analysis Fees, p. 1319, 1783
4.16.102 and other rules - Growth Through Agriculture Program, p. 2329

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, 2005, 2145

COMMERCE, Department of, Title 8

I Administration of the Quality Schools Grant Program, p. 2193
I & II Administration of the Quality Schools Grant Program - Planning Grants - Emergency Grants, p. 1837, 2367
8.94.3725 Administration of the 2009-2010 Federal Community Development Block Grant (CDBG) Program, p. 1605
8.119.101 Tourism Advisory Council, p. 1066, 1590

(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
10.54.3610 and other rules - Communication Arts Content Standards and Performance Descriptors, p. 2196
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. 1712, 2244
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
12.11.3215 Recreational Water Use on Holter Lake, p. 2240
12.11.6601 and other rules - Emergency Closures of Department Lands and Public Waters, p. 1208, 2146
12.14.101 and other rules - Commercial Use Rules in Montana, p. 1436, 2245

ENVIRONMENTAL QUALITY, Department of, Title 17

I-V Underground Storage Tanks - Underground Storage Tank Operator Training, p. 1529, 2250
17.36.802 and other rule - Fee Schedules - Changes in Subdivision, p. 1725
17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326
17.53.111 and other rules - Hazardous Waste Fees - Registration of Generators - Information Requests - Annual Reports, p. 1717, 2371
17.55.102 and other rules - Definitions - Facility Listing - Facility Ranking - Delisting a Facility on the CECRA Priority List - Incorporation by Reference - Proper and Expeditious Notice - Third-Party Remedial Actions at Order Sites - Additional Remedial Actions Not Precluded - Orphan Share Reimbursement - Purpose, p. 1730, 2077
17.56.101 and other rules - Underground Storage Tank Operation Requirements - Leak Detection - License Renewal Training, p. 1450, 2247

(Board of Environmental Review)
17.4.101 and the Department - Model Rules, p. 129, 1011
17.8.102 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 954, 1784
17.8.501 and other rules - Air Quality - Definitions - Permit Application Fees - Operation Fees - Open Burning Fees, p. 958, 1785
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, 1786
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. 1353,1794
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

CORRECTIONS, Department of, Title 20

20.7.507 Siting, Establishment, and Expansion of Prerelease Centers, p. 1363, 1798

JUSTICE, Department of, Title 23

23.12.602 and other rules - Uniform Fire Code - Fire Safety - Fireworks, p. 1535, 1608
23.12.1411 Student Academic Performance Requirements at Law Enforcement Academy, p. 1548, 2018
23.19.1001 Consumer Debt Management License Fee, p. 810, 1166

(Gambling Control Division)
23.16.101 and other rules - Definitions - Transfer of Interest Among Licensees - Transfer of Interest to a New Owner - Loans and Other Forms of Financing - Change of Liquor License Type - Change of Location - Approved Variations of Keno - Quarterly Reporting Requirements - Reporting Frequency for Approved Automated Accounting Systems - Exceptions - General Requirements of Operators - Manufacturers - Manufacturers of Illegal Devices - Distributors - Route Operators of Video Gambling Machines or Producers of Associated Equipment - Live Keno and Bingo Record Keeping, p. 2078
23.16.202 and other rules - Gambling Business License - Approval of Variations of Standard Bingo Cards - Credit Play - Card Dealer Licenses - Card Room Contractors License Requirements - Sports Tab Game Seller License - Distributor Licenses - Route Operator Licenses -

Manufacturer Licenses - Accounting System Vendor Licenses - Manufacturer of Illegal Gambling Devices License - Raffle Record Keeping Requirements, p. 912, 1260

LABOR AND INDUSTRY, Department of, Title 24

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

I — Licensee Lookup Database, p. 61, 1167
I-XIII — Workers' Compensation Claims Examiner Certification, p. 1213, 2019
24.17.127 — Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 1840
24.29.1533 — and other rule - Workers' Compensation Medical Fee Schedules, p. 2086
24.301.161 — Model Energy Code, p. 1844

(Alternative Health Care Board)
24.111.401 — and other rule - Fees - Licenses, p. 1550, 2257

(Board of Architects and Landscape Architects)
24.114.401 — and other rules - Fee Schedule - Applications - Education and Experience - Examinations, p. 1457, 2151

(Board of Barbers and Cosmetologists)
24.121.401 — Fees, p. 2337

(Board of Chiropractors)
24.126.301 — and other rules - Definitions - Applications - Display of License - Continuing Education - Unprofessional Conduct, p. 923, 2152

(Board of Dentistry)
24.138.402 — and other rules - Fee Schedule - Dental Auxiliaries - Requirements and Restrictions - Continuing Education - Restricted Volunteer Licensure, p. 1743
24.138.508 — and other rules - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education, p. 1068, 2091

(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)
24.101.413 and other rules - Renewal Dates - Medical Examiners-Licensure - Telemedicine - Podiatry - Nutrition Practice - Acupuncture - Physician Assistant-Scope of Practice - Reciprocity - Board Report Obligations, p. 2340
24.156.616 and other rules - Registry - Licenses - Testing Requirements - Registration, p. 1610

(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, 2024

(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, 2153

(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, 1799

(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, 1800

(Board of Realty Regulation)
24.101.413 and other rules - Renewal Dates - Brokers and Salespersons - Property Management - Timeshare Licensure and Registration, p. 1748
24.210.301 and other rules - Definitions - Licensing - Renewals - Unprofessional Conduct - Continuing Education, p. 928, 2373

(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, 2158

(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

32.3.104 and other rules - Trichomoniasis - Deputy State Veterinarians, p. 1852, 2092, 2356
32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1096, 1591
32.8.101 and other rule - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 2095
32.23.101 and other rules - Purchase and Resale of Milk, p. 1762, 2258
32.28.202 and other rule - Uncoupling Horses for Wagering Purposes, p. 1098, 1592

MILITARY AFFAIRS, Department of, Title 34

34.6.101 and other rule - Education Benefit Program, p. 2357

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.10.129 and other rule - Wildland-Urban Interface - Guidelines for Development Within the Wildland-Urban Interface, p. 1101, 1667
36.12.1901 and other rule - Filing a Change Application - Change Application - Historic Use, p. 814, 2259

(Board of Oil and Gas Conservation)
36.22.302 and other rules - Oil and Gas Provisions and Production, p. 1619, 2165

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-V State Matching Fund Grants to Counties for Crisis Intervention - Jail Diversion - Involuntary Precommitment - Short-Term Inpatient Treatment Costs for Individuals with Mental Illness, p. 1624, 1807
I-VI State Matching Fund Grants to Counties for Crisis Intervention - Jail Diversion - Involuntary Precommitment - Short-Term Inpatient Treatment Costs - Contracts for Crisis Beds - Emergency and Court-Ordered Detention Beds for Persons With Mental Illness, p. 1871, 2360
I-XXVII Behavioral Health Inpatient Facilities (BHIF), p. 844, 1801
37.5.117 and other rules - Swimming Pools, Spas, and Other Water Features, p. 604, 1104
37.8.126 Grandparents and Relative Caregivers Access to Birth Records, p. 1007, 1671
37.36.101 and other rules - The Montana Telecommunications Access Program (MTAP), p. 1226, 1672
37.40.307 and other rule - Medicaid Nursing Facility Reimbursement, p. 997, 1411
37.40.405 and other rule - Medicaid Reimbursement for Swing-Bed Hospital Services, p. 1642, 2166
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 596, 1020
37.78.102 and other rule - Temporary Assistance for Needy Families (TANF), p. 1863, 2380
37.79.101 and other rules - Implementing the Healthy Montana Kids Plan Act, p. 1235, 1673
37.81.104 and other rules - Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx Program), p. 1769, 2378
37.81.1002 and other rules - Montana PharmAssist Program and Medicaid Reimbursement Rates for Some Services with Rates Not Set Under Resource Based Relative Value Scale (RBRVS), p. 1570, 2029
37.82.101 and other rule - Medicaid Eligibility, p. 2114
37.85.206 Basic Medicaid Services for Able-Bodied Adults, p. 1773, 2379
37.85.212 and other rule, Resource Based Relative Value Scale (RBRVS) Medicaid Provider Rates and Mid-Level Practitioner's Reimbursement for Services to Medicaid Clients Under Age 21, p. 436, 1012
37.86.105 and other rules - Medicaid Physician Administered Drug Reimbursement - Pharmacy Outpatient Drug Reimbursement, p. 2120
37.86.705 and other rules - Medicaid Reimbursement for Audiology Services - Hearing Aids - Durable Medical Equipment (DME), p. 2099

37.86.1001 and other rules, Medicaid Dental Service Providers' Reimbursement Rates, p. 444, 1017
37.86.3501 and other rules - Case Management Services for Adults with Severe Disabling Mental Illness, p. 1378
37.86.4701 and other rules - Medicaid Covered Organ and Tissue Transplantation, p. 1390, 1806
37.87.1217 and other rules - Medicaid Reimbursement for Psychiatric Residential Treatment Facility (PRTF) Services, p. 2106
37.87.1303 and other rules - Home and Community-Based Services (HCBS) for Youth with Serious Emotional Disturbance (SED), p. 1630, 2376
37.88.101 and other rules - Medicaid Mental Health Center Services for Adults with Severe Disabling Mental Illness, p. 985, 1489
37.106.2401 and other rules - Home Infusion Therapy (HIT), p. 827, 1668
37.107.107 Fee Reduction for Medical Marijuana Patients, p. 1462, 2028
37.108.507 Components of Quality Assessment Activities, p. 450, 1019
37.111.230 Trailer Courts and Tourist Campgrounds, p. 859, 1408
37.113.108 and other rules - Implementation of the Montana Clean Indoor Air Act (CIAA), p. 1003, 1414

PUBLIC SERVICE REGULATION, Department of, Title 38

I Minimum Filing Requirements for Utility Applications for Approval of Natural Gas Production or Gathering Resources, p. 2362
38.3.601 and other rules- Motor Carrier Certificates - Electronic Copy of Filings, p. 319, 1417
38.5.1411 Medical Emergencies, p. 1647, 2242
38.5.2202 and other rule - Pipeline Safety, p. 1880

REVENUE, Department of, Title 42

42.9.102 and other rules - Income Tax, p. 1883
49.13.101 and other rules - Regulations for Liquor Licensees, p. 1896
42.13.601 Small Brewery Closing Time Restrictions, p. 2613, 1021
42.17.101 and other rules - Withholding Taxes, p. 1912
42.19.401 and other rule - Property Tax Assistance Program - Tax Exemptions for Disabled Veterans, p. 1993
42.19.406 Extended Property Tax Assistance Program (EPTAP), p. 1397, 1685
42.20.307 and other rules - Agricultural Land Valuation, p. 1971
42.20.515 Taxable Value of Newly Taxable Property, p. 933, 1263
42.20.701 and other rules - Forest Land Property, p. 1961
42.21.113 and other rules - Property Taxes - Trend Tables For Valuing Property, p. 1932
42.25.501 and other rules - Coal Severance, p. 1904
42.31.401 and other rules - Telecommunications 9-1-1, p. 1999

SECRETARY OF STATE, Office of, Title 44

1.2.104 and other rules - Administrative Rules, p. 1465, 1809
1.2.419 Scheduled Dates for the 2010 Montana Administrative Register, p. 1586, 2031
44.2.202 and other rules - Fees and Procedures - Business Services Division, p. 1401, 1687, 1808
44.3.105 and other rules - Elections, p. 2126
44.5.121 Fees Charged by the Business Services Division, p. 2143
44.15.101 and other rules - Notaries Public, p. 1580

(Commissioner of Political Practices)
44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1654
44.10.338 Limitations on Individual and Political Party Contributions, p. 1651

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in November 2009 appear. Vacancies scheduled to appear from January 1, 2010, through March 31, 2010, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2009.

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

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2009

Appointee	Appointed by	Succeeds	Appointment/End Date
State Tax Appeals Board (Administration)			
Ms. Samantha Sanchez	Governor	Bartlett	11/2/2009
Helena			1/1/2011
Qualifications (if required): public representative			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2010 THROUGH MARCH 31, 2010

Board/current position holder	Appointed by	Term end
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)		
Dr. Don E. Woerner, Laurel	Governor	1/1/2010
Qualifications (if required): veterinarian		
Mr. Stan Frasier, Helena	Governor	1/1/2010
Qualifications (if required): sportsperson		
Mr. James Bouma, Choteau	Governor	1/1/2010
Qualifications (if required): alternative livestock industry representative		
Board of Architects (Labor and Industry)		
Ms. Maire O'Neill, Bozeman	Governor	3/27/2010
Qualifications (if required): registered architect with the Montana State University		
Board of Architects and Landscape Architects (Labor and Industry)		
Ms. Shelly Engler, Bozeman	Governor	3/27/2010
Qualifications (if required): licensed landscape architect		
Mr. Carl A. Thuesen, Billings	Governor	3/27/2010
Qualifications (if required): licensed landscape architect		
Ms. Teresa Wilson, Butte	Governor	3/27/2010
Qualifications (if required): public representative		
Board of Chiropractors (Labor and Industry)		
Dr. Thomas P. Fullerton DC, Kalispell	Governor	1/1/2010
Qualifications (if required): practicing chiropractor with at least one year experience		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2010 THROUGH MARCH 31, 2010

Board/current position holder	Appointed by	Term end
Board of Horseracing (Livestock)		
Ms. Susan Austin, Kalispell	Governor	1/20/2010
Qualifications (if required): resident of district 5		
Mr. Charles Carruthers, Butte	Governor	1/20/2010
Qualifications (if required): industry representative		
Mr. Ray "Topper" Tracy, Stevensville	Governor	1/20/2010
Qualifications (if required): industry representative		
Mr. John Ostlund, Billings	Governor	1/20/2010
Qualifications (if required): resident of district 2		
Board of Pardons and Parole (Corrections)		
Mr. Darryl Dupuis, Polson	Governor	1/1/2010
Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology		
Ms. Margaret Hall-Bowman, Pablo	Governor	1/1/2010
Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology		
Board of Public Education (Education)		
Mr. Storrs M. Bishop, Ennis	Governor	2/1/2010
Qualifications (if required): Republican from District 2		
Board of Regents of Higher Education (Education)		
Rep. Lila V. Taylor, Busby	Governor	2/1/2010
Qualifications (if required): representative of District 4 and a Republican		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2010 THROUGH MARCH 31, 2010

Board/current position holder	Appointed by	Term end
Board of Research and Commercialization (Commerce)		
Mr. Martin R. Connell, Billings	President of the Senate	3/27/2010
Qualifications (if required): none specified		
Children's Trust Fund (Public Health and Human Services)		
Rep. Rosalie Buzzas, Missoula	Governor	1/1/2010
Qualifications (if required): public representative		
Ms. Betty Hidalgo, Great Falls	Governor	1/1/2010
Qualifications (if required): public representative		
Ms. Mary Gallagher, no city listed	Governor	1/1/2010
Qualifications (if required): agency representative		
Ms. Nancy Wikle, Helena	Governor	1/1/2010
Qualifications (if required): agency representative		
Ms. Tara Jensen, Helena	Governor	1/1/2010
Qualifications (if required): agency representative		
Ms. JoAnn Eder, Red Lodge	Governor	1/1/2010
Qualifications (if required): public representative		
Commission on Practice of the Supreme Court (Supreme Court)		
Ms. Tracy Axelberg, Kalispell	elected	3/28/2010
Qualifications (if required): elected		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2010 THROUGH MARCH 31, 2010

Board/current position holder	Appointed by	Term end
Judicial Nomination Commission (Justice)		
Judge Ted O. Lympus, Kalispell Qualifications (if required): elected	District Court	1/1/2010
Mr. Paul Tuss, Havre Qualifications (if required): public representative	Governor	1/1/2010
Lottery Commission (Administration)		
Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2010
Ms. Beth O'Halloran, Missoula Qualifications (if required): public member	Governor	1/1/2010
Montana Arts Council (Arts Council)		
Mr. Tim Holmes, Helena Qualifications (if required): resident of Montana	Governor	2/1/2010
Mr. Wilbur Wood, Roundup Qualifications (if required): resident of Montana	Governor	2/1/2010
Ms. Youpa Stein, Missoula Qualifications (if required): resident of Montana	Governor	2/1/2010
Mr. Mark Kuipers, Missoula Qualifications (if required): public representative	Governor	2/1/2010

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2010 THROUGH MARCH 31, 2010

Board/current position holder	Appointed by	Term end
Montana Council on Developmental Disabilities (Commerce)		
Ms. Sara Casey, Helena	Governor	1/1/2010
Qualifications (if required): agency representative		
Sen. Carol Williams, Missoula	Governor	1/1/2010
Qualifications (if required): legislator		
Mr. Roger Holt, Billings	Governor	1/1/2010
Qualifications (if required): advocacy representative		
Ms. Anna Whiting-Sorrell, Helena	Governor	1/1/2010
Qualifications (if required): DPHHS Director		
Rep. Tim Furey, Milltown	Governor	1/1/2010
Qualifications (if required): legislator		
Montana Grass Conservation Commission (Natural Resources and Conservation)		
Mr. Sonny Obrecht, Turner	Governor	1/1/2010
Qualifications (if required): grazing district preference holder		
Montana Pulse Crop Advisory Committee (Agriculture)		
Mr. Grant Zerbe, Frazer	Director	2/13/2010
Qualifications (if required): none specified		
Ms. Leta Campbell, Harlem	Director	2/13/2010
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2010 THROUGH MARCH 31, 2010

Board/current position holder	Appointed by	Term end
Small Business Health Insurance Pool Board (State Auditor)		
Ms. Gail Briese-Zimmer, Helena	Governor	1/1/2010
Qualifications (if required): management level individual with knowledge of medicaid services		
Ms. Betty Beverly, Helena	Governor	1/1/2010
Qualifications (if required): consumer		
State Employee Charitable Giving Campaign Advisory Council (Administration)		
Ms. JereAnn Nelson, Helena	Director	1/4/2010
Qualifications (if required): Department of Administration representative		
Mr. Dave Paton, Helena	Director	1/4/2010
Qualifications (if required): Department of Administration representative		
State Employee Group Benefits Advisory Council (Administration)		
Ms. Amy Sassano, Helena	Director	1/23/2010
Qualifications (if required): Executive Branch Agencies representative		
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Mr. Ian Elliot, Billings	Governor	1/1/2010
Qualifications (if required): survivor		
Mr. James Hunt, Helena	Governor	1/1/2010
Qualifications (if required): advocate for brain injured		