ISSUE NO. 4

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.10.201, 4.10.202, 4.10.203, 4.10.205, 4.10.206, 4.10.207, 4.10.209, 4.10.311, 4.10.313, 4.10.502, 4.10.503, 4.10.1101, 4.10.1103, 4.10.1106, 4.10.1109, and 4.10.1501 relating to pesticide administration	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 18, 2010, at 10:00 the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on March 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS

(1) remains the same.

(2) A person ~~shall~~ must apply for a license on the department's application form. The application ~~shall~~ must be completed in its entirety, accompanied by the licensing fee and a completed statement of financial responsibility. Applicants submitting incomplete applications and not meeting the conditions and standards expressed in the Act and department rules will be notified of such deficiencies and the procedure for correcting the deficiencies. The department will return the application along with the notice.

(3) and (3)(a) remain the same.

(b) A nonresident individual or partnership may designate the Secretary of State as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the Secretary of State. Service of process for individuals or partnerships shall apply to all employees transacting business in the state. The individual ~~of~~ or partnership shall provide to the department a list of the employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.

(c) remains the same.

(4) An individual applying for a public utility applicator's license ~~or certification-license~~ shall be required to meet the same conditions and standards established within these rules for commercial applicators. For purposes of this subchapter, "public utility" means any governmental organization supplying water, electricity, transportation, etc. to the public, including utilities operated by a private entity under governmental regulation.

(5) An individual applying for a government applicator's license ~~or certification-license~~ shall be required to meet the conditions and standards of these rules except for those specifically exempted in the Act. The department may accept for certification those federal employees certified through an EPA approved federal agency certification program or if the employee has been certified by another state with comparable requirements and standards of the department. The department reserves the responsibility to require federal employees to meet any special state certification standards.

(6) Those individuals who cannot be classified as a commercial, public utility, or government ~~certified~~ pesticide applicator or who cannot be classified as a farm applicator, but desire the use of restricted-use pesticides, shall be considered to be ~~certified~~ noncommercial applicators.

(a) through (d) remain the same.

(7) No licenses ~~or certification-licenses~~ shall be issued to any person until the application, fees and all examination or requalification requirements are fulfilled and approved by the department.

(8) A licensed pesticide~~s~~ applicator changing his employment to another company or business within a licensing period shall be required to submit his license and any employee licenses referenced to his license to the department for cancellation. The applicator, by submission of a written request or application, may request the issuance of a new license. If the applicator paid the license fee, the department will reissue the license. If the company or business originally employing the applicator paid the license fee, the department shall not reissue the applicator's license until the fee is paid by the applicator or the applicator's new employer. If the original company paid the licensing fee, the department will credit the fee to the company for issuance of another applicator's license within the same licensing period~~.~~ ~~P~~provided that the license ~~shall~~ must not be issued until the applicant passes the required written examination or is already an approved applicator. Licenses and licensing fees ~~shall~~ must not be transferable between licensing periods.

(9) An applicator not renewing and maintaining his license and ~~qualification~~ certification within the established qualification period shall be required to retake and pass the complete examination series prior to the issuance of a new license at the beginning of the next qualification period. The applicator may maintain his qualifications by attending approved requalification programs for a time period not to exceed four years. The applicator will be required to maintain his records of requalification for submission to the department for relicensing. The department reserves the right to require special examination(s) on new requirements or technology.

(10) remains the same.

(a) When an applicator terminates his employment, transfers his license, or modifies or cancels his license, all employee operator licenses issued under the

applicator's name and license are terminated, modified, or cancelled. Employees ~~licensed~~ certified as applicators may retain their license provided that their financial responsibility is still valid. New licenses will be issued to employee operators previously licensed ~~or qualified~~ once the business has appointed a new supervisory ~~licensed~~ certified applicator.

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

REASON: These changes clarify the use of the terms "license" meaning a document or authorization and "certification" meaning a qualifying process.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS (1) All applicants applying for a pesticide applicator's license required by 80-8-203 and 80-8-213, MCA, or desiring ~~a license~~ certification, shall be classified as either a commercial pesticide applicator, public utility applicator, government pesticide applicator, or noncommercial applicator as defined in ARM 4.10.201. Applicants that meet competency standards required by ARM 4.10.203 may ~~shall be further classified either as individuals using only~~ use general and restricted-use pesticides ~~or as persons using general use and restricted use pesticides~~.

~~(a) An applicant using general use pesticides shall be classified as either a licensed commercial, public utility, or government pesticide applicator.~~

~~(b) An applicant using general and restricted use pesticides shall be classified as either a certified-licensed commercial, public utility, government, or noncommercial pesticide applicator.~~

(2) A person, whether certified as a commercial, public utility, government, or noncommercial licensed ~~or certified-licensed~~, aerial or ground applicator, shall be further classified into one or more of the specific classifications set forth in this rule. The specific classification(s) shall determine the type, substance, and comprehensiveness of each applicant's examinations and the areas, classes of pesticides, and conditions by which the applicant may conduct pesticide operations.

(a) A person ~~licensed~~ certified as an applicator may use ~~general use pesticides for which he is qualified throughout the state. A person certified-licensed as an applicator may use~~ general and restricted-use pesticides for which he is qualified throughout the state.

~~(i) A licensed commercial applicator may use a restricted pesticide under the following conditions:~~

~~(A) under the special supervision of a certified-licensed applicator; or~~

~~(B) under the direct supervision of a certified-licensed applicator but within 100 miles of the certified applicator.~~

~~(ii) A licensed government applicator may use a restricted pesticide under the following conditions:~~

~~(A) special supervision of a certified-licensed applicator; or~~

~~(B) direct supervision of a certified licensed applicator but within the respective jurisdiction of the certified applicator.~~

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

(f) Right-of-way, rangeland, pasture, and noncrop pest control classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas. This classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation on grassland and pastures that are not harvested for forage, and any applicator using or supervising the use of pesticides on noncrop areas to manage weeds or other vegetation.

(g) through (m) remain the same.

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

REASON: The proposed rule change removes the current two-tiered licensing system and replaces it with a one-tier system that permits qualified (certified) pesticide applicators to use restricted-use and general use pesticides. This will set one standard for pesticide applicator licensing. This will make Montana licensing standards similar to most other states in the U.S. and assure that applicators obtaining reciprocal licensing among states have met similar standards. Levels of supervision of licensed applicators in ARM 4.10.202(2)(a) is removed because the licensed applicator tier will be removed and supervision is no longer needed. The right-of-way license classification in ARM 4.10.202(3)(f) is expanded to permit pesticide applicators licensed in this classification to apply pesticides to rangeland and pasture to manage weeds.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.203 COMPETENCY STANDARDS FOR ~~LICENSING AND~~ CERTIFICATION~~-LICENSING~~ OF PESTICIDE APPLICATORS (1) An individual applying for a commercial, public utility, governmental, or noncommercial applicator's license ~~or certification license~~ shall be required to pass a written examination prior to issuance of a license ~~or certification license~~.

(a) remains the same.

(b) Any individual applying for a license ~~or a certification license~~ shall meet the general and specific competency standards of ARM 4.10.204 and 4.10.205.

(c) remains the same.

(d) The department may accept the applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination. However, all other standards and requirements of the department must be met by the applicant. All out-of-state applicators will be required to take and pass an examination based on the Montana Pesticide Act and these rules. The scores required are set forth in (3)~~(a) and (b)~~.

(2) An applicator's examination ~~shall~~ must consist of:

(a) a core ~~basic~~ examination consisting of, but not limited to, questions based on pesticide laws, rules, regulations, definitions, labeling, safety, toxicology, effects on animals, plants, and the environment, safety equipment, first aid, and alternatives to chemicals.

(b) a specific examination or examinations consisting of, but not limited to, questions based on the pests to be controlled, various control methods, pesticides utilized, environmental and safety considerations, pesticide formulations, and equipment calibration and maintenance, in the specific classification or classifications the applicator chooses for ~~licensing or~~ certification~~-licensing~~.

(3) The minimum passing score for applicants shall be:

(a) ~~In the case of applicants qualifying for general use pesticides, 70~~ 80% for the ~~basic~~ core pesticide examination, and ~~70~~ 80% for each respective specific examination required.

(b) ~~In the case of applicants qualifying for restricted use pesticides, 80% for the basic examination, and 80% for each respective specific examination required.~~ Applicators licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination and/or specific classification examinations must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.

(4) An applicant not receiving a passing score on one or more of the examinations shall be required to retake and pass the failed examination(s) prior to issuance of a license. The applicant taking more than one specific examination may elect to be ~~licensed~~ certified only for the specific examination(s) passed if the applicant has passed the ~~basic~~ core pesticide examination, and at least one specific examination.

(a) Applicants failing the ~~basic~~ core pesticide examination or any other examination the first time shall not be allowed to retake the examination(s) for seven days after notification of failure. Applicants failing the examination(s) a second time may retake the examination(s) 15 days after notification. Applicants failing the examination(s) a third time shall not be allowed to retake the examination(s) until the next licensing period beginning January 1 of the next year. Reexamination may be taken at the department's Helena office or the applicant may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.

(5) remains the same.

(a) The department has a staggered four-year requalification time period designated by applicator classification and subclassification. Applicator classifications ~~will~~ must requalify by December 31 of the year designated by the department. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

(b) Applicator requalification ~~shall~~ must be accomplished by either passing the complete examination series or by attending 12 hours of training approved by the department. Courses must be either six, five, four, three, or two hours. An applicator requalifying for ~~licensing~~ certification by attending pesticide training courses must have written verification of his/her attendance.

(6) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-~~licensing~~ certification. Training

course sponsors must petition the department for approval of their courses at least 30 days prior to being held. The petition must include dates, time, location, projected attendance, speakers, and a synopsis of their presentations.

(7) The department may require applicators to pass an examination during any ~~licensing~~ certification period on new pesticide technology which applies to the applicator's classification.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-206, MCA

REASON: This proposed change will set one standard for all pesticide applicator licensing, simplify sales and recordkeeping requirements for pesticide dealers, make Montana licensing standards similar to most other states in the U.S., and assure that applicators obtaining reciprocal licensing among states have met similar standards.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION (1) ~~Licensed or certified-licensed~~ Certified commercial, public utility, government, and noncommercial pesticide applicators shall be ~~particularly~~ examined and qualified with respect to the following practical knowledge standards ~~elaborated below~~:

(a) through (e) remain the same.

(f) Right-of-way, rangeland, pasture, and noncrop pest control applicators are applicators who apply pesticides and who shall demonstrate practical knowledge of a wide variety of environments since right-of-way, rangeland, pasture, and noncrop sites can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, ~~and~~ excessive foliage destruction, and potential effects to livestock and nontarget organisms. ~~and~~ Applicators must have the ability to recognize target ~~organisms~~ plants and differentiate them from nontarget plants. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the ~~right-of-way areas~~ target application site, and the impact of their application activities in the adjacent areas and communities.

(g) through (j) remain the same.

(k) Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities associated with demonstrations. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in ARM 4.10.204. In addition, they

shall meet the specific standards required for classifications in (1)(a) through (g) applicable to their particular activity. Persons conducting field research or method improvement work with restricted-use pesticides ~~should~~ shall be expected to know the general standards required for classifications in (1)(a) through (j), applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

(l) through (m) remain the same.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-206, MCA

REASON: This proposed change expands the competency standards for right-of-way classification to include competencies for rangeland, pasture, and noncrop sites as a result of the proposed change in ARM 4.10.202(3)(f).

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.206 INDIVIDUALS REQUIRING A PESTICIDE OPERATOR'S LICENSE

(1) Employees of ~~licensed or~~ certified~~-licensed~~ applicators under certain conditions of use for general and restricted-use pesticides shall be required to become licensed pesticide operators. ~~Provided that o~~Only one certified~~-licensed~~ applicator, ~~licensed applicator~~ or licensed operator shall be required for each spraying equipment unit when in actual operation. Application for an operator's license shall be made on a standard application form provided by the department.

(2) Licensed operators shall be allowed to use and apply only those pesticides that the ~~licensed or~~ certified~~-licensed~~ applicator he is supervised by is qualified to use and apply. A licensed operator may use general or restricted-use pesticides within ~~one hundred (~~100~~)~~ miles of the applicator when he is under the direct supervision of a ~~licensed or~~ certified~~-licensed~~ applicator~~, respectively~~. Licensed operators may not apply general or restricted-use pesticides beyond ~~one hundred (~~100~~)~~ miles of the applicator.

(3) An individual may under certain conditions be licensed as a noncommercial operator under the direct supervision of a certified~~-licensed~~ noncommercial applicator. In these cases, the licensed operator may use restricted-use pesticides under the direct supervision of the certified~~-licensed~~ applicator provided that the uses of the pesticides are restricted to any of the employer's premises or materials on the premises, and that the treated materials are not sold to the general public.

(4) through (5)(b) remain the same.

(c) receiving training from a certified~~-licensed or licensed~~ applicator of the business or government agency who must certify the individual's completion of the training.

(6) The training or examination shall include knowledge of pesticide law and rules, labels and labeling, safety, first aid and toxicology, effect of pesticides, factors affecting pesticide application, equipment calibration, dilution and mixing of pesticides, and recognition of common pests to be controlled. The examination or

training for operators ~~shall~~ must be as specific as possible to their operations and responsibilities. Examinations will be given at the convenience and approval of the department or its authorized representative. The department shall cooperate with individual applicators or groups of applicators in establishing the training materials and examination questions, and may provide assistance to applicators in training applicants for an operator's license. The passing score for the examination ~~shall~~ must be ~~70~~ 80%. Operators who pass the examination may not be required to pass another examination. Operators may renew their license each year by receiving in-service business or government agency training or by attending a training course approved by the department.

(7) Government operators shall meet all the standards established for commercial operators in this regulation. Government operators shall only operate within their respective governmental boundaries regardless of the number of miles from the government certified ~~licensed or government licensed~~ applicator's business location.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-205, MCA

REASON: This proposed change clarifies licensing terminology as a result of the proposed change in ARM 4.10.202. Operators who are not trained by a certified applicator or attend approved training may qualify by passing an examination with 80% correct which is equivalent to certified applicators and pesticide dealers.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.207 RECORDS (1) All ~~licensed,~~ certified ~~licensed~~ commercial, public utility, government, certified noncommercial applicators and their operators shall be required to keep and maintain operational records for two ~~(2)~~ years. For every application performed either by an applicator or operator, the application record ~~shall~~ must include:

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

(iii) location ~~shall~~ must include the property owner's or lessee's name and address~~, the county or counties in which~~ where the pesticide was applied. The specific application site ~~shall~~ must be expressed by township, range, and section numbers, ~~or~~ local identifiable landmarks, or latitude and longitude coordinates. Right-of-way applications may be expressed in general terms of identifiable landmarks. Nonagricultural applications may specify the site, building, facility, premise, or other identifiable landmarks.

(c) remains the same.

(d) The pesticide or pesticides used ~~which~~ ~~shall~~ must include the company name, trade name, and the EPA registration number or the type of formulation.

(e) remains the same.

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

~~(b)~~ (a) If no applications of the restricted-use pesticides are made during the requested time period this ~~shall~~ must be documented to the department.

(8)~~(a)~~ Applicators shall submit to the department an accurate typed or printed report of their use of restricted and general use pesticides every fifth year beginning in calendar year 1990 and thereafter every five years. The report ~~shall~~ must include a summary of use of these pesticides by county, ~~month,~~ total acreage, amount of the formulated product used, ~~crop or site treated,~~ the product used by company name and trade name, and the EPA registration number ~~or the type of formulation~~ for the fifth year only. The report ~~shall~~ must be submitted to the department by January 31 of the next year. The report ~~shall~~ must be submitted on the standard form provided by the department or on forms approved by the department.

~~(b)~~ (a) If no application of general and/or restricted-use pesticides are made during the calendar year, this ~~shall~~ must be ~~so~~ documented by the department.

(9) remains the same.

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

REASON: The proposed changes simplify the information required for pesticide recordkeeping and reporting based on data most needed for potential regulatory oversight of pesticide use.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.209 NOTIFICATION BY ~~LICENSED OR CERTIFIED LICENSED~~ APPLICATORS

(1) remains the same.

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

REASON: This proposed change clarifies licensing terminology as a result of the proposed change in ARM 4.10.202.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.311 DESIGNATION OF RESTRICTED-USE AQUATIC HERBICIDES

(1) The sale and use of aquatic herbicides that contain one or more of the following active ingredients intended for remission of aquatic vegetation, ~~shall~~ must be designated as restricted-use:

(a) xylene,

(b) acrolein~~,~~.

~~(c) endothall.~~

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

REASON: Aquatic herbicides are designated as restricted use based on their potential to harm aquatic fauna. Based on current knowledge and use, products containing the active ingredient endothall do not present significant risk to aquatic fauna and designation of products containing endothall as restricted use is no longer needed.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.313 USE OF RESTRICTED-USE AQUATIC HERBICIDES (1) Only persons certified and holding an aquatic pest control applicator license or permit issued by the department may purchase, or use a restricted-use aquatic herbicide.

(a) To initially qualify a person ~~must~~ shall ~~attend a department approved aquatic herbicide training course and~~ pass a~~n~~ department aquatic herbicide examination.

(b) remains the same.

(c) All farm applicators must attend ~~one~~ six ~~(6)~~ hours of department approved aquatic training ~~course~~, or pass an aquatic herbicide examination to maintain qualifications. The permit issued will conform to the five year qualification period established for the district in which the farm applicator resides.

(d) The department may require ~~additional~~ training to obtain or maintain an aquatic pest control applicator license if significant changes occur in aquatic herbicide use patterns or aquatic vegetation control techniques.

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

REASON: Based on past experience by the department with aquatic pesticide applicator certification, it is believed that persons becoming initially certified as aquatic pesticide applicators can demonstrate sufficient competency by examination alone and that supplemental training is not necessary. The department is retaining the option to require training if significant changes in the application process occur or unreasonable environmental harm is documented.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.502 RETAIL SALE OF PESTICIDES (1) The retail sale of pesticides shall be limited to products:

(a) labeled for only home, yard, lawn, and/or garden uses; and

(b) through (2) remain the same.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-212, MCA

REASON: The proposed change clarifies that retail pesticides are labeled and can be used only for home, yard, lawn, and/or garden uses.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) and (2) remain the same.

(3) Competency of applicants by written examination shall be determined by their knowledge of the subjects and materials set forth in the (~~Montana Pesticide Manual for Applicators and Dealers~~ Pesticide Applicator Certification Core Manual), including future revisions and any other manual, guide, or materials required by the department. Examination questions will be derived from these manuals. Their degree of difficulty will be based upon the degree of importance established by the department for the various subjects. The examination ~~shall~~ must consist of but not be limited to questions on pesticide legislation; regulations and guidelines; safety and toxicology; disposal; storage and transportation; effects on animals, plants, and environment; fish and wildlife; alternatives to chemicals; pollinating insects; selection of control methods; factors affecting pesticide applications; classification and formulations of insecticides; fungicides, herbicides, and other pesticides and their uses; definitions; and recommendations for use of pesticides. The minimum passing examination score for applicants to be licensed as dealers shall be ~~75~~ 80%.

(4) Dealers shall be required to requalify for licensing prior to December 31, 1986, and by the end of every fourth year thereafter. Dealer requalification ~~shall~~ must be accomplished by either passing a dealer examination or by attending 12 hours of training approved by the department. Courses must be either six, five, four, three, or two hours of training. A dealer attending pesticide training courses must have written verification of his/her attendance.

(a) Dealers licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.

(5) through (7) remain the same.

(8) A licensed dealer changing his employment to another company or business within a licensing period shall be required to submit to the department the license and any employee credentials for cancellation by the department. The dealer, by submission of a written request or application, may request the issuance of a new license. If the dealer paid the license fee, the department will issue the license. If a dealership or company originally employing the dealer paid the license fee, the department shall not reissue the license to the dealer or the dealer's new employer. If the company paid for the licensing fee, the department will credit the fee to the company for issuance of another dealer's license by the department within the same licensing period~~.~~, ~~P~~provided that the license ~~shall~~ must not be issued until the applicant passes the required written examination or is already a licensed dealer. Licenses and license fees ~~shall~~ must not be transferable between licensing periods.

(9) A licensed dealer or employees supervised by the dealer shall only sell restricted-use pesticides to other dealers, certified~~-licensed~~ commercial, public utility, or governmental applicators, to noncommercial certified applicators, or to certified farm applicators or their credentialed family members or employees. The dealer or

dealer's employees shall only sell to a certified applicator the pesticide or pesticides within the group or class of pesticides stated on the license or permit.

(10) Dealers are allowed to sell restricted-use pesticides to persons possessing proper identification or credentials issued by the department. These credentials will state that the person is purchasing the pesticide under the name and license or permit number of a certified applicator and that the certified applicator supervises the use of the pesticide by that person. Sale of restricted-use pesticides to any person other than certified applicators or persons with departmental credentials is illegal. Such sales to any person ~~shall~~ must subject a dealer to immediate revocation of the license.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-207, 80-8-208, MCA

REASON: This proposed change will make certification requirements for dealers equivalent with pesticide applicators.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.1101 DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA.

(1) through (4) remain the same.

(5) "Operational activities" means transferring, loading, unloading, mixing, repackaging, and refilling pesticides; and emptying, cleaning, or rinsing refillable containers.

(6) through (10) remain the same.

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

REASON: The U.S. Environmental Protection Agency has implemented rules (CFR 165) for containment of bulk pesticide storage, packaging, and refilling. States must adopt and/or modify their administrative rules to be equivalent to federal rule. The proposed rule changes provide increased protections from spills or leaks from operational activities of a PSF.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.1103 GENERAL REQUIREMENTS AT PERMANENT STORAGE FACILITIES (1) remains the same.

(2) A person who operates a PSF prior to ~~January 15~~ April 30, ~~1999~~ 2010, ~~must~~ shall, within ~~four~~ two years, bring their facility into compliance with ARM 4.10.1101 through 4.10.1109.

(3) through (5)(d) remain the same.

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

REASON: This proposed rule change sets the dates for compliance with the proposed rule changes.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.1106 OPERATIONAL ACTIVITIES FOR BULK PESTICIDES AT A PSF

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

(b) a person conducting operational activities outside of secondary containment ~~shall use at a minimum, temporary or portable catch basins under fittings or connections during pesticide transfers. An attendant must be present during all operational activities~~ must conduct these activities on a containment pad.

(c) the containment pad must have a capacity of at least 750 gallons. If the largest container to be used on the containment pad is less than 750 gallons, the capacity of containment pad must be 100 percent of the largest pesticide container or pesticide holding equipment used on the pad.

(d) the surface area of the containment pad must extend completely beneath any container used on the pad. For transport vehicles, excluding railcars, the surface area of the pad must extend beyond any valve or hose coupling used in the transfer of pesticide materials.

(e) the containment pad must be constructed in a manner that permits removal and recovery of spilled, leaked, or discharged materials and rainfall. The surface of the pad must be sloped toward an area where liquids can be collected for removal.

(f) the containment pad must be constructed of materials and with specification as required for secondary containment in ARM 4.10.1105.

(g) temporary or portable catch basins must be used under fittings or connections not located over a containment pad during pesticide transfers. An attendant must be present during all operational activities.

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

REASON: The U.S. Environmental Protection Agency has implemented rules (CFR 165) for containment of bulk pesticide storage, packaging, and refilling. States must adopt and/or modify their administrative rules to be equivalent to federal rule. The proposed rules changes provide increased protections from spills or leaks from operational activities of a PSF.

FINANCIAL IMPACT: All new and approximately 50 existing facilities will incur up to $750.00 in construction cost of the containment pads required by this rule change.

4.10.1109 RECORDS, INSPECTION AND MAINTENANCE RECOMMENDATIONS (1) Any person operating a PSF ~~should~~ shall maintain written records of all inspections and maintenance of the PSF for at least two years that include:

(a) the name of the person conducting the inspection or maintenance;

(b) date of the inspection;

(c) conditions noted; and

(d) specific maintenance performed.

(2) All appurtenances and primary containment holding bulk pesticides ~~should~~ must be inspected weekly for damage and leakage. Secondary containment and containment pads ~~should~~ must be inspected at least monthly during the use season for cracks or other damage to the containment structures which may permit discharge outside the containment structures.

(3) Regular maintenance of PSF, ~~and~~ secondary containment, and containment pads ~~should~~ must be performed to ensure that the integrity of the sites is maintained.

(4) Repair of seals, cracks, gaps, or other damage in containment structures or appurtenances must be initiated upon discovery and completed within a time frame that is reasonable.

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

REASON: The U.S. Environmental Protection Agency has implemented rules (CFR 165) for containment of bulk pesticide storage, packaging, and refilling. States must adopt and/or modify their administrative rules to be equivalent to federal rule. The proposed rule changes provide increased protections from spills or leaks from operational activities of a PSF.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4.10.1501 DEFINITION OF TERMS These definitions apply to all regulations and rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA unless specified differently by statute or individual rules.

(1) through (24) remain the same.

~~(25) "Commercial applicator license" means an authorization issued by the department to an individual to use and apply general use pesticides for which he is qualified.~~

(26) through (33) remain the same but are renumbered (25) through (32).

~~(34)~~ (33) "Direct supervision" means the act or process whereby the use of a pesticide is made by a competent person acting under the verifiable instructions and supervision of a ~~licensed or~~ certified applicator, who has provided detailed guidance to the competent person for proper use of the pesticide; who has made provisions for contact in the event he is needed; and who is responsible for the actions of that person.

(35) through (50) remain the same but are renumbered (34) through (49).

~~(51)~~ (50) "Conditions of use for general use pesticides" means:

(a) a ~~commercial~~ certified pesticide applicator may use and apply general use pesticides for which he is licensed anywhere within the state.

(b) a licensed pesticide operator, as an employee of a ~~licensed commercial~~ certified applicator, may use and apply general use pesticides for which the applicator is licensed and under his direct supervision within ~~a~~ 100 miles of the ~~licensed~~ certified applicator; beyond 100 miles, special supervision shall be required.

(c) an unlicensed employee of a ~~licensed commercial~~ certified applicator may use and apply general use pesticides only under the special supervision of the ~~licensed~~ certified applicator or licensed operator employed by the ~~licensed~~ certified applicator.

(52) remains the same but is renumbered (51).

~~(53) "Government applicator license" means an authorization issued by the department to an individual to use and apply general use pesticides for which he is qualified.~~

(54) through (90) remain the same but are renumbered (52) through (88).

~~(91)~~ (89) "Conditions for use for restricted use pesticides" means:

(a) a ~~commercial~~ certified pesticide applicator may use and apply restricted use pesticides for which he is certified~~-licensed~~ anywhere within the state;

(b) a licensed ~~applicator or~~ operator, as an employee of a certified~~-licensed~~ applicator, may use and apply restricted use pesticides for which the certified~~-licensed~~ applicator is licensed, only within 100 miles of the certified~~-licensed~~ applicator while under his direct supervision;

(c) a licensed ~~applicator, or~~ operator working beyond the 100 mile limit~~,~~ may use or apply restricted-use pesticides only under the special supervision of a certified~~-licensed~~ applicator.

(92) through (93) remain the same but are renumbered (90) through (91).

~~(94)~~ (92) "Special supervision" means that a certified~~-licensed~~ applicator ~~or licensed applicator~~ must be physically present at the time of use and application of a pesticide.

(95) through (107) remain the same but are renumbered (93) through (105).

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

REASON: Updates to ARM 4.10.501(25), (34), (51), (53), (91), and (94) reflect the proposed change from a two-tiered licensing system to a one-tier licensing system for pesticide applicators.

FINANCIAL IMPACT: There will be no financial impact regarding this rule change.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-

0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov, and must be received no later than 5:00 p.m. on March 25, 2010.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

8. The amendments to ARM 4.10.207 if adopted are intended to be retroactive to January 1, 2010 to avoid companies having to maintain two different types of records for the same calendar year.

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

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DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, February 16, 2010.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 10.16.3022, 10.16.3122, 10.16.3320, 10.16.3324, 10.16.3346, 10.16.3505 through 10.16.3507, 10.16.3512, 10.16.3560, 10.16.3660, and 10.16.3904 pertaining to special education	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 24, 2010 at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in Superintendent's conference room at 1227 11th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Superintendent of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on March 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

3. Statement of Reasonable Necessity: The adoption of New Rule I and the amendments to ARM 10.16.3122, 10.16.3505, 10.16.3506, and 10.16.3507 are made to comply with the updated IDEA regulations issued by the Department of Education on December 1, 2008. The amendment to ARM 10.16.3022 is made to be consistent with statute. The amendment to ARM 10.16.3320 allows a person or entity requesting an evaluation to do so by means of an electronic signature thereby expediting the process. ARM 10.16.3324 is being amended to clarify the type of documentation required when extended school year services are being requested. The amendments to ARM 10.16.3346 provide for increased student safety and parental notification when aversive treatment procedures are used. The remaining amendments are to correct, clarify, or provide consistency to special education rules.

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

NEW RULE I REVOCATION OF PARENTAL CONSENT (1) A parent may revoke consent for services at any time. The revocation of consent must be provided to the district in writing.

(2) Upon receipt of the parent's written revocation of consent, the district must:

(a) issue written notice to the parent of receipt of the revocation;

(b) issue prior written notice of the date on which special education and related services will cease; and

(c) inform the parent in writing that the procedural safeguards of IDEA no longer apply to their child.

(3) On the date set forth in the prior written notice in (2)(b), the district must cease providing services and is not permitted to file a request for a special education due process hearing or implement any dispute resolution procedures generally allowed under the Individuals with Disabilities Education Act as revised. The district is not required to amend the child's education records to remove references to the child's receipt of special education and related services.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

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

10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (1) The student may be identified as having a visual impairment if the student has:

(a) a visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than 20 degrees in the better eye with correction; or

(b) a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in (1)(a).

AUTH: 20-7-402, MCA
IMP: 20-7-401, 20-7-403, 20-7-471, MCA

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) The local educational agency in which a student with disabilities resides is responsible for ensuring the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 USC, sections 1401 through 1419) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16) unless the parent has refused initial consent for services or has revoked such consent. If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency.

(2) through (7) remain the same.

(8) Local educational agencies must take measurable steps to recruit, hire, train, and retain qualified personnel, including individuals with disabilities, to provide special education and related services to students with disabilities.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3320 REQUEST FOR INITIAL EVALUATION (1) and (2) remain the same.

(a) When the request for initial evaluation is made by an LEA, the request must include a statement of the reasons for the request, including documentation of regular education interventions for students enrolled in school, and the signature or electronic signature of the person making the request.

(b) When the request for initial evaluation is made by a parent, the request must include a statement of the reasons for the request and the signature or electronic signature of the person making the request.

(c) through (3) remain the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3324 EXTENDED SCHOOL YEAR SERVICES (1) remains the same.

(2) IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services. In the absence of the opportunity to collect data to determine regression, the IEP team may conclude that ESY services are necessary based on ~~observations and other information that suggest~~ data that research has shown to predict regression and difficulty with recoupment ~~may occur~~.

(3) remains the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3346 AVERSIVE TREATMENT PROCEDURES (1) through (6)(c) remain the same.

(7) A behavioral intervention plan using aversive treatment procedures must be in writing and shall:

(a) through (8) remain the same.

(9) Parents must be informed as soon as possible, but no less than 24 hours after the procedure is used, in writing, or orally if in writing is not possible, in their native language each time an aversive procedure is implemented on their child.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3505 PARENTAL CONSENT (1) through (1)(c)(ii) remain the same.

(d) ~~When parental consent for annual placement is refused, the local educational agency shall informally attempt to obtain consent from the parent. If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall:~~

~~(i) provide the parent written notice as required by 34 CFR 300.503; and~~

~~(ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it shall file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523, or take other action necessary to ensure that a parent's refusal to consent does not result in a failure to provide the student with a free appropriate public education.~~

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3506 VOLUNTARY MEDIATION (1) remains the same.

(2) Mediation may not be used in the case of revocation of parental, consent for placement.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3507 SCOPE OF RULES (1) remains the same.

(2) A school district is not permitted to request a due process hearing when a parent has revoked consent for special education evaluation or services.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES (1) through (2) remain the same.

(3) ~~Individual privacy.~~ The impartial hearing officer shall ~~provide for~~ implement provisions to ensure the privacy of matters before him/her as ~~is~~ required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and to have the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the student with disabilities to be present at the hearing upon request of the parent, guardian, surrogate parent, or the student with disabilities who is the subject of the hearing.

(4) ~~Location of hearing.~~ The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3560 SPECIAL EDUCATION RECORDS (1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR ~~500.610 through 500.626~~ 300.610 through 300.626.

(2) remains the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3660 EARLY ASSISTANCE PROGRAM (1) through (3) remain the same.

(4) As stated in ARM 10.16.3662, immediately following the filing of a formal administrative complaint as referenced in 34 CFR 300.151 through 300.153 (as distinguished from a request for due process), a parent or guardian and the local educational or public agency may agree ~~in writing~~ to allow the Superintendent of Public Instruction, through the Early Assistance Program, 15 business days from the day it receives the written complaint to attempt to resolve the problem through the Early Assistance Program. Pursuant to 34 CFR 300.152(b)(1)(ii)~~, and upon written agreement of the parties,~~ these 15 business days shall not be counted as part of the 60 day complaint resolution timeline.

(5) remains the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3904 PROCEDURES FOR APPROVAL (1) A draft of a new or amended interlocal agreement shall be submitted to the Superintendent of Public Instruction for ~~initial~~ review and ~~comment~~ approval on or before January 1. ~~In order for the new or amended agreement to be effective for the ensuing fiscal year, upon completion of initial review and comment by the Superintendent, the agreement shall be submitted to the Attorney General. Within ten days of the Attorney General's approval, the agreement shall be submitted to the Superintendent for final approval.~~ Upon ~~final~~ approval, the cooperative contract shall be filed with the county Clerk and Recorder of the county or counties in which the school districts involved are located and with the Secretary of State.

AUTH: 20-7-457, MCA
IMP: 20-7-453, 20-7-454, MCA

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: Beverly Marlow, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., March 26, 2010.

7. Ann Gilkey, Chief Legal Counsel for the Office of Public Instruction has been designated to preside over and conduct this hearing.

8. The Superintendent of Public Instruction 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 Superintendent.

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

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

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State, February 16, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI, regarding incumbent worker training grants program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 22, 2010, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room 104, Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on March 16, 2010, to advise us of the nature of the accommodation that you need. Please contact the Workforce Services Division, Department of Labor and Industry, Attn: Dave Morey, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3478; fax (406) 444-3037; TDD (406) 444-5549; or e-mail DMorey@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The proposed new rules provide the initial implementation of the Incumbent Worker Training (IWT) program, which was established by Chapter 325, Laws of 2009 (Senate Bill 388). In order to develop the rules, the department held two teleconference meetings with the various stakeholders and received substantive comments, which assisted the development of these proposed program rules. Department representatives also met with representatives of the Department of Commerce, Montana State University and the Governor's Office, to devise a workable appeals process. There is reasonable necessity to adopt the proposed new rules in order to provide employer applicants and the economic development bodies that review and provide recommendations regarding the award of IWT grant funds, provide an explanation of the application process and establish criteria for the award of grants. In addition, there is reasonable necessity to provide, as part of the initial implementation of the IWT program, an appeals process to provide due process rights to employer applicants that are aggrieved by a department decision regarding the employer's grant application.

This general statement of reasonable necessity applies to the new rules, and is supplemented by statements following the individual rules.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "BEAR program" means a business expansion and retention program, as provided by 53-2-1216, MCA, and recognized pursuant to [NEW RULE II].

(2) "Department" means the Department of Labor and Industry.

(3) "Employer" means, as provided by 53-2-1216, MCA, a business entity that:

(a) employs 20 or fewer employees in this state in one location but no more than 50 employees statewide; and

(b) is registered with the Secretary of State to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association.

(4) "MMEC" means the Montana Manufacturing Extension Center at Montana State University - Bozeman.

(5) "Recommending entity" means a recognized BEAR program, a SBDC, or the MMEC.

(6) "SBDC" means a small business development center operating as such pursuant to 13 CFR part 130.

AUTH: 53-2-1220, MCA
IMP: 53-2-1215, 53-2-1216, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to identify and define various terms used throughout the proposed rules.

NEW RULE II RECOGNITION OF A BEAR PROGRAM (1) In order to qualify as a recommending entity, a BEAR program must be recognized, as provided by 53-2-1216, MCA, by:

(a) the Governor's Office of Economic Development;

(b) the Department of Commerce; and

(c) the department.

(2) In order to be recognized, a BEAR program must:

(a) have been established and trained by the Montana Economic Developers Association; and

(b) have requested, in writing, recognition from any of the three agencies identified in (1).

(3) Written recognition of an eligible BEAR program by any of the three agencies identified in (1) constitutes recognition by all of the agencies. An agency denying a written request for recognition shall promptly explain the basis for the denial in writing.

(4) A recognized BEAR program may lose its recognition status if all three agencies unanimously agree that the BEAR program is no longer actively providing assistance to employers via the use of assessments, interviews, and surveys, or is otherwise failing to undertake it's responsibilities as a recommending entity. The department will promptly communicate the loss of recognition to the BEAR program in writing, and explain the basis for the decision.

AUTH: 53-2-1220, MCA

IMP: 53-2-1216, MCA

REASON: There is reasonable necessity to adopt NEW RULE II in order to describe the process by which a BEAR program becomes recognized, which is a prerequisite for a BEAR to become a recommending entity.

NEW RULE III GENERAL REQUIREMENTS (1) The department provides grant funding on a first-come, first-served basis, in accordance with the day of receipt of an application for funding by the department. Facsimile transmissions are accepted.

(2) The department shall review the expenditures of the incumbent worker training program throughout the fiscal year. One-fourth of the total annual grant funds shall be available during each quarter-year of the program. When funds allotted for a quarter are depleted before the end of the quarter, the department may suspend the grant program until the beginning of the next quarter and consider pending applications at the start of the next quarter. The department shall carry-over to the next quarter any funds not expended by the end of a quarter.

(3) The department shall accept only those grant applications and approval recommendations for incumbent worker training submitted to the department by a recommending entity. Only those grant applications that have been approved by a recommending entity are eligible for funding.

(4) The department shall verify the completeness of applications and ensure that each recommending entity has meaningfully evaluated each application in accordance with the incumbent worker training program grant award criteria, provided by 53-12-1218, MCA.

(5) The department shall enter into funding agreements for incumbent worker training with the employers upon grant application approval. Funding agreements must contain the following:

(a) the terms of the grant;

(b) a schedule for direct payment to the eligible training provider, when applicable;

(c) a schedule for pre-payment or reimbursement of approved costs to the employer, when applicable; and

(d) the grant reporting requirements of the employer.

(6) Grant funding may be made at a ratio of no more than four grant dollars for each one dollar of eligible matching share paid by the employer.

(7) Matching share paid by the employer may include:

(a) cost of tuition, fees for certified education, or skills-based training;

(b) employee wages for the time of actual training and travel time to and from training;

(c) direct employee benefits for actual training and travel time, excluding mandatory payroll taxes, premiums for workers compensation, and unemployment insurance;

(d) cost of educational materials, training supplies, or lab fees; and

(e) travel and lodging costs required for training, calculated at the current state of Montana rate. A minimum of 50 percent of out-of-state travel costs, if any, must be paid by the employer as matching share.

(8) Incumbent worker training grant funds may pay for:

(a) certified education or skills-based training for permanent employees;

(b) educational materials, training supplies, or lab fees; and

(c) travel and lodging costs required for training, calculated at the current state of Montana reimbursement rate for state employees. Grant funds may pay for no more than 50 percent of out-of-state travel costs.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: There is reasonable necessity to adopt NEW RULE III as the proposed rule is necessary to clarify worker training costs that are eligible for IWT grant funding and to explicate the employer-paid costs that qualify for the matching share requirements. Section 53-2-1217, MCA, requires that each grant recipient enter into a funding agreement with the department prior to the release of grant dollars. The proposed rule specifies the contents of a properly executed agreement.

Equitable distribution of available grant funds was not explicitly addressed by the 2009 Montana Legislature. Stakeholders proposed three major options to the department: (1) distribute grant funds on a first-come, first-served basis statewide until the fund is depleted; (2) distribute grant funds on a first-come, first-served basis by quarter year or another time period; and (3) distribute grant funds by geographic region. While the department recognizes that grant funding is limited, the demand for incumbent worker training services is unknown at this time. The department considered the merits of each approach and determined that quarterly spending would likely offer the most equitable distribution scheme. Quarterly distribution of grant funds preserves opportunity for grants over the entire program year and was the preferred alternative of the interested parties. Geographical distribution was rejected as a rational grant dispersal formula because the department is unable to anticipate the level of demand in each region at this time.

NEW RULE IV GRANT APPLICATION PROCEDURES (1) The department shall make available the incumbent worker training grant application form, which a business entity and recommending entity must complete in conjunction for the purpose of applying for a grant award.

(2) A business entity may submit an application to a recommending entity. The recommending entity shall verify that the business entity is an employer that meets the definition of [NEW RULE I] and that the information contained in the application is accurate and complete. The recommending entity shall evaluate the application based upon the incumbent worker training program grant award criteria provided in 53-2-1218, MCA, and makes a recommendation as to:

(a) whether a grant should be awarded; and

(b) the proposed amount of the grant award.

(3) Applications submitted to the department for grant funding must be signed and dated by both the employer and an authorized representative of the recommending entity.

(4) The recommending entity shall submit a cover letter to the department with each completed grant application. The cover letter must address, at a minimum, an analysis of the following:

(a) the goals of the proposed training of incumbent workers;

(b) the anticipated economic benefits from the training; and

(c) the recommendation for a specific amount of grant funding.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

REASON: There is reasonable necessity to adopt NEW RULE IV as the proposed rule is necessary to delineate the responsibility of the department to make the application form available to the public and the responsibility of the BEAR, SBDC, or MMEC to apply for a grant on behalf of the employer. The department will not conduct an independent analysis of grant applications, but will verify the completeness of applications and verify that the recommending entity has conducted a meaningful evaluation of the application, in accordance with the grant award criteria of 53-12-1218, MCA. The rule clarifies that the employer is responsible for providing all required information for an application to the recommending entity, and that the recommending entity is responsible for verification of the accuracy and completeness of that information prior to submission of a grant application to the department. The funding recommendations of the recommending entity must be described in a cover letter to the department and explicitly address the grant award criteria established by 53-2-1218(3)(a) through (f), MCA.

The department determined that it is reasonable and necessary to require both the employer and the designated representative of the recommending entity to sign and date a grant application prior to submission to the department. This is a universal requirement of other job training programs the department administers and ensures accountability on the part of all parties.

NEW RULE V EVALUATION CRITERIA AND LIMITATIONS (1) The department shall award incumbent worker training grants to employers in accordance with the grant award criteria set forth by 53-2-1218, MCA, and the approval of a recommending entity.

(2) Continuing education that is a regular and customary requirement for maintenance of an employee's professional or occupational licensure does not qualify for incumbent worker training grant funding.

(3) The department shall award grant funding only to employers who have demonstrated that incumbent worker training is an integral part of a plan for worker retention, skill improvement, and wage enhancement.

(4) The department shall award incumbent worker training grant funding on a prospective basis only and may not award grant funding to an employer for training that occurred prior to the date upon which the employer and recommending entity signed the completed grant application.

AUTH: 53-2-1220, MCA

IMP: 53-2-1217, 53-2-1218, MCA

REASON: There is reasonable necessity to adopt NEW RULE V as the proposed rule reiterates that IWT grant awards are intended for those employers who meet the funding criteria of 53-2-1218, MCA. IWT grant funds may only be used for training that "is not normally provided or required by the employer and, as far as may be determined, by the employer's competitors," according to 53-2-1218, MCA. The department determined that educational requirements for continued occupational or professional licensure is training that is normally "required by the employer. . . and the employer's competitors." Therefore, the propose rule prohibits the use of IWT funds for mandatory continuing education for licensed occupations.

The department determined that the Legislature intended the IWT grant awards to be used for prospective training only. The proposed rule clarifies that reimbursement for training that occurred prior to the date that an employer's application was signed and submitted to the department by a recommending entity does not comport with legislative intent and, therefore, is not allowed. The date upon which a grant application is signed and submitted to the department is the key date for determining whether training is prospective, regardless of whether a final funding decision by the department is delayed due to quarterly funds running out or due to a pending appeal.

NEW RULE VI APPEAL PROCEDURE (1) An employer has the right to appeal when a recommending entity:

(a) fails to take action on a grant application for more than 30 days after submission by the employer;

(b) decides not to recommend grant funding for incumbent worker training; or

(c) recommends less grant funding than requested.

(2) The employer first must seek informal administrative review of a funding recommendation by submitting a written request for review, a copy of the grant application, and a copy of the notice letter to the appropriate entity, as follows:

(a) funding decisions of a BEAR program must be submitted for review to the Montana Economic Development Association, MEDA-BEAR Working Group, 118 E. Seventh Street, Suite 2A, Anaconda, MT 59711; (406) 563-5259;

(b) funding decisions of a SBDC must be submitted for review to the Department of Commerce, SBDC Lead Center, Business Resources Division, Room 116, P.O. Box 200505, Helena, MT 59620-0505; (406) 841-2769; and

(c) funding decisions of MMEC must be submitted for review to the Montana Manufacturing Extension Center, P.O. Box 174255, Bozeman, MT 59717; (406) 994-3876.

(3) The entity providing administrative review shall evaluate the funding decision and send a written notice of findings and recommendations to the employer and the department within 30 days of receipt of the request for review.

(4) Within 20 days of the mailing of the notice of findings and recommendations by the entity providing administrative review, the department shall consider the findings and recommendations and make a final decision on the grant application and notify the parties in writing.

(5) Within 20 days of the mailing of the notice of the final decision of the department, the employer may submit a written request to the department for a contested case proceeding, pursuant to Title 2, chapter 4, MCA, to challenge a department action to deny a grant application or to provide less grant funding than requested.

(6) The employer bears the burden of demonstrating that the action by the department constitutes an abuse of discretion.

(7) A BEAR program which is aggrieved by a decision to either deny recognition or to remove recognition pursuant to [NEW RULE II] may submit a written request to the department for a contested case proceeding, pursuant to Title 2, chapter 4, MCA, within 20 days of being notified of the decision to deny or remove recognition.

AUTH: 2-4-201, 53-2-1220, MCA
IMP: 2-4-201, 53-2-1218, MCA

REASON: There is reasonable necessity to adopt NEW RULE VI to provide an appeal process to ensure that the due process rights of all employers are protected. The proposed rule obligates the recommending entity to explain the explicit reason(s) for each recommendation for ITW grant funding, grant denial, or funding at a lower amount than requested by the employer. The Montana Legislature did not specify time limits for the recommending entity to consider and process an application for grant funding. The proposed rule sets forth a 30-day requirement for the BEAR, SBDC, or MMEC to take action on an IWT grant application. Within 30 days of the submission of an application by an employer, the recommending entity must either complete its review, evaluation, and submit a grant application and cover letter to the department or, alternatively, notify the employer that an application is incomplete or that the recommending entity will recommend grant denial or grant funding at a lesser amount than requested.

The first step in the appeal process is informal administrative review of the decision of the recommending entity. The cooperating agencies of government that oversee the work of the BEAR programs, SBDC, and MMEC are the Montana Economic Development Association, Department of Commerce, and Montana State University, respectively. Each agency agrees to participate in the IWT program by conducting an informal administrative review of a recommendation that the department deny a grant application or reduce the funding requested by the employer.

Considering the findings and recommendations of the reviewing entities, the department will make a final decision on grant funding, which the employer may appeal using the contested case proceeding.

There is also reasonable necessity to provide for due process for a BEAR program which is aggrieved by an agency decision to deny or withdraw recognition of the BEAR program as a recommending entity.

5. The department lacks data upon which to provide an estimate of the number of persons who are likely to be affected by the ITW grant program, or the number of employers that will apply for or receive a grant. The department estimates that there are approximately 23,000 businesses in Montana that have 50 or fewer employees in the state, which is one of the statutory criteria contained in the definition of "employer". Based on data from a pilot project in the Billings area, the department estimates that the average amount of the grants is approximately $800. The amount of money available for IWT program grants for the current biennium is approximately $1,200,000.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Workforce Services Division, Department of Labor and Industry, Attn: Dave Morey, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-3037; or by e-mail to DMorey@mt.gov, and must be received no later than 5:00 p.m., March 29, 2010.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. Senator Kim Gillan, the primary sponsor of Senate Bill 388, was contacted by the department on November 2, 2009, in writing and by telephone, and notified that work was beginning on the substantive content and wording of the proposed new rules presented in this notice. Senator Gillan offered useful

comments during the rule-drafting process. All comments received from Senator Gillan were taken into account in drafting the proposed rules.

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

/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 February 16, 2010

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

In the matter of the amendment of ARM 37.12.401 pertaining to laboratory testing fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 27, 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 March 19, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

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

37.12.401 LABORATORY FEES FOR ANALYSES (1) remains the same.

(2) The Department of Public Health and Human Services shall maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Laboratory Test Fee List effective ~~August 1, 2008~~ July 1, 2010, which shall be available on the web site of the Department of Public Health and Human Services at www.dphhs.mt.gov/forms/, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) and (4) remain the same.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

4. ARM 37.12.401 provides information regarding the fees charged for biological and environmental tests performed by the Montana State Laboratory, in conformity with state statute. The Department of Public Health and Human Services (the department) proposes to modify the rules to reference the new version of the state laboratory fee list, which provides an average increase of 5% in the cost of lab services, though fee increases on a test-by-test basis vary. The revised fees are

necessary to keep the fees charged for lab service in line with the actual current cost associated with providing that service.

The proposed fee increases will result in a cumulative increase in fees for all laboratory services of approximately $140,000, affecting the approximately 1,000 annual customers of the state laboratory. The fee increases proposed represent the minimum increases necessary to maintain the state laboratory's current level of services, and are reasonably necessary to allow the state laboratory to fulfill its obligations as an adjunct to public health and health care functions in the state of Montana. The proposed fees account for the increased costs incurred by the laboratory since the last fee increase, including increased personnel costs, increased costs of supplies, and increased costs of new and replacement testing equipment.

The department considered not increasing its testing fees, but concluded that not doing so would result in the laboratory spending more to provide services than it would recover in service fees, and would result in the laboratory having to discontinue services.

The department will post the proposed revised fee list along with a copy of this notice in the rules notices section of the DPHHS web site at www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml.

5. 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 March 25, 2010. Comments may also be faxed to (406) 444-1970 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Rhonda Lesofski at the above address no later than 5:00 p.m., March 25, 2010.

7. 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 100 persons based on the 1000 customers affected by rules covering state laboratory fees and services.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State February 16, 2010.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption New Rules I through XIII pertaining to interconnection standard established by the federal Energy Policy Act of 2005	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 31, 2010, at 9:30 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room at 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Service Regulation 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 Service Regulation no later than 4:00 p.m. on March 24, 2010, to advise us of the nature of the accommodation that you need. Please contact Verna Stewart, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail vstewart@mt.gov.

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

NEW RULE I DEFINITIONS Terminology used in these rules has the following meanings, except where the context clearly indicates otherwise:

(1) "Applicant" means a person who has filed an application to interconnect a customer-generator facility to an Electric Delivery System.

(2) "Area Network" means a type of electric system served by multiple transformers interconnected in an electrical network circuit.

(3) "Commission" means the Montana Public Service Commission.

(4) "Customer" means any entity connected to the utility system for the purpose of receiving electric power from the EDS.

(5) "Customer-Generator" means a residential or commercial customer that generates electricity, typically on the customer's side of the meter.

(6) "Electric Distribution System" or "EDS" (i) means the infrastructure constructed and maintained by an EDC. (ii) Electric Distribution System has the same meaning as the term Area EPS, as defined in 3.1.6.1 of IEEE Standard 1547-2003.

(7) "Electric Distribution Company" or "EDC" means an electric utility that distributes electricity to end users within Montana and is subject to regulation by the commission.

(8) "IEEE" means the Institute of Electrical and Electronics Engineers.

(9) "IEEE Standards" means the standards published by the Institute of Electrical and Electronics Engineers.

(10) "Interconnect" means to connect a utility customer's generator to the electric distribution company's electric distribution system.

(11) "Interconnection" is the result of connecting a utility customer's generator to the electric distribution company's electric distribution system.

(12) "Nameplate Capacity" means the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer and is usually indicated on a nameplate physically attached to the power production equipment.

(13) "Nationally Recognized Testing Laboratory" or "NRTL" means a testing laboratory that is recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards.

(14) "Radial Distribution Circuit" means a circuit configuration in which independent feeders branch out radially from a common source of supply. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer's electric service entrance equipment. In a radial distribution system, power flows in one direction from the utility to the load.

(15) "Small Generator Facility" means a generator or a group of generators located on the utility customer's premises that have an aggregate nameplate capacity that is less than or equal to 10 MW and is designed to operate in parallel with the electric distribution system.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE II APPLICABILITY (1) The interconnection procedures set forth in this subchapter apply to applicants proposing to install and interconnect a small generator facility to an EDC's system that satisfies the following criteria:

(a) The small generator facility must be sited on the utility customer's premises; and

(b) The customer installing the small generator facility must be in good standing with the utility.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to

electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE III INTERCONNECTION REQUESTS (1) Applicants seeking to interconnect a small generator facility shall submit an interconnection request using a standard form filed with the commission by the EDC that owns the electric distribution system to which interconnection is sought. All fees for processing interconnection requests must be paid prior to acceptance of the interconnection request by the utility.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE IV AGREEMENTS, FORMS, AND FEES (1) The EDC shall file standard applications for interconnection requests, standard agreements required by the interconnection rules, a schedule of fees for processing interconnection requests, and a schedule of rates for performing the various studies required by these rules with the commission. All agreements, forms, fees, and rates must be filed with and approved by the commission after public notice and opportunity for comment. Utilities may not deviate from the standard agreements and fees filed with the commission without commission approval.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE V CERTIFIED EQUIPMENT (1) An interconnection request may be eligible for expedited interconnection review as determined under [NEW RULE VI] if the small generator facility uses certified interconnection equipment. Interconnection equipment shall be deemed certified upon establishment of all of the following:

(a) The interconnection equipment has been labeled and is publicly listed by a NRTL at the time of the interconnection application;

(b) The NRTL testing the interconnection equipment makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its web site and by encouraging such

information to be included in the manufacturer's literature accompanying the equipment;

(c) The applicant verifies that the intended use of the interconnection equipment falls within the use or uses for which the interconnection equipment was labeled, and listed by the NRTL;

(d) If the interconnection equipment is an integrated equipment package such as an inverter, then the applicant must show that the generator or other electric source being utilized is compatible with the interconnection equipment and is consistent with the testing and listing specified for this type of interconnection equipment;

(e) If the interconnection equipment includes only interface components (switchgear, multifunction relays, or other interface devices), then the applicant must show that the generator or other electric source being utilized is compatible with the interconnection equipment and is consistent with the testing and listing specified for this type of interconnection equipment;

(f) Interconnection equipment must be evaluated by a NRTL in accordance with the following codes and standards:

(i) IEEE 1547-2003 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1-2005 testing protocols to establish conformity); and

(ii) UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems; and

(g) Certified interconnection equipment shall not require further design testing or production testing, as specified by IEEE Standard 1547-2003 Sections 5.1 and 5.2, or additional interconnection equipment modification to meet the requirements for expedited review; however, nothing herein shall preclude the need for an interconnection installation evaluation, commissioning tests or periodic testing as specified by IEEE Standard 1547-2003 Sections 5.3, 5.4, and 5.5, or for a witness test that may be conducted by the EDC.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE VI REVIEW PROCEDURES (1) An EDC shall review interconnection requests using one or more of the following review procedures:

(a) An EDC shall use Level 1 procedures for evaluation of all interconnection requests to connect inverter-based small generation facilities if:

(i) The small generator facility has a nameplate capacity of 10 kW or less; and

(ii) The customer interconnection equipment proposed for the small generator facility is certified.

(b) An EDC shall use Level 2 procedures for evaluating interconnection requests if:

(i) The small generator facility has a nameplate capacity of 2 MW or less; and

(ii) The interconnection equipment proposed for the small generator facility is certified; or

(iii) The small generator facility was reviewed under Level 1 review procedures but not approved and the applicant has submitted a new interconnection request for consideration.

(c) An EDC shall use Level 3 review procedures for evaluating interconnection requests to area networks and radial distribution circuits where power will not be exported based on the following criteria:

(i) For interconnection requests to the load side of an area network the following criteria must be satisfied to qualify for a Level 3 expedited review:

(A) The nameplate capacity of the small generator facility is less than or equal to 50 kW;

(B) The proposed small generator facility utilizes a certified inverter-based equipment package;

(C) The small generator utilizes reverse power relays and/or other protection functions that prevent the export of power into the area network;

(D) The aggregate of all generation on the area network does not exceed the smaller of 5% of an area network's maximum load or 50 kW; and

(E) No construction of facilities by the electric distribution company shall be required to accommodate the small generator facility.

(ii) For interconnection requests to a radial distribution circuit, the following criteria must be satisfied to qualify for a Level 3 expedited review:

(A) The small generator facility has a nameplate capacity of 10 MW or less;

(B) The aggregated total of the nameplate capacity of all of the generators on the circuit, including the proposed small generator facility, is 10 MW or less;

(C) The small generator will use reverse power relays or other protection functions that prevent power flow onto the electric distribution system;

(D) The small generator is not served by a shared transformer; and

(E) No construction of facilities by the EDC on its own system shall be required to accommodate the small generator facility.

(d) An EDC shall use the Level 4 study procedures for evaluating interconnection requests if:

(i) The nameplate capacity of the small generator facility is 10 MW or less; and

(ii) The interconnection request was not approved under a Level 1, Level 2, or Level 3 expedited review and the applicant has submitted an interconnection request for consideration under a Level 4 study review; or

(iii) The interconnection request does not meet the criteria for expedited review under Level 1, Level 2, or Level 3 review procedures.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE VII TECHNICAL STANDARDS (1) Unless otherwise provided in these rules, IEEE Standard 1547-2003 is to be used in evaluating all interconnection requests under Level 1, Level 2, Level 3, and Level 4 reviews. IEEE Standard 1547.1-2005 is to be used for testing interconnection equipment to ensure it complies with IEEE 1547-2003.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE VIII ADDITIONAL REQUIREMENTS (1) The interconnection applicant is responsible for construction of all generator facilities and obtaining any necessary local code official approval.

(2) To assist customers in the interconnection process, the EDC will designate an employee or office from which basic information on the application can be obtained through an informal process. Upon request, the EDC shall provide the applicant with all relevant forms, documents and technical requirements for filing a complete application for interconnection of generators. Upon the customer's request, the EDC shall meet with the customer prior to submission of an application for expedited interconnection.

(3) When an interconnection request for a small generator facility includes multiple energy production devices at a site for which the applicant seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the aggregate nameplate capacity of multiple devices.

(4) When an interconnection request is for an increase in capacity for an existing small generator facility, the interconnection request shall be evaluated on the basis of the new total nameplate capacity of the small generator facility.

(5) When an interconnection request is deemed complete, any modification that is not agreed to in writing by the EDC shall require submission of a new interconnection request.

(6) Small generator facilities shall be capable of being isolated from the EDC by means of a lockable, visible-break isolation device accessible by the EDC. The isolation device shall be installed, owned, and maintained by the owner of the small generation facility and located between the small generation facility and the point of interconnection.

(7) Any metering necessitated by a small generator interconnection shall be installed, operated, and maintained in accordance with applicable tariffs. Any such

metering requirements must be clearly identified as part of the standard generator interconnection agreement executed by the interconnection customer and the EDC.

(8) EDC monitoring and control of small generator facilities shall be permitted only if the nameplate rating is greater than 15% of the line section annual peak load as most recently measured at the substation. Any monitoring and control requirements shall be consistent with the EDC's written and published requirements and must be clearly identified as part of an interconnection agreement executed by the interconnection customer and EDC.

(9) The EDC shall have the option of performing a witness test after construction of the small generator facility is completed. The applicant shall provide the EDC at least 20 business days notice of the planned commissioning test for the small generator facility. If the EDC elects to perform a witness test, it shall contact the applicant to schedule the witness test at a mutually agreeable time within ten business days of the scheduled commissioning test. If the EDC does not perform the witness test within ten business days of the commissioning test, the witness test is deemed waived. If the witness test is not acceptable to the EDC, the applicant shall be granted a period of 30 business days to address and resolve any deficiencies. If the applicant fails to address and resolve the deficiencies to the satisfaction of the EDC, the interconnection request shall be deemed withdrawn. If a witness test is not performed by the EDC or an entity approved by the EDC, the applicant must still satisfy the interconnection test specifications and requirements set forth in IEEE standard 1547-2003 Section 5. The applicant shall, if requested by the EDC, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1-2005.

(10) Once an interconnection has been approved under this rule, the EDC may not require a customer-generator to test its facility except for the following:

(a) For Levels 2 and 3, an annual test in which the customer-generator's facility is disconnected from the EDC's equipment to ensure that the generator stops delivering power to the grid, and any manufacturer recommended testing; and

(b) For Level 4, all interconnection related protective functions and associated batteries shall be periodically tested according to the following:

(i) Intervals specified by the manufacturer; or

(ii) Intervals agreed upon by the EDC and customer-generator; and

(c) Customer-generators shall maintain periodic test reports or an inspection log for Level 4 interconnections.

(11) An EDC shall have the right to inspect a customer-generator's facility before and after interconnection approval is granted, at reasonable hours and with reasonable prior notice provided to the customer-generator. If the EDC discovers the customer-generator's facility is not in compliance with the requirements of IEEE Standard 1547-2003, and the noncompliance adversely affects the safety or reliability of the electric system, the EDC may require disconnection of the customer-generator's facility until it complies.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE IX LEVEL 1 EXPEDITED REVIEW (1) An EDC shall use the Level 1 interconnection review procedure for an interconnection request that meets the criteria in [NEW RULE VI(1)(a)]. An EDC shall not impose additional requirements for Level 1 reviews not specifically authorized under this rule unless the EDC and the applicant mutually agree to do so.

(2) The EDC shall evaluate the potential for adverse system impacts using the following screens which must be satisfied:

(a) For interconnection of a proposed small generator facility to a radial distribution circuit, the aggregated generation on the circuit, including the proposed small generator facility, may not exceed 15% of the line section annual peak load as most recently measured at the substation;

(b) For interconnection of a proposed small generator facility to a spot network circuit where the generator or aggregate of total generation exceeds 5% of the spot network's maximum load, the generator must utilize a protective scheme that will ensure that its current flow will not affect the network protective devices, including reverse power relays or a comparable function;

(c) When a proposed small generator facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed small generator facility, may not exceed 20 kilovolt-amps (kVA);

(d) When a proposed small generator facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer;

(e) The generator cannot exceed the capacity of the customer's existing electrical service; and

(f) Construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.

(3) The Level 1 interconnection review must be conducted in accordance with the following procedures:

(a) An EDC shall, within ten business days after receipt of the interconnection request, inform the applicant that the interconnection request is complete or incomplete and what materials are missing;

(b) The EDC shall, within 15 business days after the end of the ten business days noted in (3)(a), verify that the small generator facility equipment can be interconnected safely and reliably using Level 1 screens;

(c) Unless the EDC determines and demonstrates that a small generator facility cannot be interconnected safely or reliably to its system and provides a letter to the applicant explaining its reasons for denying an interconnection request, the EDC shall approve the interconnection request subject to the following conditions:

(i) The small generator facility has been approved by local or municipal electric code officials with jurisdiction over the interconnection;

(ii) A certificate of completion has been returned to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities;

(iii) The witness test has been successfully completed or waived; and

(iv) The applicant has signed a standard small generator interconnection agreement. When an applicant does not sign the agreement within 30 business days after receipt from the EDC, the interconnection request shall be deemed withdrawn.

(d) When a small generator facility is not approved under a Level 1 review, the applicant may submit a new interconnection request for consideration under Level 2, Level 3, or Level 4 procedures.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE X LEVEL 2 EXPEDITED REVIEW (1) An EDC shall use the Level 2 interconnection review procedure for an interconnection request that meets the criteria in [NEW RULE VI(1)(b)]. An EDC shall not impose additional requirements for Level 2 reviews not specifically authorized under this section unless the EDC and the applicant mutually agree to do so.

(2) The EDC shall evaluate the potential for adverse system impacts using the following screens which must be satisfied:

(a) For interconnection of a proposed small generator facility to a radial distribution circuit, the aggregated generation on the circuit, including the proposed small generator facility, may not exceed 15% of the line section annual peak load as most recently measured at the substation;

(b) For interconnection of a proposed small generator facility to a spot network circuit where the generator or aggregate of total generation exceeds 5% of the spot network's maximum load, the generator must utilize a protective scheme that will ensure that its current flow will not affect the network protective devices, including reverse power relays or a comparable function;

(c) For interconnection of a proposed small generator facility that utilizes inverter-based protective functions to an area network, the generator facility, in aggregate with other exporting generator facilities interconnected on the load side of network protective devices, will not exceed the lesser of 10% of the minimum annual load on the network or 500 kW. For a photovoltaic generator facility without batteries, the 10% minimum shall be determined as a function of the minimum load occurring during an off-peak daylight period;

(d) For interconnection of generators to area networks that do not utilize inverter-based protective functions or inverter-based generators that do not meet the requirements of (2)(c), the generator must utilize reverse power relays or other protection devices and/or methods that ensure power is not exported from the

customer's site including any inadvertent export (e.g. under fault conditions) that could adversely affect protective devices on the network circuit;

(e) The proposed small generator facility, in aggregation with other generation on the distribution circuit, may not contribute more than 10% to the distribution circuit's maximum fault current at the point on the primary line nearest the point of interconnection;

(f) The proposed small generator facility, in aggregate with other generation on the distribution circuit, may not cause any distribution protective devices and equipment (including substation breakers, fuse cutouts, and line reclosers), or other customer equipment on the electric distribution system to be exposed to fault currents exceeding 90% of the short circuit interrupting capability;

(g) When a customer-generator facility is to be connected to 3-phase, three wire primary EDC distribution lines, a 3-phase or single-phase generator will be connected phase-to-phase;

(h) When a customer-generator facility is to be connected to 3-phase, four wire primary EDC distribution lines, a 3-phase or single phase generator will be connected line-to-neutral and will be effectively grounded;

(i) When the proposed small generator facility is to be interconnected on single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed small generator facility, shall not exceed 20 kVA;

(j) When a proposed small generator facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer;

(k) A small generator facility, in aggregate with other generation interconnected to the distribution side of a substation transformer feeding the circuit where the small generator facility proposes to interconnect, may not exceed 10 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (for example, three or four distribution busses from the point of interconnection);

(l) The proposed small generator facility's point of interconnection may not be on a transmission line;

(m) The generator cannot exceed the capacity of the customer's existing electrical service; and

(n) Construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.

(3) The Level 2 interconnection review must be conducted in accordance with the following procedures:

(a) An EDC shall, within ten business days after receipt of the interconnection request, inform the applicant that the interconnection request is complete or incomplete and what materials are missing;

(b) When an interconnection request is complete, the EDC shall assign a line section queue position if there is more than one interconnection request pending for the same line section. The line section queue position of the interconnection request shall be used to determine the potential adverse system impact of the small generator facility based on the relevant screening criteria. The EDC shall notify the

applicant about other higher line section queued applicants on the same line section or spot network for which interconnection is sought. Line section queue position shall not be forfeited or otherwise impacted by any pending dispute submitted under the provisions of [NEW RULE XIII];

(c) Within 20 business days after the EDC notifies the applicant it has received a completed interconnection request, the EDC shall:

(i) Evaluate the interconnection request using the Level 2 review criteria;

(ii) Review the applicant's analysis, if provided by applicant, using the same criteria; and

(iii) Provide the applicant with the EDC's evaluation, including a comparison of the results of its own analyses with those of applicant, if applicable. When an EDC does not have a record of receipt of the interconnection request and the applicant can demonstrate that the original interconnection request was delivered, the EDC shall expedite its review to complete the evaluation of the interconnection request within 20 business days of the applicant's resubmission of the interconnection request; but

(iv) The EDC shall not be obligated to meet the timeline for reviewing the interconnection request as provided for in (3)(c) until such time as the EDC has completed the review of all other interconnection requests that have a higher line section queue position.

(4) When an EDC determines that the interconnection request passes the Level 2 screening criteria, or fails one or more of the Level 2 screening criteria but determines that the small generator facility can be interconnected safely and reliably, it shall provide the applicant a standard small generator interconnection agreement within five business days after the determination.

(5) Additional review may be appropriate when a small generator facility has failed to meet one or more of the Level 2 screens. An EDC shall offer to perform additional reviews to determine whether minor modifications to the electric distribution system would enable the interconnection to be made consistent with safety, reliability, and power quality criteria. The EDC shall provide the applicant with a nonbinding, good faith estimate of the costs of additional review and minor modifications. The EDC shall undertake the additional review only after the applicant consents to pay for the review. If the review identifies the need for modifications, the EDC shall make the necessary modifications only if the interconnection customer agrees to pay for them.

(6) An applicant shall have 30 business days after receipt of an interconnection agreement to sign and return the agreement. When an applicant does not sign the agreement within 30 business days, the interconnection request shall be deemed withdrawn. If construction is required under the provisions of (5), the interconnection of the small generator facility shall proceed according to any milestones agreed to by the parties in the standard small generator interconnection agreement. The standard small generator interconnection agreement may not become final until:

(a) The milestones agreed to in the standard small generator interconnection agreement are satisfied;

(b) The small generator facility is approved by electric code officials with jurisdiction over the interconnection;

(c) The applicant provides a certificate of completion to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and

(d) There is a successful completion of the witness test, unless waived.

(7) If the small generator facility is not approved under a Level 2 review, the EDC shall provide the applicant a letter explaining its reasons for denying the interconnection request. The applicant may submit a new interconnection request for consideration under a Level 3 or Level 4 interconnection review; however, the line section queue position assigned to the Level 2 interconnection request shall be retained provided the request is made within 15 business days of notification that the current interconnection request is denied.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE XI LEVEL 3 EXPEDITED REVIEW (1) An EDC shall use the Level 3 interconnection review procedure for an interconnection request that meets the criteria in [NEW RULE VI(1)(c)]. An EDC shall not impose additional requirements for Level 3 reviews not specifically authorized under this section unless the EDC and the applicant mutually agree to do so.

(2) Once the interconnection request is deemed complete by the EDC, the EDC shall assign a line section queue position based upon the date and time the interconnection request is determined to be complete if there is more than one interconnection request pending for the same line section. The line section queue position of each interconnection request shall be used to determine the potential adverse system impact of the small generator facility based on the relevant screening criteria. The applicant will proceed under the timeframes of this section. The EDC shall notify the applicant about other higher line section queued applicants on the same radial line or area network that the applicant is seeking to interconnect to. Line section queue position shall not be forfeited or otherwise impacted by any pending dispute submitted under the provisions of [NEW RULE XIII].

(3) Interconnection requests meeting the requirements set forth in [NEW RULE VI(1)(c)(i)] for nonexporting small generator facilities interconnecting to an area network shall be presumed to be appropriate for interconnection. The EDC shall process the interconnection request to area networks using the following procedures:

(a) The EDC shall evaluate the interconnection request under Level 2 interconnection review procedures as set forth in [NEW RULE X(3)] except that the EDC may have 25 business days to conduct an area network impact study to determine any potential adverse system impacts of interconnecting to the EDC's area network; however, the EDC shall not be obligated to meet the timeline for reviewing the interconnection request as provided for herein until such time as the

EDC has completed the review of all other interconnection requests that have a higher line section queue position;

(b) In the event the area network impact study identifies potential adverse system impacts, the EDC may determine at its sole discretion that it is inappropriate for the small generator facility to interconnect to the area network in which case the interconnection request shall be denied; however, the applicant may elect to submit a new interconnection request for consideration under Level 4 procedures in which case the line section queue position assigned to the Level 3 interconnection request will be retained provided the request is made within 15 business days of notification that the current application is denied; and

(c) In the event the EDC denies the interconnection request, the EDC shall provide the applicant with a copy of its area network impact study and written justification for denying the interconnection request.

(4) For an interconnection request meeting the requirements of [NEW RULE VI(1)(c)(ii)] for nonexporting small generator facilities interconnecting to a radial distribution circuit, the EDC shall evaluate the interconnection request under the Level 2 expedited review in [NEW RULE X]. The EDC shall approve the interconnection request if all of the applicable screens in [NEW RULE X(2)] are satisfied.

(5) For a small generator facility that satisfies the criteria in (3) or (4) of this rule, the EDC shall approve the interconnection request and provide a standard interconnection agreement for the applicant to sign within five business days.

(6) The applicant shall have 30 business days after receipt of an interconnection agreement to sign and return the standard small generator interconnection agreement. If the applicant does not sign the standard small generator interconnection agreement within 30 business days, the request shall be deemed withdrawn. After the standard small generator interconnection agreement is signed by the parties, interconnection of the small generator facility shall proceed according to any milestones agreed to by the parties in the standard small generator interconnection agreement.

(7) The interconnection agreement will not be final until:

(a) Any milestones agreed to in the standard small generator interconnection agreement are satisfied;

(b) The small generator facility is approved by electric code officials with jurisdiction over the interconnection;

(c) The applicant provides a certificate of completion to the EDC; and

(d) There is a successful completion of the witness test, if conducted by the EDC.

(8) If the small generator facility is not approved under a Level 3 review, the applicant may submit a new interconnection request for consideration under the Level 4 procedures specified in [NEW RULE VI(1)(d)] without sacrificing the original line section queue position provided the revised interconnection request is submitted within 15 business days of notice that the current request has not been approved.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE XII LEVEL 4 STUDY REVIEW (1) An EDC shall use the Level 4 study review procedure for an interconnection request that meets the criteria in [NEW RULE VI(1)(d)].

(2) Within ten business days from receipt of an interconnection request, the EDC shall notify the applicant whether the request is complete. When the interconnection request is not complete, the EDC shall provide the applicant a written list detailing information that shall be provided to complete the interconnection request. The applicant shall have ten business days to provide appropriate data in order to complete the interconnection request or the interconnection request shall be considered withdrawn. The interconnection request shall be deemed complete when the required information has been provided by the applicant.

(3) When an interconnection request is complete, the EDC shall assign a line section queue position if there is more than one interconnection request pending for the same line section. The line section queue position of an interconnection request shall be used to determine the cost responsibility necessary for the facilities to accommodate the interconnection. The EDC shall notify the applicant about other higher line section queued applicants. Any required interconnection studies shall not begin until the EDC has completed its review of all other interconnection requests that have a higher line section queue position. Line section queue position shall not be forfeited or otherwise impacted by any pending dispute submitted under the provisions of [NEW RULE XIII].

(4) The following procedures shall be followed in performing a Level 4 study review:

(a) By mutual agreement of the parties, the scoping meeting, interconnection feasibility study, interconnection impact study, or interconnection facilities studies provided for in a Level 4 review and discussed in this section may be waived;

(b) If agreed to by the parties, a scoping meeting will be held within ten business days after the EDC has notified the applicant that the interconnection request is deemed complete, or the applicant has requested that its interconnection request proceed after failing the requirements of a Level 2 review or Level 3 review. The purpose of the meeting must be to review the interconnection request, existing studies relevant to the interconnection request, and the results of the Level 1, Level 2, or Level 3 screening criteria;

(c) If the parties agree at a scoping meeting that an interconnection feasibility study shall be performed, the EDC shall provide to the applicant, no later than five business days after the scoping meeting, an interconnection feasibility study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study;

(d) If the parties agree at a scoping meeting that an interconnection feasibility study is not required, the EDC shall provide to the applicant, no later than five business days after the scoping meeting, an interconnection system impact study

agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study; or

(e) If the parties agree at the scoping meeting that an interconnection feasibility study and system impact study are not required, the EDC shall provide to the applicant, no later than five business days after the scoping meeting, an interconnection facilities study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(5) The following guidelines shall be followed in conducting all required interconnection studies:

(a) An interconnection feasibility study shall include any of the following analyses necessary for the purpose of identifying a potential adverse system impact to the EDC's electric distribution system that would result from the interconnection:

(i) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

(ii) Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

(iii) Initial review of grounding requirements and system protection; and

(iv) Description and nonbinding estimated cost of facilities required to interconnect the small generator facility to the EDC's electric distribution system in a safe and reliable manner.

(b) If an applicant requests that the interconnection feasibility study evaluate multiple potential points of interconnection, additional evaluations may be required. Additional evaluations shall be paid by the applicant.

(c) An interconnection system impact study is not required if the interconnection feasibility study concludes there is no adverse system impact, or if the study identifies an adverse system impact, but the EDC is able to identify a remedy without the need for an interconnection system impact study.

(d) The parties shall use a form of interconnection feasibility study agreement approved by the commission.

(e) An interconnection system impact study shall evaluate the impact of the proposed interconnection on both the safety and reliability of the EDC's electric distribution system. The study shall identify and detail the system impacts that result when a small generator facility is interconnected without project or system modifications, focusing on the adverse system impacts identified in the interconnection feasibility study, or potential impacts including those identified in the scoping meeting. The study shall consider all generating facilities that, on the date the interconnection system impact study is commenced, are directly interconnected with the EDC's system, have a pending higher line section queue position to interconnect to the system, or have a signed a standard small generator interconnection agreement. As part of its impact study, the EDC shall agree to evaluate and consider any separate studies prepared by the applicant that evaluate alternatives for interconnecting the small generator facility including the applicant's assessment of potential impacts of the small generator facility on the electric distribution system. The EDC shall provide the applicant with the EDC's final impact study evaluation including a comparison of the results of its own analyses with those provided by the applicant.

(i) A distribution interconnection system impact study shall be performed when a potential distribution system adverse system impact is identified in the interconnection feasibility study. The EDC shall send the applicant an interconnection system impact study agreement within five business days of transmittal of the interconnection feasibility study report. The agreement will include an outline of the scope of the study and a good faith estimate of the cost to perform the study. The impact study shall include any necessary elements from among the following:

(A) A load flow study;

(B) Identification of affected systems;

(C) An analysis of equipment interrupting ratings;

(D) A protection coordination study;

(E) Voltage drop and flicker studies;

(F) Protection and set point coordination studies;

(G) Grounding reviews; and

(H) Impact on system operation.

(ii) An interconnection system impact study shall consider any necessary criteria from among the following:

(A) A short circuit analysis;

(B) A stability analysis;

(C) Alternatives for mitigating adverse system impacts on affected systems;

(D) Voltage drop and flicker studies;

(E) Protection and set point coordination studies; and

(F) Grounding reviews.

(iii) The final interconnection system impact study must provide the following:

(A) The underlying assumptions of the study;

(B) The results of the analyses;

(C) A list of any potential impediments to providing the requested interconnection service;

(D) Required distribution upgrades; and

(E) A nonbinding good faith estimate of cost and time to construct any required distribution upgrades.

(iv) The parties shall use an interconnection impact study agreement as approved by the commission.

(f) The interconnection facilities study shall be conducted as follows:

(i) Within five business days of completion of the interconnection system impact study, a report shall be transmitted to the applicant with an interconnection facilities study agreement, which includes an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(ii) The interconnection facilities study shall estimate the cost of the equipment, engineering, procurement and construction work, including overheads, needed to implement the conclusions of the interconnection feasibility study and the interconnection system impact study to interconnect the small generator facility. The interconnection facilities study shall identify:

(A) The electrical switching configuration of the equipment, including transformer, switchgear, meters, and other station equipment;

(B) The nature and estimated cost of the EDC's interconnection facilities and distribution upgrades necessary to accomplish the interconnection; and

(C) An estimate of the time required to complete the construction and installation of the facilities.

(iii) The parties may agree to permit an applicant to separately arrange for a third party to design and construct the required interconnection facilities. The EDC may review the design of the facilities under the interconnection facilities study agreement. When the parties agree to separately arrange for design and construction, and to comply with security and confidentiality requirements, the EDC shall make all relevant information and required specifications available to the applicant to permit the applicant to obtain an independent design and cost estimate for the facilities, which must be built in accordance with the specifications.

(iv) In the event that distribution upgrades are identified in the impact study that must be added only in the event that higher line section queued customers not yet interconnected eventually complete and interconnect their generation facilities, an applicant may elect to interconnect without paying for such upgrades at the time of the interconnection under the condition that the customer shall pay for such upgrades at the time the higher line section queued customer is ready to interconnect. If the customer does not pay for such upgrades at that time, the EDC will require the customer to immediately disconnect its generating facility so that the higher line section queued customer can be accommodated.

(v) The parties shall use an interconnection facility study agreement approved by the commission.

(6) When an EDC determines, as a result of the studies conducted under a Level 4 review, that it is appropriate to interconnect the small generator facility, the EDC shall provide the applicant with a standard small generator interconnection agreement. If the interconnection request is denied, the EDC shall provide the applicant a written explanation.

(7) An applicant shall have 30 business days after receipt of an interconnection agreement to sign and return the agreement. When an applicant does not sign the agreement within 30 business days, the interconnection request shall be deemed withdrawn. When construction is required, the interconnection of the small generator facility shall proceed according to milestones agreed to by the parties in the standard small generator interconnection agreement. The standard small generator interconnection agreement may not be final until:

(a) The milestones agreed to in the standard small generator interconnection agreement are satisfied;

(b) The small generator facility is approved by electric code officials with jurisdiction over the interconnection;

(c) The applicant provides a certificate of completion to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and

(d) There is a successful completion of the witness test, unless waived by the EDC.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

NEW RULE XIII DISPUTE RESOLUTION (1) A party shall attempt to resolve all disputes regarding interconnection as provided in [NEW RULE I THROUGH NEW RULE XII] promptly, equitably, and in a good faith manner.

(2) When a dispute arises, a party may seek immediate resolution through complaint procedures available through the commission, or an alternative dispute resolution process approved by the commission, by providing written notice to the commission and the other party stating the issues in dispute. Dispute resolution shall be conducted in an informal, expeditious manner to reach resolution with minimal costs and delay. When available, dispute resolution may be conducted by phone.

(3) When disputes relate to the technical application of this section, the commission may designate a technical master to resolve the dispute. Upon commission designation, the parties shall use the technical master to resolve disputes related to interconnection. Costs for a dispute resolution conducted by the technical master shall be established and allocated by the technical master, subject to review and approval or disapproval by the commission.

(4) Pursuit of dispute resolution may not affect an applicant with regard to consideration of an interconnection request or an applicant's line section queue position.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: The department is proposing these rules to provide an efficient, transparent, and uniform process by which small generators may connect to electrical grid and to implement Section 1254 of the Electricity Modernization Act of 2005.

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: Verna Stewart, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail VStewart@mt.gov, and must be received no later than 5:00 p.m., March 31, 2010. Please reference Docket L-10.02.1-RUL in all submissions or e-mails.

5. Commissioner Greg Jergeson, Department of Public Service Regulation, or another commissioner will preside over and conduct this hearing.

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

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

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

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

/s/ Robin A. McHugh
Robin A. McHugh
Rule Reviewer

/s/ Greg Jergeson
Greg Jergeson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State February 12, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2403 and 44.3.2404 pertaining to elections	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 18, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in Room 206 of the Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on March 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTICAL-SCAN BALLOTS

(1) remains the same.

(2) Except as provided in (3), only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA, and the oval, box, or other designated voting area on the ballot is marked. The following rules shall apply to determining a valid write-in vote in a count or recount of paper and optical-scan ballots:

(a) through (3) remain the same.

AUTH: 13-15-206, MCA
IMP: 13-10-211, 13-15-206, MCA

44.3.2404 DETERMINING A VALID VOTE ON AN ELECTRONIC VOTING SYSTEM (1) remains the same.

(a) All electronic voting system equipment shall provide for the use of a device for the voter to enter the name of a write-in candidate where applicable. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA, and the oval, box, or other designated voting area on the ballot is marked.

(b) remains the same.

AUTH: 13-15-206, MCA
IMP: 13-15-206, MCA

4. REASON: These rules are being amended pursuant to the passage of House Bill 509 during the 2009 legislative session. The main purpose of these rule amendments is to reflect the changes made to the election laws during the legislative session.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., March 25, 2010.

6. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter sent via U.S. Mail on October 28, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 16th day of February, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2203 pertaining to elections	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 18, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in Room 206 of the Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on March 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) remains the same.

(2) The minimum acceptable prescribed form for an application for an absentee ballot must include a written request for the absentee ballot, the elector's birth date, and the elector's or the elector's agent's signature. Additional recommended statements include the election for which the elector is requesting an absentee ballot and the address to which the elector wants the ballot mailed. Electors are strongly encouraged to use the form ~~used by~~ available from election administrators, which appears in the forms book~~let~~ that is provided by the Secretary of State to each election administrator.

(3) through (5) remain the same.

(6) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State in January ~~and July~~ of each year to each elector who has requested an absentee ballot for subsequent elections. The annual address confirmation form ~~mailed in January~~ is for elections to be held between February 1 following the mailing through ~~July of the same~~ January of the next year~~, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year~~. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election

administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for subsequent elections.

(7) remains the same.

(8) An elector who has been removed from the register of electors who have requested an absentee ballot for each subsequent election may ~~subsequently~~ later request to be mailed an absentee ballot for subsequent elections.

AUTH: 13-1-202, MCA
IMP: 13-1-211, 13-13-212, 13-13-213, MCA

4. REASON: This rule is being amended pursuant to the passage of Senate Bill 276 during the 2009 legislative session. The main purpose of these amendments is to reflect the changes made to the election laws during the legislative session and to clean up language in the rule.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., March 25, 2010.

6. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter sent via U.S. Mail on October 28, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 16th day of February, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I, II, and III pertaining to postelection audits	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 18, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in Room 206 of the Capitol Building, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on March 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I DEFINITIONS (1) "Blind count" means that the members of the county audit board do not know the vote totals in the precinct(s) being audited prior to conducting the postelection audit.

(2) "Board" is defined as the state board of canvassers consisting of the attorney general, the state auditor, and the superintendent of public instruction.

AUTH: 13-17-503, MCA
IMP: 13-17-503, MCA

REASON: The 2009 Legislature enacted SB 155, which requires a random-sample audit of vote-counting machines after a federal election. This proposed new rule defines "Blind count" to clarify its meaning as used in New Rule II and defines "Board" as the State Board of Canvassers. The term "board" is used throughout the new rules which set forth the procedures for conducting the random-sample audit. This definition is necessary to eliminate the need to spell out the State Board of Canvassers each time the board is referenced.

NEW RULE II SELECTION PROCESS FOR RANDOM-SAMPLE AUDIT

(1) Within seven to nine days after a federal election, the Secretary of State shall call a public meeting of the board to randomly select the races, ballot issues, and precincts to be audited pursuant to the Postelection Audit Act. Such public meeting will be posted no later than five days prior to the meeting date on the Secretary of State's web site.

(2) A county exempt from the postelection audit requirements because it does not use a vote-counting machine or has a race that is within the margins of a recount pursuant to Title 13, chapter 16, part 2, MCA, shall notify the Secretary of State of its exemption no later than seven days after the election by submitting a request for exemption on the form approved by the Secretary of State.

(3) Pursuant to 15-17-503, MCA, at least 5% of the precincts in each county, or a minimum of one precinct in a county, shall be audited, whichever is greater. The board shall utilize current official precinct information provided by the counties to the Secretary of State to determine the number of precincts to be audited per county. Three additional precincts in each county will be selected pursuant to 15-17-505, MCA, in case a discrepancy in vote tallies occurs that necessitates further auditing.

(4) To select the specific races and precincts to be audited, the board shall use ten-sided dice with numerals from 0 to 9 as the method of random selection. One, two, or three dice shall be used as specified below. The dice shall be red, white, and blue in color where red is the first number, white is the second number, and blue is the third number, if necessary.

(a) The precincts shall be numbered with consecutive numbers from 00 up to the actual number of precincts for counties having from 11 to 100 precincts, i.e., precinct 1 is numbered 01, precinct 2 is numbered 02 and so on until all the precincts in a county have been numbered. Precinct 100 will be numbered 00. For counties with 101 or more precincts, the precincts shall be numbered with consecutive numbers from 101 up to the actual number of precincts.

(b) One or two ten-sided dice shall be used to select one statewide office race, if any, one federal office race, one legislative office race, and one statewide ballot issue, if any, by assigning a number to each district or race based on its order of placement on the ballot.

(c) One ten-sided die shall be used to select the precinct to be audited for counties consisting of ten or less precincts, with 0 representing precinct 10.

(d) Two ten-sided dice shall be utilized to select the precinct or precincts to be audited for those counties consisting of 11 to 100 precincts.

(e) Three ten-sided dice shall be utilized to select the precincts to be audited for any counties consisting of more than 100 precincts.

(f) The board may decide to assign a number range of equal intervals to each precinct to reduce the number of dice throws needed, e.g., 0 – 2 = precinct 1, 3 – 5 = precinct 2, 6 – 8 = precinct 3, etc.

(5) The board shall determine the order in which board members will throw the dice. Board members will rotate dice throwing after each 30-minute interval. A ribbed tumbler and dice tray shall be utilized to accomplish the dice throw. The Secretary of State shall record the results on the prescribed form.

(6) Once the races and the precincts to be audited have been selected, the Secretary of State shall notify each county election administrator of the race and precinct selections and post the selections on the Secretary of State's web site.

(7) The Secretary of State in collaboration with the counties will prescribe the method the counties will use to ensure all individual precinct ballots, including but not limited to each precinct's absentee ballots, are accounted for in a manner that

will correlate to a specific vote-counting machine. The prescribed method will ensure that the postelection audit is a blind count.

AUTH: 13-17-503, MCA
IMP: 13-17-503, 13-17-504, 13-17-505, 13-17-506, 13-17-507, MCA

REASON: The 2009 Legislature enacted SB 155, which requires a random-sample audit of vote-counting machines after a federal election. This proposed new rule sets forth the process to be used for selecting precincts, races, and ballot issues for the postelection audit. This rule is necessary to provide guidance and direction to the State Board of Canvassers as to how to conduct the random selection process and to provide guidance to the counties regarding the postelection audit process. A review of other states' postelection audit information revealed that the use of ten-sided dice is an effective and simple way to conduct a random selection process and the best practice to ensure a fair and random sample. The random selection process set forth in this rule is based on procedures utilized in Marin County, California (3/11/07), that were developed by Arel Cordero and David Wagner, University of California, Berkeley, CA, and David Dill, Stanford University, Stanford, CA, and published in an abstract entitled "The Role of Dice in Election Audit–Extended Abstract," June 16, 2006.

NEW RULE III REPORTING PROCESS FOR RANDOM-SAMPLE AUDIT

(1) Once the county audit committee has performed the random-sample audit pursuant to the procedures specified in 13-17-503 and 13-17-504, MCA, the county election administrator shall notify the Secretary of State of the results by submitting the information on a form approved by the Secretary of State.

(2) The Secretary of State shall post the results of the random-sample audit on its web site.

AUTH: 13-1-202, 13-17-503, MCA
IMP: 13-17-506, 13-17-507, MCA

REASON: This rule sets out the process to be followed by the county election administrator to provide the random-sample audit results to the Secretary of State and also instructs the Secretary of State to post the results on its web site. This is necessary to ensure that the results are reported in a timely and uniform manner and that the information is made available to the public.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., March 25, 2010.

5. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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, apply and have been fulfilled. The primary bill sponsor was contacted by letter via U.S. Mail on October 28, 2010.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 16th day of February, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.104, 44.3.2014, 44.3.2015, 44.3.2109, 44.3.2113, 44.3.2114, 44.3.2401, 44.9.202, 44.9.301, 44.9.303, 44.9.305, 44.9.307, 44.9.312, 44.9.315, 44.9.402, and 44.9.404 pertaining to elections	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 18, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in Room 206 of the Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on March 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) ~~To be designated as accessible to individuals with disabilities and elderly voters, the standards for a polling place approved pursuant to 13-3-205(1), MCA, prior to October 1, 2005, must be consistent with the standards for accessibility established by the American National Standards Institute and the Uniform Federal Accessibility Standards. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this section.~~

~~(2)~~ Polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this subchapter.

AUTH: 13-1-202, 13-3-205, MCA
IMP: 13-1-202, 13-3-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendment eliminates outdated standards for polling place accessibility and reflects the changes made to the election laws during the legislative session.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) through (6) remain the same.

(7) An elector's registration shall be reactivated pursuant to 13-2-222, MCA, or shall be canceled pursuant to 13-2-402, MCA.

AUTH: 13-2-108, MCA
IMP: 13-2-220, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendment reflects the changes made to the election laws during the legislative session.

44.3.2015 LATE REGISTRATION PROCEDURES (1) remains the same.

(2) Except as provided in (3)(a), an elector who registers or changes the elector's voter information pursuant to this rule may vote in the election only if the elector ~~votes at~~ obtains the ballot from and returns it to the location designated by the county election administrator's ~~office~~. For the purposes of this rule, ~~voting at~~ returning the ballots to the location designated by the county election administrator's ~~office~~ includes:

(a) immediately after registering under the procedures of this rule, receiving and casting an absentee ballot at the location designated by the county election administrator's ~~office~~; and

(b) at any time after registering under the procedures of this rule, receiving in person from the election administrator and returning an absentee ballot directly to the location designated by the county election administrator's ~~office~~, either in person or by mail, subject to applicable deadlines.

(3) through (5) remain the same.

AUTH: 13-2-108, MCA
IMP: 13-2-304, 13-2-514, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the changes made to the election laws during the legislative session.

44.3.2109 PROCEDURES FOR CHALLENGES (1) through (4) remain the same.

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged

elector ~~as soon as possible~~ of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within five days of the filing of the challenge if the election is more than five days away; or

(ii) on or before election day if the election is less than five days away.

(b) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. ~~If the challenge is made more than five days before an election, "as soon as possible", as used in this section, means no later than five days after the challenge.~~

(5) and (6) remain the same.

AUTH: 13-13-301, MCA
IMP: 13-13-301, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-13-301, MCA, during the legislative session.

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - CASTING A BALLOT (1) through (5) remain the same.

(6) Consistent with 13-15-107, MCA, an election official shall handle a provisional ballot outer envelope which holds a ballot cast provisionally by an elector whose voter information is verified by the ~~close of the polls on~~ end of election day as follows:

(a) and (b) remain the same.

(c) ensure that the ballot is removed from the provisional ballot secrecy envelope, ~~which must be opened by the elector to remove the provisional ballot, which must then be~~ deposited with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot;

(d) and (e) remain the same.

AUTH: 13-13-603, MCA
IMP: 13-13-114, 13-13-601, 13-15-107, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments are to clean up language in the rule.

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) The election administrator shall direct election officials in each precinct, after the close of polls on election day, to tally the number of electors who have chosen to cast provisional ballots, but whose voter information is not verified by the

~~close of the polls on~~ end of election day, in a location specified by the election administrator in the records maintained by election officials.

(2) through (7)(a) remain the same.

(b) If the signatures do not match, and the elector or the elector's agent fails to provide ~~sufficient~~ valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108, MCA, and this section.

(8) Consistent with 13-15-107, MCA, ~~an election official shall handle~~ a provisional ballot must be removed from its provisional outer envelope, ~~which holds a ballot cast provisionally by an elector whose voter information is verified after the close of polls on election day as follows~~ grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the elector's voter information is:

(a) ~~remove the provisional ballot outer envelope from the unverified provisional ballot container~~ verified before 5:00 p.m. on the day after the election; or

(b) ~~mark it to indicate the reason(s) why it was verified and removed;~~ postmarked by 5:00 p.m. on the day after election day and received and verified by 3:00 p.m. on the sixth day after the election.

~~(c) remove the provisional ballot secrecy envelope, which must be opened to remove the provisional ballot, and which must then be grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot under (9); and~~

~~(d)~~ (9) After the process in (8) is completed, an election official shall mark the provisional ballot outer envelope with the reason(s) why it was verified and removed and place the provisional ballot outer envelope in the verified provisional ballot container.

~~(9) Election officials must not begin the count of provisional ballots, cast by electors whose voter information is received and verified after the close of polls on election day, until 3:00 p.m. on the sixth day following the election.~~

(10) Provisional ballots that are not resolved by the end of election day may not be counted until after 3:00 p.m. on the sixth day after the election.

(10) and (11) remain the same, but are renumbered (11) and (12).

AUTH: 13-13-603, MCA
IMP: 13-15-107, 13-15-301, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments add a voter's designated agent, clarify that identity and eligibility need to be verified, allow voters to verify signatures by mail or in person and to correct other minor issues by several different methods, require a ballot to be handled as a provisional ballot if issues are not resolved, and reflect the statutory changes made during the legislative session.

44.3.2401 BALLOT FORM AND UNIFORMITY (1) through (6) remain the same.

(a) Except as provided in (6)(c), ~~T~~the election administrator shall ensure that ballots are available for voting at least:

(i) through (b) remain the same.

(c) A ballot ~~may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot~~ requested pursuant to Title 13, chapter 21, MCA, ~~may~~ must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with 13-1-104(1), MCA; and

(d) remains the same.

AUTH: 13-12-202, MCA
IMP: 13-12-202, 13-13-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect statutory changes made during the legislative session. The implementation statutes were reviewed and updated.

44.9.202 WRITTEN PLAN SPECIFICATIONS (1) The written plan for the conduct of an election or elections held on the same election day ~~shall at least~~ must include:

(a) through (l) remain the same.

(m) sample written instructions that will be sent to the electors. The instructions must include, but are not limited to:

(i) information on the estimated amount of postage required to return the ballot; and

(ii) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is known, or if the information on location and hours of places of deposit is not yet known, a section that will allow the information to be added before the instructions are mailed to electors.

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-205, MCA, during the legislative session that require a written plan that addresses instructions to voters and postage needed for return of the ballot.

44.9.301 PROCEDURES FOR VOTING IN PERSON (1) In certain instances where the mail ballot election option is being used, ~~some~~ certain electors may vote in person at a designated location. These instances may include voting by:

(a) ~~voting by~~ an elector who will be absent from his place of residence during the conduct of the election;

(b) ~~voting by~~ nonregistered but otherwise qualified electors; ~~and~~

(c) ~~voting by~~ electors requesting a replacement ballot~~.~~; and

(d) reactivating electors or late registrants.

(2) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-303, 13-19-304, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made during the legislative session. Section 13-19-303, MCA, was amended to allow a mailed ballot to be provided as an absentee ballot if a voter reactivates registration and requests an absentee ballot.

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS

(1) remains the same.

(2) When such an individual appears in person ~~and demonstrates an eligibility to vote~~ or contacts the election administrator by mail, facsimile, or electronic means, and provides materials demonstrating that the individual possesses the qualifications required for voting as provided in 7-13-2212, 7-33-2106, 85-7-1710, and 85-8-305, MCA, or a similar section, ~~he~~ the individual must be allowed to vote, by following 13-19-304, MCA, and either:

(a) remains the same.

(b) completing and signing or providing the signature of the individual's agent designated pursuant to 13-1-116, MCA, for subsequent signature verification purposes, an absentee request as provided in Title 13, chapter 13, part 2, MCA.

(3) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-304, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-304, MCA, during the legislative session to allow a person who is not a registered voter, but who is eligible to vote in an election to provide proof without physically coming to the office by recognizing that the person may live out-of-state or out of the country. In addition, some amendments were made to make the language gender neutral.

44.9.305 REPLACEMENT BALLOTS (1) through (3) remain the same.

(a) prior to mailing or providing in person the replacement ballot, check the register to verify that the elector is entitled to vote and has not at that point done so;

(b) through (4) remain the same.

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The rule is amended to reflect the statutory changes made to 13-19-305, MCA, during the legislative session which clarified the handling of replacement ballots.

44.9.307 PLACES OF DEPOSIT (1) The Act provides that the election administrator may designate one or more places within the political subdivision in which the election is conducted as places of deposit where ballots may be returned by the elector or the elector's agent or designee.

(2) Whenever a place of deposit is designated, the election administrator shall also designate ~~a person~~ at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102, MCA, to be responsible for all mail ballot election procedures at that place of deposit. Such designated ~~person~~ election officials shall:

(a) through (d) remain the same.

(e) be personally available at such place of deposit ~~during a substantial portion of the hours that it is open for business~~ as specified in 13-19-307(2), MCA;

(f) through (3) remain the same.

AUTH: 13-19-105, MCA
IMP: 13-19-307, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-307, MCA, during the legislative session to require that places of deposit must be accessible, have accessible voting machines, and be staffed by at least two election officials.

44.9.312 SIGNATURE VERIFICATION PROCEDURES (1) through (1)(e) remain the same.

(f) ~~those~~ for a ballot~~s~~ not validated ~~shall be recorded by~~, the school district clerk (election administrator) shall designate it as a provisional ballot, give notice to the elector as provided in 13-19-313, MCA, and record the ballot as provided in ARM 44.9.313;

(g) through (4) remain the same.

AUTH: 13-19-105, MCA
IMP: 13-19-310, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-310, MCA, during the legislative session to make a questionable ballot a provisional ballot rather than having it presented to the canvassing board for a determination.

44.9.315 INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS (1) Inactive electors are not provided with mail ballots unless they reactivate under the following procedures:

(a) ~~If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) before the ballots are mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and send the elector a ballot on the same date as all other mail ballots are mailed.~~ At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the location designated by the election administrator to an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222, MCA.

(b) ~~If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) after the day on which the ballots were mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and provide the elector with a ballot in person or by mail.~~ An elector on the inactive list shall vote at the location designated by the election administrator on election day if the elector reactivates the elector's registration after noon on the day before election day.

(c) For an elector reactivating under (1)(a) or (1)(b), election officials must change the elector's status in the statewide voter registration database to "Active".

~~(c)~~ (2) ~~In neither (1)(a) or (b) is i~~It is not necessary for an election official to require ~~the~~ a reactivating elector to fill out a replacement ballot form under 13-19-305, MCA, since the elector, by following 13-2-222, MCA, is activating the elector's registration and is therefore automatically eligible for a ballot.

AUTH: 13-19-105, MCA
IMP: 13-2-222, 13-13-211, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-2-222, MCA, during the legislative session to clarify that a person may reactivate registration by voting in a mail ballot election. The implementation statutes were reviewed and updated.

44.9.402 RETURN/VERIFICATION ENVELOPE (1) remains the same.

(2) The face of the envelope should have the address of the election administrator both as return address and, in larger type, as mailing address. The words "~~POSTMASTER:~~ OFFICIAL BALLOT - DO NOT DELAY" and ~~"RETURN SERVICE REQUESTED", to ensure the nonforwardability of the mail ballots,~~ wording that conforms to postal regulations to require the return, not forwarding of undelivered packets should also appear.

(3) through (5) remain the same.

AUTH: 13-1-202, 13-19-105, MCA

IMP: 13-19-105, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendment is to clean up existing rule language and clarify procedures under the Secretary of State's authority granted by 13-19-105, MCA. Postal regulation wording has changed and the amendment provides flexibility so that forms may be changed as postal regulations change.

44.9.404 INSTRUCTIONS TO VOTERS (1) Instructions, as approved by the Secretary of State pursuant to 13-19-205, MCA, shall be included with the ballot, the secrecy envelope, and the return verification envelope as part of the packet mailed to the voter. The instructions shall detail the mechanical process which must be followed in order to properly cast the ballot. The instructions shall also:

(a) through (c) remain the same.

(d) advise the voter that in order for ~~his~~ the voter's ballot to be counted, it must be received in the election administrator's office no later than 8:00 p.m. on the day of the election~~.~~, except as provided in 13-21-206, MCA; and

(e) include the information specified under ARM 44.9.202(1)(m).

AUTH: 13-19-105, MCA
IMP: 13-19-105, 13-19-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-105, MCA, during the legislative session to clarify that the Secretary of State has authority to establish procedures for mail ballot elections. The implementation statutes were reviewed and updated.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., March 25, 2010.

5. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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, apply and have been fulfilled. The primary bill sponsor was contacted by letter sent via U.S. Mail on October 28, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 16th day of February, 2010.

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.183.408 authorization, 24.183.502 applications, 24.183.509 examination procedures, 24.183.2105 continuing education, and 24.183.2401 screening panel	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 10, 2009, the Board of Professional Engineers (board) published MAR Notice No. 24-183-35 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1554 of the 2009 Montana Administrative Register, issue no. 17.

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

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

COMMENT 1: Several comments were made in support of the proposed amendments to ARM 24.183.408, 24.183.502, 24.183.509, and 24.183.2401.

RESPONSE 1: The board appreciates all comments made during the rulemaking process and is amending these rules exactly as proposed.

COMMENT 2: One commenter suggested the board add one professional engineer and one professional land surveyor to the board's screening panel instead of adding two professional engineers.

RESPONSE 2: The board notes that in terms of total Montana licensees, the ratio of professional engineers to professional land surveyors is 11 to 1. The increase in screening panel members helps assure the presence of a quorum and better reflects this ratio. The board is amending ARM 24.183.2401 exactly as proposed.

COMMENT 3: The board received numerous comments in opposition to most of the proposed amendments to ARM 24.183.2105. Commenters stated the changes are unnecessary, too sweeping, and that Montana's continuing education (CE) standards should remain consistent with those of the National Council of Examiners for Engineering and Surveying (NCEES) and nearby states. Other commenters

expressed concern and possible confusion as to the administrative rulemaking process and a perceived inadequate publication of the rulemaking notice.

RESPONSE 3: Following discussion, the board decided to not proceed with any amendments to ARM 24.183.2105 at this time.

COMMENT 4: One commenter supported the proposed reduction in the number of allowable CE carryover hours in ARM 24.183.2105.

RESPONSE 4: Because the board decided not to amend the CE rule at this time, the entire rule will remain in its current form.

COMMENT 5: Several commenters supported amending ARM 24.183.2105 to extend the CE recordkeeping requirement to two full renewal cycles.

RESPONSE 5: The board appreciates all comments made during the rulemaking process and will consider making this amendment in the future.

4. The board has amended ARM 24.183.408, 24.183.502, 24.183.509, and 24.183.2401 exactly as proposed.

5. The board did not amend ARM 24.183.2105 as proposed.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, PRESIDING OFFICER

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

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

Certified to the Secretary of State February 16, 2010

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

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

TO: All Concerned Persons

1. On October 15, 2009, the Board of Realty Regulation (board) published MAR Notice No. 24-210-35 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1748 of the 2009 Montana Administrative Register, issue no. 19.

2. On November 9, 2009, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the November 17, 2009, deadline.

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

COMMENT 1: Two commenters requested that the board not amend ARM 24.210.611(9)(e), regarding entry-only listings not qualifying as experience for a broker license. The commenters stated that the board did not amend the definition of entry-only listing during their last rule project and instead referred the matter to a newly created rule review task force. The commenters suggested the board not proceed with this amendment and instead refer it to the task force.

RESPONSE 1: The board agrees with the commenters and is not amending ARM 24.210.611(9)(e) regarding entry-only listings, but will refer the matter to the board's rule review task force.

COMMENT 2: One commenter stated that a licensee should be responsible to provide a net sheet of basic costs at the time of listing or within a reasonable amount of time after taking a listing. The commenter further stated that most consumers are not knowledgeable about title insurance or prorated taxes, and that amending ARM 24.210.641 to eliminate this requirement may reduce a licensee's liability. The commenter also suggested adding language to require that licensees only provide an estimate and that it would not be considered unprofessional conduct if an agent is just not precise on an estimate.

RESPONSE 2: The board agreed that most consumers are not knowledgeable about costs associated with a real estate transaction. The board concluded that not eliminating this requirement unduly increases a licensee's liability for providing estimated closing costs when the licensee is not privy to all liens on the property. The board is amending this rule exactly as proposed.

COMMENT 3: One commenter supported the proposed amendment to ARM 24.210.641 eliminate the requirement that agents provide estimated costs and fees for sellers to help reduce the liability on licensees.

RESPONSE 3: The board appreciates all comments made during the rulemaking process and is amending the rule exactly as proposed.

4. The board has amended ARM 24.101.413, 24.210.641, 24.210.660, 24.210.674, 24.210.677, 24.210.801, 24.210.805, 24.210.809, 24.210.828, 24.210.835, 24.210.840, 24.210.843, 24.210.1001, 24.210.1007, 24.210.1016, 24.210.1020, 24.210.1025, and 24.210.1037 exactly as proposed.

5. The board has amended ARM 24.210.611 with the following changes, stricken matter interlined, new matter underlined:

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER (1) through (9)(d) remain as proposed.

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

(f) remains as proposed.

6. The board has repealed ARM 24.210.1003, 24.210.1005, 24.210.1011, 24.210.1013, 24.210.1018, 24.210.1029, 24.210.1033, and 24.210.1035 exactly as proposed.

BOARD OF REALTY REGULATION
CINDY WILLIS, CHAIRPERSON

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

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

Certified to the Secretary of State February 16, 2010

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 ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 24, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-496 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2446 of the 2009 Montana Administrative Register, Issue Number 24.

2. The department has adopted New Rule I (37.104.102), II (37.104.321), and III (37.104.405) as proposed.

3. The department has amended ARM 37.104.101, 37.104.105, 37.104.203, 37.104.213, 37.104.218, and 37.104.316 and repealed ARM 37.104.221 rules as proposed.

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

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 with EMT-intermediates or EMT-paramedics, 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) An ambulance service or NTU that provides advanced life support with EMT-basics with endorsements will receive a basic life support license with authorization for limited ALS.

(2) through (2)(b) remain as proposed.

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

5. 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: One commentor questioned in Rule I (37.104.102) how the "one EMT and a driver" works and requested information about whether the driver should have some EMS skills. The commentor thought that the driver should know how to do more than just drive and should be able to help the EMT if needed.

RESPONSE #1: Senate Bill 79, passed by the 2009 Legislature, allows a qualified volunteer EMS service to respond with one EMT-basic and one trained driver. In order to meet legislative intent, these proposed rules clarify that the driver only needs to obtain emergency vehicle driving education. However, this does not restrict services with adequate staffing and training resources from providing additional education to allow a driver to provide more services or assistance to the EMT.

COMMENT #2: One commentor noted that "service plan" is deleted in ARM 307.104.101(31) of these proposed rules, but is not similarly deleted in ARM 37.104.109(2)(a) without the definition to clarify the meaning of this.

RESPONSE #2: ARM 37.104.109(2)(a) does not reference a "service plan" and is not in error.

COMMENT #3: In ARM 37.104.316(3) commentor stated that the proposed new language identifies "training equivalent to the emergency vehicle operation objectives…" but it does not identify who will determine equivalency. The commenter suggests that this section be modified to clarify that the department will determine equivalency.

RESPONSE #3: The emergency driving learning objectives of an EMT-basic course are very minimal and can be met by many courses provided for EMS, law enforcement, fire, and other emergency responders. The department does not feel that it is necessary to review and determine equivalency of each of these courses and that the EMS services can adequately determine equivalency which meets the intent of statute.

COMMENT #4: We oppose the deletion of the definition for a grandfathered advanced first aid person under ARM 37.104.101(22) and other related deletions which allow a grandfathered first aid person to act as one of the required personnel on an ambulance.

RESPONSE #4: The department was not aware that there is still one person in the state that qualifies as a grandfathered advanced first aid responder and it is not the intention of the department to eliminate the contribution this provider makes to their local community. Even so, the department does not feel that it is necessary to continue to have this paragraph in rule. To the extent that there are any services

with grandfathered first aid providers, they may contact the department to obtain a personnel waiver through authority allowed under 50-6-325, MCA and ARM 37.104.107.

COMMENT #5: One commentor stated that ARM 37.104.101(22), "intermediate life support service", defines a service that provides care at the "EMT-intermediate equivalent" level, but that equivalency is not defined.

RESPONSE #5: The complimentary rule which defines an "EMT-intermediate equivalent" is already in ARM 37.104.101(17).

COMMENT #6: One commentor suggested the language "cannot provide it 24 hours a days, seven days per week" in ARM 37.104.109(1)(a) should be deleted and instead proposed providing language that states "an ambulance service or NTU that provides advanced life support with EMT-basics with endorsement will receive a basic life support license with authorization for limited ALS".

RESPONSE #6: ARM 37.104.109(1)(a) effects not only EMS services which provide advanced life support with EMT-basics with endorsements, but also services that utilized limited EMT-intermediate or EMT-paramedic staff. The department feels it can revise ARM 37.104.109(1) with two modifications which clarify, but do not change the intent of the proposed rule:

(a) An ambulance service or NTU that provides advanced life support with EMT-intermediates or EMT-paramedics, 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) An ambulance service or NTU that provides advanced life support with EMT-basics with endorsements will receive a basic life support license with authorization for limited ALS.

COMMENT #7: One commentor stated that ARM 37.104.109(2)(a) and (2)(b) is a Board of Medical Examiners (BOME) or local medical director issue and should be deleted from these rules. Additionally, the commentor questioned why any rules for medical direction are in service licensing rules as medical direction is a BOME issue.

RESPONSE #7: Under 50-6-323, MCA, the department has general authority to supervise and regulate emergency medical services. Additionally, 50-6-323(5)(c), MCA states that the department may prescribe and enforce rules for offline and online medical direction. The department and the Board of Medical Examiners work closely to ensure that the BOME authority for EMTS and the department authority for EMS services are coordinated.

COMMENT #8: One commenter stated that ARM 37.104.213(2) should be stricken or clarified as it appears to require the highest qualified person on an ambulance to always be in the back with the patient.

RESPONSE #8: The department disagrees that ARM 37.104.213(2) needs to be stricken or clarified. The first part of the sentence describes that an EMT (or their equivalent) must be attending the patient. The second part of the sentence requires that an EMT licensed at the corresponding level must attend the patient. For example, it requires the paramedic of an EMT-basic/EMT-paramedic team attend to the patient if any advanced life support monitoring or care is necessary. However, this does not restrict an EMT-basic on team to provide care to the patient that only requires basic life support.

COMMENT #9: One commentor stated that language in ARM 37.104.218(3) relative to "two-way communication, approved by the department" is too vague and should not be left that open.

RESPONSE #9: The department feels that ARM 37.104.218(3) should remain open and flexible as there are a variety of methods that EMS services operate and utilize communications technologies and all of them cannot be described in rules. Additionally, there are continually new technologies emerging to facilitate communications with hospitals and medical control and a detailed rule would not enable the department to easily approve these technologies as they become available.

COMMENT #10: One commentor suggested that language from 50-6-322, MCA be added to ARM 37.104.316.

RESPONSE #10: The department disagrees. It is not common practice to publish language from a statute into rules. Upon adoption of these rules, the department will provide a complete overview of the new statute and rule language to all services.

/s/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State February 16, 2010.

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

In the matter of the amendment of ARM 37.5.118, 37.47.601, 37.47.610, and 37.47.613 pertaining to administrative review of fair hearing decisions	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 14, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-498 pertaining to the proposed amendment of the above-stated rules at page 50 of the 2010 Montana Administrative Register, Issue Number 1.

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

3. No comments or testimony were received.

/s/ Bernie Jacobs
Rule Reviewer

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

Certified to the Secretary of State February 16, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.701, 42.20.705, 42.20.715, 42.20.720, 42.20.725, and 42.20.745 relating to forest land property	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-814 regarding the proposed amendment of the above-stated rules at page 1961 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 23, 2009, to consider the proposed amendment. Oral and written testimony was received at the hearing and prior to the close of comment period is summarized as follows along with the response of the department:

COMMENT NO. 1: Confusing process - Mr. Chuck Roady, F H Stoltze Land and Lumber and on behalf of the Montana Wood Products Association; Mr. Paul McKenzie, Montana Tree Farm System; Ms. Debra Parker Foley, Montana Forest Owners Association, and Mr. Kevin Stowe, Stimson Lumber Company submitted comments regarding the reappraisal process this past year. They stated that it has been very frustrating, confusing and extremely difficult for the private forest land owners of Montana to even start to verify the valuation of their forest lands to determine if it is fair or correct. Much of the information provided by the department in regards to valuation, calculations, the assessments, and the productivity classifications have been constantly changing and all are extremely difficult for a landowner to verify if their valuation is accurate and fair. To date, nearly all of the information that has been provided by the department regarding productivity classification, valuation, and assessments has been either erroneous or has changed since the time the information was provided and the calculations of taxable value are actually made. It has been extremely difficult for a landowner to verify if the valuation of their forest land is correct and fair.

Mr. Stowe further stated that it would be good to have a better understanding how the department calculates board foot productivity for forest land.

RESPONSE NO. 1: The department has worked with a number of the agricultural advisory committees and those advisory committees have always taken a look back in time to try to come up with a new method of valuing agricultural land and to review the methodologies that are used for valuing agricultural land.

The department provided its initial estimate of the impacts of reappraisal on forest land to the Select Committee on Reappraisal. During the Select Committee hearings, members of various forest land groups and organizations testified about the valuation impacts associated with the statutory requirements concerning the

capitalization rate used to determine the value of forest land. Based on the foresters' testimony, the Select Committee included language in House Bill 658 (HB 658), the reappraisal mitigation bill. That language included a statutory change to the capitalization rate and directed the department to use an 8% cap rate for the 2009 – 2014 appraisal cycle. There is an inverse relationship between cap rates and values and the use of a higher cap rate results in a lower per-acre value for forest land.

Based on recommendations presented by the department to the Select Committee, and agreed to by the Select Committee, the department also incorporated the use of the "weighted mean board foot productivity" when determining the value of a forested polygon. This is a change from the assignment of a "grade" per-forested polygon. A grade represents a range of production while the weighted mean productivity represents an actual productivity. For most forested polygons in Montana this change also resulted in a lower per-acre value when compared to the value associated with the former grade. Please see Response 5 for more detailed information related to the change from a grade to the weighted mean volumetric averages.

COMMENT NO. 2: Definitions - Mr. Roady and Ms. Parker Foley stated that some of the rule definitions are completely different from the intent of the legislative language in House Bill 658.

RESPONSE NO. 2: The department cannot discern a difference in the proposed rules and the legislative intent of HB 658. The only noticeable difference is the opinion regarding the timing of the appointment of the Forest Land Advisory Committee. The other proposed rules are consistent with the discussions and direction provided by the Select Committee on Reappraisal and the language contained in HB 658.

COMMENT NO. 3: Cap Rate - Mr. Corey Swanson, Plum Creek Timber Company, Mr. Roady, and Ms. Parker Foley stated that the language in 15-44-103(6), MCA, is very explicit in regards to the capitalization rate calculations. It states that the capitalization rate is to be determined by the department after consultation with the Forest Lands Advisory Committee. The statute is mandating the formation and utilization of the Advisory Committee and that cannot continue to be ignored. Also, the capitalization rate is not statutorily established at 8%. Section 15-44-103(6), MCA clearly states: "[h]owever the capitalization rate for each year of the base period for tax years 2009-2014 may not be less than 8%."

Mr. McKenzie stated that in ARM 42.20.715(5)(c)(i), the department states that the capitalization rate is statutorily established at 8%. That is incorrect and clearly inconsistent with the legislation which states that the capitalization rate may not be less than 8%. He stated that this issue was to be determined by the department after consultation with the Forest Lands Taxation Advisory Committee plus the effective tax rate. The capitalization rate must be adopted by rule. However, the capitalization rate for each year in the base year, for tax years 2009-2014, may not be less than 8%. It is very clear that this is a cooperative process between the committee and the department, not an arbitrary rate that's set by the department.

Mr. Bill Frings, Plum Creek Timber Company stated that the department must

follow House Bill 658 with regard to the cap rate and nothing says it has to be 8%, it is nothing less than 8%, so in today's external environment with the changes that have occurred in the forest products industry over the last 18 months and some of the macro-economic things being seen, means there has to be some flexibility and consideration on an annual basis with the cap rate, just because of those external factors that have been seen. When the housing starts drop 10.5% in one month, those are the types of things that have to be considered for a viable long term forest products industry here in Montana.

RESPONSE NO. 3: House Bill 658 refers to the "base period for tax years 2009-2014". That base period is comprised of years 2003 through 2007. That base period has expired, so no further adjustments can be made. Dr. David Jackson from the University of Montana worked to develop and determine the capitalization rate per the statute, prior to the 2009 legislative session. That cap rate for the base period on a statewide basis came out somewhere in the neighborhood of 6.2%, and it was going to cause a pretty substantial increase in the value of forest land, and so per the input of the forest industry with the Subcommittee on Reappraisal, the Legislature directed the department to not use the calculated cap rates of 6.2% in determining the value for the base period, but to use the 8% cap rate. The department understood the legislative intent was to use that cap rate rather than the calculated cap rate, so the department incorporated that into the administrative rules. The proposal that the cap rate would change each year of the appraisal cycle is in error. If the department were to change the cap rate of forest land each year of the appraisal cycle, that would be a selective reappraisal of forest land which is contrary to Montana Law and court decisions and the department would not do that.

Forest land is appraised on a cyclical basis, the same as agricultural land and class 4 lands. Those values are determined based on historical information for the base period, prior to the implementation of the appraisal cycle, so any change to that a cap rate going forward for each year, 2009, 2010, and 2011, would be contrary to existing law, and would not be something that could be implemented without some major changes to the laws or through a court ruling.

COMMENT NO. 4: Advisory Committee - Mr. Jeff Clausen, F.H. Stoltze; Mr. Bill Frings; Ms. Mary Whittinghill, Montana Taxpayers Association; Mr. Ronald Buentemeier, Columbia Falls; Ms. Ellen Simpson, Montana Wood Products Association; Mr. Roady; Mr. McKenzie; Mr. Swanson; and Ms. Debra Parker Foley stated that the department should convene the Forest Land Taxation Advisory Committee immediately.

Mr. Roady further stated that his association definitely believes and the history has proven that a better more accurate product will result for the forest landowners of Montana, if the department and the representatives of this advisory committee work cooperatively. He asked for clarification regarding the department's interpretation of the advisory committee's roll with regard to taking a look back at the calculations only as it applies to changes the future legislation? He stated that he thought it was to be a cooperative effort between the department and advisory committee. He stated that he wanted to emphasize that they want to work together with the department and the advisory committee.

Mr. Jeff Clausen further stated that in the early 1990's. F. H. Stoltze was one of the timberland owners that together with the State and the University of Montana put together the productivity tax model as it is used today. He said that they did it willingly and everyone was reasonably happy with the final product. Their guiding light, so to speak, was that it was equitable, transparent, and defensible. In this last reappraisal cycle, the department contracted with the University of Montana again to revamp the underlying GIS data in part for technological advances. This was done and Dr. Jackson also did a little bit of revamping of the economic model. The industry and timberland owners as a whole were excluded from this process. As an example, the industry and timberland owners were invited to an informational meeting on December 31, 2008 to lay out the final product, which in turn was in fact not the final product. During the legislative session, they came again for another informational meeting, which they thought was the final product. There were several changes before it went before the Legislature. This process of excluding timberland owners forced a lot of major players to petition the Legislature to set up an advisory committee, which in fact they did in House Bill 658. The industry and landowners have wanted to be a cooperator in the process. He stated that their goal is to have tax equity and they do not want to evade taxes.

Ms. Whittinghill further stated that according to the compiler's notes the advisory committee could have been appointed as early as May 10th of this year. She stated that she believes having had the committee involved with the rules would have been very helpful in explaining the process to the taxpayers, and the county tax appeal boards. It is a complicated process and the department has started with a set of rules that could be broadened and clarified.

Ms. Parker Foley further stated that the lack of reference to the "Forest Lands Taxation Advisory Committee" is egregious. She stated that under 15-44-103(6), MCA, the department was to establish the cap rate "after consultation with the Forest Lands Taxation Advisory Committee."

Ms. Simpson stated they would like a group of stakeholders be invited to meet with the department to correct the numerous errors and inconsistencies contained in the current version of the rules. She further stated they feel a meeting would greatly benefit the end product.

RESPONSE NO. 4: Montana law requires the department to establish productivity, per-acre net income, mean annual net wood productivity and other valuation data based upon prior year data. The information must be reviewed and analyzed in a timely manner to allow the department to apply the results to the subsequent reappraisal cycle. For the 2009-2014 cycle, the department reviewed and analyzed information from 2003 – 2007. The results of that review and analysis were compiled for use by July, 2008 and were applied to the January 1, 2009 valuation of forest lands. Section 15-7-111(3), MCA, states "[t]he revaluation of class three, four and ten property is complete on December 31, 2008." Prior to December 31, 2008, the Forest Land Tax Advisory Committee did not exist.

House Bill 658 which established the Forest Land Tax Advisory Committee was not adopted until April 30, 2009. By that time, the department had already begun applying the 2009 valuations to all property within the state. In order for the department to meet its statutory deadlines for property valuation, it was not feasible to

convene the committee or to consider recalculation of the prior cycle data.

Section 15-44-103(10)(c), MCA, establishes the committee's duty to review the data referenced in sections 15-44-103(2) through (6), (8) and (9), MCA. The committee is required to review all of the data that accumulates over the five-year period between 2009 and 2013 and to advise the department as it establishes values for the 2015 – 2020 cycle. Because limited data will be available until at least mid-way through the 2009 – 2014 cycle, the department has determined that the committee should be convened early in 2012. At that point in time the committee will have a reasonable amount of data available to it for review and analysis. The committee will also have an adequate amount of time in which to establish goals, review data, compile alternatives, and to develop suggestions for the department as it undertakes its cyclical revaluation of property for the 2015 – 2020 cycle. The department fully intends to work cooperatively with the committee as it undertakes its statutory duties.

COMMENT NO. 5: Productivity - Mr. Roady, Mr. McKenzie, Ms. Whittinghill, Mr. Swanson, and Ms. Parker Foley all stated that the reference in the rules to forest productivity is a concern because it is not clear what is exactly a weighted mean volumetric average. It is impossible for a landowner to understand this concept to determine what productivity class was used to calculate their productivity values.

Mr. McKenzie further stated the proposed rule changes add to the continuation of that frustrating process. He stated it appears there are a variety of problems in the proposed rules, ranging from minor technical errors in the definitions to complete misrepresentations of the legislative language included in House Bill 658. Specifically under the definition in ARM 42.20.701(7), the definition of forest site productivity, the definition as offered is completely inadequate. He questioned the department's basis of the weighted mean volumetric average. For example, is it based on ownership boundaries, is it based on former productivity classes? It is very unclear how the process was undertaken to take the information from the productivity formula that was produced by the university and then transferred into a weighted mean volumetric average for a landowner. This definition needs work to clearly identify how those productivity values were calculated and upon what basis and using what data set.

Ms. Whittinghill suggested there appears to be an error in ARM 42.20.725(5) because the term "potential productivity" does not appear in the statutes in House Bill 658. She suggested, at a minimum, that reference should be stricken.

Ms. Parker Foley further stated the explanation in ARM 42.20.715 of how productivity will be assigned is inadequate. There is no basis cited for the "weighted mean volumetric average."

RESPONSE NO. 5: A polygon represents an area of forest land that meets the statutory requirements to be considered for forest land classification. The potential productivity and ultimately a "grade" are determined on a polygon by polygon basis.

Since the creation of the forest land productivity information in the early 1990s, the department has used GIS technology to identify both the potential productivity of forest land and the assignment of a "grade" associated with the potential productivity. The first step in determining the grade of the forest land is to determine the volumetric output productivity of the forested polygon. The volumetric

output is expressed as the maximum average annual growth of wood that could be expected from a natural, fully stocked stand of coniferous trees over the biological rotation age, after adjusting for average annual mortality based on yield tables. A GIS function (map algebra) combines all acreage within the forested polygon and determines the weighted mean volumetric average by averaging the potential productivity. The weighted mean volumetric average represents the average forest land production within a specific timber stand expressed in board feet per acre.

A grade represents a "range of potential production". Once the weighted mean volumetric average has been determined, a grade for the forested polygon can be assigned based on a range of production associated with the indicated grade. Grades are arbitrary production ranges and may not be good expressions of the potential forest land productivity.

For example, a grade of "V" (five) represents a range of production between 100 board feet per acre to 175 board feet per acre (bf/ac). Any forested polygon with an estimated production that falls within the 100 bf/ac to 175 bf/ac range of production would be assigned a grade V. In determining the per-acre value of all forest land with a grade of V, the midpoint of the range of production would be used {(100 bf/ac + 175 bf/ac)/2 = 137.5 bf/ac} for the productivity component of the forest land valuation formula identified in statute. Using a grade assigns a per-acre value of all forest land with the same grade, regardless of the actual weighted mean volumetric average potential production. In reality, two forest stands that are side by side, could have significantly different potential productivity, i.e., one forest stand on the low end of the productivity range associated with a grade and the other near the high end of the productivity range. But because they fall within the same grade range they would have the same per-acre value.

The "weighted mean volumetric average" is the actual average potential production for a forest polygon. In effect, it eliminates the step of assigning a grade to the forested polygon. In the determination of the per-acre value of the forested polygon, the actual weighted mean volumetric average production is used for the productivity component of the forest land valuation formula identified in statute.

The University of Montana is using the Forest Projection System (FPS) Model to predict the potential productivity for forest land production. The department believes it is important to include the definition of "potential productivity" in the administrative rules because that's what the model predicts. In addition, 15-44-102,(6), MCA states "'Forest productivity value' means the value of forest land for assessment purposes, which value is determined only on the basis of its potential to produce timber, other forest products, and associated agricultural products through an income approach provided for in 15-44-103." (emphasis added)

COMMENT NO. 6: Delay rule action - Mr. Roady, Mr. Clausen, Mr. McKenzie, Ms. Whittinghill, Ms. Parker Foley, Mr. Stowe, and Ms. Stimpson strongly request the department delay the rulemaking process until the Forest Land Advisory Committee can be assembled and have an opportunity to review the rules and can make the appropriate recommendations to clarify the rules to meet the legislative intent of House Bill 658.

Mr. McKenzie also stated the members of the Montana Tree Farm System still feel that the productivity based valuation method is the correct and most equitable

method to assess forest land values and tax liabilities in our state. However, the department has sufficiently succeeded in sufficiently clouding the waters in the process used to implement the program that the landowners don't have the confidence that the program is working properly or as intended by this Legislature.

Mr. Kevin Stowe added that delaying the rulemaking process would allow discussion on topics such as: establishment of the Forest Lands Taxation Advisory Committee as cited in House Bill 658; the definition of capitalization rate as defined in House Bill 658 versus the rate proposed in ARM 42.20.725; and forest productivity assignations.

RESPONSE NO. 6: The Forest Land Advisory Committee will not be convened until 2012, at the earliest. Advisory committees review historical information and make recommendations for changes for the future appraisal cycle. They do not make recommendations for the current appraisal cycle.

COMMENT NO. 7: Appeals - Mr. Al Kington stated that he represents two landowners who own about seven thousand acres on two different ranches of forest land. He stated that he was also involved in the forest land productivity start up in 1993, and he served on the governor's tax advisory committee.

Mr. Kington further stated that at the present time he could not support the rules because he has been involved with the appeals process of Montana's forest lands and he feels that the rules, as they are written now, with the ambiguity and misstatements, would be very difficult for the local people and the local appeal boards to get their hands around. It would not be to the benefit of the department to lose a bunch of appeals and it could even jeopardize the productivity we've known since 1993. He stated that the biggest concern would be the wasted time and effort by both the department and the appeal boards whether they be local or statewide.

RESPONSE NO. 7: The department attempts to draft rules that clearly and completely implement the laws under which the department operates. Montana law requires the department to adopt certain rules relating to the valuation of forest lands as well as all other types of property subject to taxation. While the department regrets the fact that Mr. Kington cannot support the department's forest land rules as they are written, the department believes that these rules meet the department's statutory mandated rule adoption requirements and that they will assist both the department and the public in understanding how the forest land statutes have been and will be implemented by the department.

COMMENT NO. 8: Technical Problems - Ms. Whittinghill stated there are some technical problems with ARM 42.20.725(4). She suggested that this section may not even belong in this rule. She stated the language contained in this amendment is something that has already been done. This rule also references a rule that deals with class 4 property, therefore it appears there is an incorrect internal reference in this rule.

RESPONSE NO. 8: The department has used the change in language included in ARM 42.20.725(1)(b) to clarify that forest lands are subject to phase-in provisions in Montana statutes. The language is also used to clarify that the "full

phase down" provisions are applicable should there be a decrease in value caused by the reappraisal.

COMMENT NO. 9: Legal Opinion - Mr. Swanson asked if there had been any discussion about the legal requirement to have the advisory committee involved before the department set the cap rate. He asked if the position in the rules was considered a legal opinion of the department because the statute seems to be saying that the cap rate, in this cycle, will be set by the department after consultation with the committee rather than for the next cycle, which may be completely changed by the Legislature. He stated that the statutory language seems clear and conflicts with the proposed rule language.

RESPONSE NO. 9: As noted in the department's response to Comment No. 4, the Forest Lands Taxation Advisory Committee was not established until the adoption of House Bill 658 in April of 2009. Because the committee did not exist at the time the department was required to establish its cap rate for the 2009 – 2014 cycle, the department could not have consulted the committee.

The cap rate used in the 2009 – 2014 cycle was established by the department based upon the cap rates that existed in 2003 – 2007. The use of these prior year cap rates as a basis for the current year cap rate calculation is required by 15-44-103(6), MCA. A review of the prior year cap rates indicated that the cap rate for each of was lower than 8%. Because 15-44-103(6), MCA provides that capitalization rate for each of the base years used to establish the cap rate for the 2009 – 2014 cycle may not be lower than 8%, the department adjusted each year's cap rate to 8% minimum rate. This resulted in the overall cap rate of 8% that was used to value forest lands for the 2009 – 2014 cycle.

The language in the proposed rule does not conflict with existing law. The cap rate established by the department was established in accordance with Montana law. If the Legislature chooses to amend 15-44-103(6), MCA in the future, the department will amend its process and rules to comport with the Legislature's mandate at that time.

COMMENT NO. 10: Retroactive Applicablilty - Ms. Patty Lovaas, Missoula stated the proposed rules 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). She further stated a rule is designed to implement or interpret prescribed law, not create it. Committees do not have the legislative authority to adopt rules which in essence increase property taxes without full enabling legislation.

Ms. Lovaas further stated the Revenue and Transportation Interim Committee members should require an economic impact statement of the adoption of these rules, many of which were adopted by the department in the 2009 appraisal assessments without enabling legislation.

Ms. Lovaas suggested that unless there is a full legislative analysis of the impact of these proposals, they should be rejected.

RESPONSE NO. 10: The amendment of these rules has nothing to do with

retroactive applicability of an enacted statute. This rule action is in compliance with the requirements of the Montana Administrative Procedure Act.

3. The department amends ARM 42.20.701, 42.20.705, 42.20.715, 42.20.720, 42.20.725, and 42.20.745 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 February 16, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.20.602); II (42.20.603); and III (42.20.604) and amendment of ARM 42.20.307, 42.20.601, 42.20.605, 42.20.606,42.20.610, 42.20.620, 42.20.625, 42.20.650, 42.20.655, 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680 relating to Agricultural Land Valuation	)))))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-815 regarding the proposed adoption and amendment of the above-stated rules at page 1971 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 23, 2009, to consider the proposed adoption and amendment. Oral and written testimony received at, and subsequent to the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. Loren Hawks, Chester, Montana stated that he felt the new section in ARM 42.20.601 regarding "productive capacity value and productivity value" should be separated and not synonymous. He stated that a productive capacity value infers the potential value of that land. The potential value, as opposed to the productivity value infers that it's a set value that you know you can attain. He stated that in future reappraisal cycles or even this one, in the first instance, if the language was left as the productive capacity value, a person would stand a better chance to contest the productivity values assigned to the land. He stated that he thought it would help the taxpayer (landowner) in the long run if that language was left as productive capacity value, if it came to the sense of trying to adjust your productivity value that has been assigned to the land.

RESPONSE NO. 1: The department is not changing the standard for "productive capacity value" and "productivity value." It is attempting to ensure that no confusion exists when those terms are used.

The law doesn't establish "productive capacity value" as a potential value; the law grounds it in the average practice to attain productive capacity.

This becomes clear when you review the various statutes:

Section 15-7-201(7), MCA states "The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(e) verify for each class of land that the income determined in subsection (5)

reasonably approximates that which the average Montana farmer or rancher (*emphasis added*) could have attained; . . ."

Section 15-7-201(4), MCA states that "the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where"; the language in statute continues to provide a description of sources of information and the determination of the productive capacity value.

Section 15-7-103(2), MCA, makes specific mention of the term "productive capacity" when discussing the departments appraisal practice regarding agricultural lands. In our discussions with landowners and staff the terms productive capacity and productivity are often intermixed and the proposed rule is an attempt to ensure that no confusion exists when those terms are used.

The department is not changing the standard not affecting "productive capacity" (legal term), while still preserving the taxpayer's understanding of the common term "productive value". In addition, other administrative rules provide description and reference to have the productivity of the land reflect "average management practices" under any specified use, to further reduce the concern about calculating a "potential" productivity value.

COMMENT NO. 2: Ms. Mary Whittinghill, President, Montana Taxpayers Association (MonTax), thanked the department for spelling out the definition of "productive capacity value and productivity value" as clearly as they did. She stated that she had some questions generally about the rules themselves and the timing, and also the recent discussions or concerns that she had heard from some of the MonTax members on potential changes that are occurring. In that regard, she asked if the particular information contained in the rule language being considered today was provided with the assessment notices, since this was used to determine the 2009 values.

Ms. Whittinghill explained that there has been a lot of confusion because people didn't have the final bushel values for the productive capability of the land and some of the formulas. She stated that she understands the department's desire to get these rules adopted now, but, she was just wondering if the rules are out there already, because this is the method that was utilized to assign these values to those acreages.

Ms. Whittinghill stated that there seems to be a tremendous amount of questions that are coming after the fact, and considering the department went to so much trouble providing the maps to the landowners, it would have been good to have gotten the information on how the values would be performed to them a little earlier too.

Ms. Whittinghill further stated that she has heard questions in regards to recent changes occurring in some of the determinations of the productive capacity of the land in terms of grazing. She asked if some of the spring wheat calculations will need to be reflected in the rules.

Ms. Whittinghill requested that as the department finalizes what is happening, takes steps to provide the information to the landowners in writing. She also asked if an adjustment is made that would apply to everyone in an area of a county, would the department change everybody in that county, even if an AB26 is not filed by each landowner?

Ms. Whittinghill stated she would like to be on record as thanking the

department staff throughout the state for going through this large process and it was quite an incredible thing. She stated that they are to be commended for the time the department staff took to try to reach the thousands of taxpayers with these questions and perhaps these rules in time will help clear up some of the questions taxpayers have at this time.

RESPONSE NO. 2: The department undertook several means to keep taxpayers informed and involved in the process on valuing agricultural properties. The department began discussing the agricultural reappraisal in 2005 with the Revenue and Transportation Interim Committee. Those discussions included various changes the 2009 agricultural land reappraisal would encompass. Meetings with the Governor's Agricultural Advisory Committee began in 2006, where the department was provided recommendations for the reappraisal of agricultural lands. Once the department received and accepted the recommendations, the department began meeting with various agricultural groups and attending conventions between 2006 and 2008. The department staff also attended agricultural trade shows in 2007 to provide information on the agricultural reappraisal.

Prior to sending the maps to agricultural producers, the department held various focus groups across the state to gather more information on the map mailing process. The changes and recommendations from all groups were considered as the department progressed through the reappraisal efforts. This culminated in early 2009 as the maps and instructions were sent to all agricultural property owners. The letter to the producers explained that their land would be valued based on the productivity of the land. The producers were invited to discuss any productivity issues or questions with staff at that time. Additionally, in the course of the department's field work, and map reviews last winter, staff members spoke to individuals and explained the steps that were taken and how the department intended to determine the value.

The department's concern at this early stage was to ensure the accuracy of field delineations and yield levels. Thus, the department did not include dollar valuation information during the review processes. References were made to the use of the statutory valuation formula. The department provided the dollar value information when asked for it and instructed staff on the use of the valuation formulas so the potential valuation information could be provided should someone ask.

The statutes require the department to send an assessment notice to notify a taxpayer of the values associated with their property. The assessment notice does not provide a description of formulas to determine value for any type of property. If the assessment were to provide this type of information for every property type: commercial, residential, agricultural, forest lands, personal property, industrial property, the challenge would be cost prohibitive, would complicate the assessment notice, and would cause additional taxpayer confusion.

For these reasons, the department invites taxpayers through the assessment notice to come to the local offices to discuss any questions they have on their valuation.

The language contained in ARM 42.20.665 may cover the question of spring wheat calculations.

Under Montana Code Annotated, as well as the Montana Supreme Court's

interpretation of that code, in the case entitled Department of Revenue v. State Tax Appeal Board (1980), states that these types of issues can only be properly handled on a case-by-case basis through the appeal process established by law, as the decision expressly prohibits global or sweeping valuation adjustments. Based on the court's analysis in that case, the department has determined to address any productivity concerns through the AB-26 and appeals process.

An individual who has timely filed an AB-26 or County Tax Appeal Board (CTAB) appeal will be allowed to present evidence that the actual productive capacity of their property is less than that established by the department. The evidence presented by the taxpayer will be considered and adjustments will be made if the evidence indicates that such adjustment is necessary.

Changes in productivity for 2009 will only be considered in those cases in which an AB-26 or CTAB appeal has been timely filed for 2009. However, the department will also consider making similar adjustments for tax year 2010, if a taxpayer who missed the 2009 appeal deadline timely files an AB-26 request between January 1, 2010, and the first Monday in June 2010. Productivity issues raised after the first Monday in June 2010 deadline cannot be considered by the department.

COMMENT NO. 3: Mr. Hawks asked how the phase-in process will take place under the Montana code and administrative rule process.

Mr. Hawks asked where in Montana law or administrative rule, does it give the Department of Revenue the authority to do a phase in. He stated that he could not find that authority in the Montana code or administrative rules.

Mr. Hawks referred to the AG Land Valuation Advisory Committee and part of their executive summary, which says agricultural taxpayers who see an increase in land valuation will have those increased values phased-in incrementally over the six-year reappraisal cycle. In other areas of this report it refers to 15-7-111, MCA, to do a periodic revaluation of certain taxable property. Section (3) of 15-7-111, MCA, states that "the revaluation of class three, four, and ten property is complete on December 31st 2008. The amount of the change in valuation from the 2002 base year for each property in those classes must be phased in each year at the rate of 16.66% of the change in valuation." That valuation process is shown in administrative rule 42.20.503 and it talks to just that, that it is phasing in the total difference over six years. So, where in the law or administrative rule does the department get the authority to do this?

Mr. Hawks further stated that information is information that the public is not aware of. The only reason that I was able to find it, is by doing the math on my assessment notices and ultimately from my market value to my taxable value and seeing that phase in process referred to in law was not being used. Only then, when I went to my local appraiser, assessor's office, were they able to tell me somewhat how this process that advisory committee came up with worked by going back and applying it to the last reappraisal process. It goes back to getting the information out to the public sooner. Especially being this close to when a week from today the property taxes are due.

Mr. Hawks also mentioned that in the reasonable necessity for ARM 42.20.660 it states the language regarding the phase in of values is included to provide knowledge and assurance, underline assurance, to landowners that the phase in provisions of Montana law are also applied to agricultural land. He said that he would

like to go on record to say that he doesn't believe that is being done.

RESPONSE NO. 3: Section 15-7-111, MCA gives the department the responsibility of overseeing and implementing reappraisal activities. That law further states in (2) that "the department shall value and phase in (emphasis added) the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1)", and directs the department to adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

The department's existing rules set forth how this phase in will be accomplished by specifying the manner in which a value before reappraisal (VBR) is calculated. ARM 42.20.502. The department has implemented this phase in consistent with these rules with a minor exception noted below related to productivity changes only on agricultural lands.

Administrative rule 42.20.502(2) for the 2003 reappraisal cycle states that the current year VBR for reclassified agricultural land is the prior year VBR of the new classification or land use change. The rule requires that the department ascertain the prior year VBR of the land as if the land had been classified in the prior reappraisal cycle in the same class of land as it is for this reappraisal cycle. The difference between the new reappraisal value and the prior year VBR for the land determines the amount of value that is to be phased in over the 6-year period. To effect this rule the department has determined a VBR for each parcel of agricultural land that was reclassified under the current reappraisal cycle.

The rule related to the reclassification of agricultural land is consistent with ARM 42.20.502(5), in which the VBR of land that has been reclassified as residential or commercial property will be determined by comparing other 2002 market values of similar residential or commercial land and determining a comparable VBR for the new residential or commercial land. Likewise, in the case of class four property that contains new construction, the current year VBR is determined by dividing the reappraisal value by one plus the percent of neighborhood group change (ARM 42.20.502(4)).

Administrative rule 40.20.502(3) specifies that the new reappraisal value of agricultural land that experienced changes in productivity (only) is to be phased in based on the prior year VBR of the prior grade. The department did not initially implement this portion of the rule correctly. The department has determined that it will change the VBR and phase in calculation for agricultural producers who timely requested an informal review of their productivity values arising from a change in productivity only. For agricultural producers who did not timely request a review, the department will make the adjustment beginning in tax year 2010. The adjustment will include a phase in amount for both tax year 2009 and tax year 2010. The department is in the process of adding language to the 2010 assessment notice to clarify this process for taxpayers. Accordingly, the department is in compliance with the existing statutes and rules with a minor exception that the department has determined to correct.

COMMENT NO. 4: Mr. Cory Swanson, Attorney, Helena, Montana asked for a

clarification regarding the valuation of denied access land. He asked if it is correct that the department would assign the highest productivity value of the land, the highest productivity of land around it if the department did not have the ability to do an NRCS sample. Then later, if that sample is provided by the landowner, the productivity value would go down to the average of all the land around it.

Mr. Swanson stated that it seems like there are a lot of legal issues that could come with that approach. First of all let's say after the sample is completed the productivity value decreases on that land from the average to the actual, is there any mechanism for revenue rebates to the landowner if let's say it was a year or two before the department would retroactively apply the proper tax rate going back in time. The matter would involve both state and local taxing entities.

Mr. Swanson further stated that it seems arbitrary to do that and it's done obviously to put leverage on the landowners to make them give the state access to their land and I don't believe there's a statutory requirement that landowners are required to do that or a constitutional requirement. By placing the highest value rather than the average value of surrounding land, if I were a devil's advocate representing the landowner, I would argue that is arbitrary as a way to help coerce landowners into letting the state have access onto their land. I don't believe there is a statutory duty for landowners to have to do that. So the result is they are being financially punished for failing to do something that they're not required to do, i.e. let the state have access onto their land to take samples. He suggested taking the situation a step further, the landowner who is concerned about some kind of federal endangered species act invasion on his land, the landowner certainly has a right to not allow state NRCS or taxing entities to come on, and certainly if he hasn't done anything to violate the law he has no obligation to allow them onto his land. He stated that this clearly appears to be a leverage mechanism on landowners.

RESPONSE NO. 4: Denied access (DA) land designations are included in the National Resource Conservation Service (NRCS) soil survey. In circumstances where the NRCS was not allowed to conduct their soil survey work, they assigned the DA designation. When the DA designation is encountered in the department's efforts to determine productivity under a particular use, the department uses the highest productivity determination from the surrounding lands with a completed soil survey. The department uses GIS technologies buffering routine to review all soils with productivity information within a mile of the DA designation. If there are enough samples of productivity information within that one-mile area, the department assigns the highest productivity from within that buffered area to the DA soils. If there are not enough samples within one mile of the DA designation, the buffer routine is expanded to five miles, and then twenty miles, if need be to determine what the highest productivity is. The need for expansion of the buffering routine reflects the need to identify sufficient acres of lands with the same agricultural use and to determine a representative sample of productivity under that same agricultural use.

There can be legitimate concerns about NRCSs access to a taxpayer's property. In such cases where NRCS was denied access the taxpayer has the opportunity to present data to the department, which the department staff will then take into consideration. It is good administrative practice, and sound appraisal practice, to ensure that the appraisers are allowed to complete their job, along with statutes that do

allow for the department to estimate property, if the appraiser cannot gather the appropriate information. A taxpayer should not benefit by not providing the department with the information that is needed to complete the valuation that is statutorily required.

When the landowner provides the department with a letter from the NRCS indicating that the landowner will allow the NRCS to conduct a soil survey, then the department immediately changes the productivity of the land to the average productivity within that same area. After the NRCS conducts their soil survey, the department will change the land to the actual productivity from the soil survey. It may take the NRCS some time to conduct the soil survey on the property, they may not get out there next summer, it may be the summer after or even later. The department can't make the change to the actual productivity until the NRCS has completed their work.

From what the department has seen and heard from landowners, they understand the time required to reduce productivity from highest to average; knowing that it will ultimately change once the soil survey is conducted. Most of the landowners that have denied access lands weren't even aware their land had that classification. It usually happened prior to their acquisition of the land and, until now, when advised by the department, had no knowledge of that designation.

If a taxpayer has appealed the value of the taxpayer's property and has paid the taxes assessed on the property, Montana law provides a mechanism through which a taxpayer may obtain a refund of overpaid taxes. A refund in these cases may become available if the value of the property is reduced as a result of the statutorily established appeals process.

Section 15-7-103, MCA requires the department to develop a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes; a general and uniform method of appraising timberlands.

The law further states that all lands must be classified according to their use or uses and graded within each class according to soil and productive capacity. In the classification work, use must be made of soil surveys and maps and all other pertinent available information.

Additionally, the law requires all lands must be classified by parcels or subdivisions not exceeding one section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

Finally, all agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

COMMENT NO. 5: Ms. Patty Lovaas, 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). A "Rule" is designed to implement or interpret prescribed law, not create it. Committees do not have the legislative authority to adopt "Rules" which in essence increase property taxes without full enabling legislation.

RESPONSE NO. 5: The amendment of these rules has nothing to do with retroactive applicability of an enacted statute. This rule action is in compliance with

the requirements of the Montana Administrative Procedure Act.

COMMENT NO. 6: Mr. Jim Hagenbarth, Hagenbarth Livestock, Dillon, Montana provided written comments concerning the definition of an animal unit. He stated that the definition is ambiguous and does not fit the parameters of today's production model very well. Today's cow size is probably a third larger than 1,000 pounds and a calf could weigh up to 500 pounds. The instructions given on the reappraisal defined an animal unit as a 1,000 pound unit or a cow with a calf. There is a considerable difference between production units used to harvest forage off of grazing lands. They can vary between a 500 pound weaned calf to a cow/calf pair weighing 1,800 pounds plus. It would be more accurate and simpler to define an animal unit as a 1,000 pound grazing unit. One could then match the production unit used with a figure that accurately represents the relationship of the production unit to a 1,000 pound taxable or grazing unit.

RESPONSE NO. 6: The Legislature requires the department to use a 1,000 pound animal unit, as defined in 15-7-201(5)(c),MCA. That statute states in part that "the base unit for valuation of grazing lands is animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent." Therefore, to change the definition of an animal unit would require legislative action and cannot be adjusted through the administrative rule process.

COMMENT NO. 7: Mr. Hagenbarth also stated that it is common practice to graze irrigated land. There is no land classification for this use. In the current system one has to covert the forage harvested in AUMS to tons of hay. It would be much simpler and more appropriate to have a grazing land category that would include irrigated land that was used solely for grazing purposes.

RESPONSE NO. 7: The department agrees with Mr. Hagenbarth's assessment. Irrigated land that is primarily grazed deserves further study and evaluation leading up to the next appraisal cycle. The current categories were set and adopted by the Governor's Agricultural Land Advisory Council, given that this cycle has been completed, it would not be practical or appropriate to add an additional category at this time. It would be beneficial to have the next Agricultural Land Advisory Committee take this recommendation under advisement and provide direction to the department to address this issue prior to the next reappraisal cycle.

COMMENT NO. 8: Jake Cummins, Jr., Executive Vice President, Montana Farm Bureau Federation provided comments regarding New Rule II stating that they think the "average level of productivity" should be used, not the "highest". NRCS soil surveys were originally used for the Food Security Act. All producers had the option to not have soil data collected. They should still have the option and be subject to the average level of productivity around them. Requiring the soil data goes beyond the scope of information the Montana Department of Revenue should be able to require.

RESPONSE NO. 8: The department's response to comment 4 is similar to Mr. Cummins' comment. The department has a statutory responsibility to utilize the soil information and the productivity capacity in the valuation of agricultural lands.

This is the first time in 46 years, that the department conducted a comprehensive reclassification and revaluation of agricultural lands. The department used the best information and science available to determine land use and productivity. Most importantly, this reappraisal used a rational and uniform methodology and replaced valuation practices lacking in any uniform rhyme or reason. In addition, the department regularly called upon farmers and ranchers during the process to review their own land information and provide input as part of this process. Indeed, given the scope of the changes undertaken for these properties, agricultural producers had two opportunities to provide input to the department as opposed to the one provided to all other taxpayers.

COMMENT NO. 9: Mr. Cummins also commented on New Rule III stating that it was a good start. However, under (a), (b), and (c) there should be wording added to encompass additional lands that are not harvested/grazed. These acreages should reflect a zero base productivity per acre. Agricultural lands are sometimes not used during droughts; and thus are not reflected in the gathering of data for Montana agricultural statistic surveys because they do not generally ask questions regarding nonharvested/grazed acres. Thus in these years, an over estimation of production is created.

RESPONSE NO. 9: Mr. Cummins' issue is similar in nature to Mr. Hagenbarth's comment no. 7. The Legislature reviewed the agricultural use in 2005 and to date has not identified a category that is not harvested/grazed or considered as waste land or no value land. The assumption is that all land has productivity of some type. The department has a statutory obligation to classify lands into one of the existing five agricultural land use classes and determine productivity associated with the particular land use.

3. As a result of the comments received the department adopts New Rule II (42.20.603) with the following changes:

NEW RULE II (42.20.603) STEPS NECESSARY TO VALUE AGRICULTURAL LAND THAT DOES NOT HAVE A PUBLISHED SOIL SURVEY

(1) Denied access (DA) lands do not currently have any agricultural use productivity information associated with them from a published soil survey.

(a) When denied access lands are encountered in the department's efforts to assign a productivity to an agricultural use, the department will use Geographic Information System (GIS) technology to determine the highest level of productivity in the same agricultural use from the surrounding soils within one mile of the DA land and will assign the highest level of productivity to the denied access lands.

(b) Where an inadequate number of acres within the same use class with productivity information are not identified in the one-mile buffer routine, the buffer routine is expanded to include all acres with the same use and productivity information within five miles of the DA property. On occasion the buffer routine is

expanded to 20 miles to ensure that an adequate number of acres with soils productivity information and in the same use are identified.

~~(b)~~(c) When the owner of the land makes arrangements with the Natural Resource Conservation Service (NRCS) and provides written proof to the department that an arrangement has been made to have a soil survey conducted on their lands, the department will use GIS technology to determine the average level of productivity in the same agricultural use from the surrounding soils within one mile of the denied access land and will assign the average level of productivity to the denied access lands.

~~(c)~~(d) Upon completion of the soil survey by the NRCS the department will apply the productivity of the soil to the agricultural use as indicated in the published soil survey.

~~(d)~~(e) When the department receives the information in (b) or (c) above within 30 days of receipt of the assessment or the 1st Monday in June, the department will make the adjustments for the current tax year. If the information is received after that date, it will be adjusted for the following tax year.

(2) Not completed (NOTCOM) lands do not have any agricultural use productivity information associated with them from a published soil survey.

(a) When NOTCOM lands are encountered in the department's efforts to assign a productivity to an agricultural use, the department will use GIS technology to determine the average level of productivity in the same agricultural use from the surrounding soils within one mile of the NOTCOM land and will assign the average level of productivity to the NOTCOM lands.

(b) Where an inadequate number of acres within the same use class with productivity information are not identified in the one-mile buffer routine, the buffer routine is expanded to include all acres with the same use and productivity information within five miles of the NOTCOM property. On occasion the buffer routine is expanded to 20 miles to ensure that an adequate number of acres with soils productivity information and in the same use are identified.

~~(b)~~(c) Upon completion and publication of the soil survey by the NRCS the department will apply the productivity of the soil to the agricultural use as indicated by the published soil survey.

AUTH: 15-7-111, MCA
IMP: 15-7-201, 15-7-202, 15-7-208, MCA

4. Therefore, the department adopts New Rule II (42.20.603) with the amendments listed above and New Rule I (42.20.602) and III (42.20.604) and amends ARM 42.20.307, 42.20.601, 42.20.605, 42.20.606, 42.20.610, 42.20.620, 42.20.625, 42.20.650, 42.20.655, 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680 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	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State February 16, 2010

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.10.338 pertaining to limitations on individual and political party contributions	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2009, the Commissioner of Political Practices published MAR Notice No. 44-2-160 pertaining to the proposed amendment of the above-stated rule at page 1651 of the 2009 Montana Administrative Register, Issue Number 18.

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

3. No comments or testimony were received.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner
Political Practices

Certified to the Secretary of State February 16, 2010.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.10.331 pertaining to limitations on receipts from political committees to legislative candidates	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2009, the Commissioner of Political Practices published MAR Notice No. 44-2-161 pertaining to the proposed amendment of the above-stated rule at page 1654 of the 2009 Montana Administrative Register, Issue Number 18.

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

3. No comments or testimony were received.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner
Political Practices

Certified to the Secretary of State February 16, 2010.

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 and 2010 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.

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, 307
2.59.1801 and other rule - Residential Mortgage Lenders, p. 2064, 212
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, 215

(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, 306

(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, 217
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, 216

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
6.6.3501 and other rules - Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements, p. 2394, 315

COMMERCE, Department of, Title 8

I Submission and Review of Applications for Funding Under the Treasure State Endowment Program, p. 4

17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326, 317
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
17.56.506 and other rules - Reporting of Confirmed Releases - Adoption by Reference - Release Categorization, p. 12

(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
17.8.501 and other rules - Definitions - Fees - Permits - Temporary Greenhouse Gas Emission Rules, p. 2429, 225
17.8.745 Montana Air Quality Permits-Exclusion for De Minimis Changes, p. 268
17.24.1109 Bonding Letters of Credit, p. 2426
17.30.201 Water Quality - Permit Fees, p. 1335, 2462
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264
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
17.38.106 Fees, p. 2421
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, 2461

TRANSPORTATION, Department of, Title 18

I-V Administration of an Emergency Medical Service Grant, p. 18
18.9.103 Distributor's Statements, p. 22

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, 395
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, 2480
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, 399

24.29.1533 and other rule - Workers' Compensation Medical Fee Schedules, p. 2086, 2482
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)
24.101.413 and other rule - Renewal Dates - Requirements - Fee Schedule, p. 200
24.114.401 and other rules - Fee Schedule - Applications - Education and Experience - Examinations, p. 1457, 2151

(Board of Barbers and Cosmetologists)
24.121.301 and other rules - Definitions - Out-of-State Applicants - Inspections - School Requirements - School Standards - Curricula - Implements and Equipment - Sanitizing Equipment - Salon Preparation - Unprofessional Conduct, p. 271
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, 411
24.138.508 and other rules - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education, p. 1068, 2091, 406

(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
24.141.301 and other rules - Definitions - Fee Schedule - Continuing Education, p. 203

(Board of Hearing Aid Dispensers)
24.150.301 and other rules - Definitions - Fees - Record Retention - Licensure - Renewals - Continuing Education - Unprofessional Conduct - Minimum Testing - Transactional Document Requirements - Notification - Licensees From Other States - Exceptions, p. 284

(Board of Massage Therapy)
24.101.413 and other rules - Renewal Dates - Massage Therapy, p. 207

(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, 73

(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 Optometry)

24.168.401 and other rules - Fee Schedule - Licensure Requirements - Continuing Education - Licensure By Endorsement, p. 298

(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, 74

(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 Psychologists)
24.189.301 and other rules - Definitions - Supervisory Experience - Continuing Education, p. 302

(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, 77

(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, 2483

LIVESTOCK, Department of, Title 32

32.3.104 and other rules - Trichomoniasis - Deputy State Veterinarians, p. 1852, 2092, 2356, 413
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 rules - Education Benefit Program, p. 2357, 423

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 Land Commissioners)
36.25.137 and other rules - Surface Leasing - Cabinsite Leasing Rules, p. 25

(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, 80
37.5.118 and other rules - Administrative Review of Fair Hearing Decisions, p. 50
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

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Office of, Title 44

(Commissioner of Political Practices)

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 January 2010 appear. Vacancies scheduled to appear from March 1, 2010, through May 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 February 1, 2010.

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 JANUARY 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Chiropractors (Labor and Industry)			
Dr. Cathleen Fellows	Governor	Fullerton	1/8/2010
Billings			1/1/2013
Qualifications (if required): practicing chiropractor with at least one year experience			
Board of Veterans' Affairs (Military Affairs)			
Ms. Lindsay Bell	Governor	Slavens	1/21/2010
Billings			8/1/2012
Qualifications (if required): representative of Senator Max Baucus			
Mr. James English	Governor	Huddleston	1/8/2010
Helena			8/1/2010
Qualifications (if required): individual with experience with veterans' issues			
Mr. Bruce W. Knutson	Governor	McCombs	1/21/2010
Helena			8/1/2012
Qualifications (if required): representative of Senator Jon Tester			
Judicial Nomination Commission (Justice)			
Mr. Paul Tuss	Governor	reappointed	1/8/2010
Havre			1/1/2014
Qualifications (if required): public representative			
Montana Alfalfa Seed Committee (Agriculture)			
Mr. Tim Wetstein	Governor	reappointed	1/8/2010
Joliet			12/21/2012
Qualifications (if required): alfalfa seed grower			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Alfalfa Seed Committee (Agriculture) cont.			
Mr. John Wold	Governor	reappointed	1/8/2010
Laurel			12/21/2012
Qualifications (if required): alfalfa seed grower			
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Sonny Obrecht	Governor	reappointed	1/8/2010
Turner			1/1/2013
Qualifications (if required): grazing district preference holder			
Water and Waste Water Operators' Advisory Council (Environmental Quality)			
Mr. Roger Skogen	Governor	reappointed	1/8/2010
Valier			10/16/2015
Qualifications (if required): wastewater plant operator			

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
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 Hail Insurance (Agriculture)		
Mr. Jim Schillinger, Baker	Governor	4/18/2010
Qualifications (if required): public member		
Board of Nursing Home Administrators (Labor and Industry)		
Ms. Linda Sandman, Helena	Governor	5/28/2010
Qualifications (if required): Nursing Home Administrator		
Board of Plumbers (Labor and Industry)		
Mr. Timothy E. Regan, Miles City	Governor	5/4/2010
Qualifications (if required): master plumber		
Mr. Olaf Stimac, Great Falls	Governor	5/4/2010
Qualifications (if required): journeyman plumber		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Dennis Hoeger, Bozeman Qualifications (if required): real estate appraiser	Governor	5/1/2010
Ms. Jennifer McGinnis, Polson Qualifications (if required): real estate appraiser	Governor	5/1/2010
Ms. Marilyn K. Rose, Great Falls Qualifications (if required): public representative	Governor	5/1/2010
Board of Realty Regulation (Labor and Industry)		
Ms. Judith Peasley, Seeley Lake Qualifications (if required): public representative	Governor	5/9/2010
Board of Research and Commercialization (Commerce)		
Mr. Martin R. Connell, Billings Qualifications (if required): none specified	Senate President	3/27/2010
Commission on Practice of the Supreme Court (Supreme Court)		
Mr. Gary Davis, Helena Qualifications (if required): none specified	elected	4/1/2010
Ms. Tracy Axelberg, Kalispell Qualifications (if required): elected	elected	3/28/2010
Ms. Sylvia Danforth, Miles City Qualifications (if required): provider representative	Governor	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services)		
Mr. Ted Maloney, Missoula Qualifications (if required): personnel preparation representative	Governor	4/9/2010
Mr. Dan McCarthy, Helena Qualifications (if required): agency representative	Governor	4/9/2010
Ms. Sandi Marisdotter, Helena Qualifications (if required): provider representative	Governor	4/9/2010
Ms. Cristin Volinkaty, Missoula Qualifications (if required): provider representative	Governor	4/9/2010
Sen. Gerald Pease, Lodge Grass Qualifications (if required): parent representative	Governor	4/9/2010
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): language therapist	Governor	4/9/2010
Ms. Sandy McGennis, Great Falls Qualifications (if required): representative of the School for the Deaf and Blind	Governor	4/9/2010
Ms. Novelene Martin, Miles City Qualifications (if required): parent representative	Governor	4/9/2010
Mr. Ronald Herman, Helena Qualifications (if required): agency representative	Governor	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Diana Colsgrove, Eureka Qualifications (if required): parent representative	Governor	4/9/2010
Ms. Mary Huston, Richland Qualifications (if required): parent representative	Governor	4/9/2010
Rep. George Groesbeck, Butte Qualifications (if required): legislator	Governor	4/9/2010
Ms. Laurie Frank, Simms Qualifications (if required): parent representative	Governor	4/9/2010
Ms. April Ganser, Bozeman Qualifications (if required): parent representative	Governor	4/9/2010
Ms. Michelle Danielson, Helena Qualifications (if required): health care representative	Governor	4/9/2010
Ms. Priscilla Halcro, Great Falls Qualifications (if required): family support specialist	Governor	4/9/2010
Ms. Cindy Sinclair, Havre Qualifications (if required): early Head Start representative	Governor	4/9/2010
Ms. Barbara Stefanic, Billings Qualifications (if required): special education representative	Governor	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Mary Runkel, Helena Qualifications (if required): agency representative	Governor	4/9/2010
Ms. Paula Sherwood, Missoula Qualifications (if required): quality improvement specialist	Governor	4/9/2010
Interagency Disabilities Advisory Council (Administration)		
Ms. June Hermanson, Billings Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. John Pipe, Wolf Point Qualifications (if required): disabilities community representative	Governor	4/25/2010
Ms. Susie McIntyre, Great Falls Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. William Neisess, Helena Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. Brian Roat, Red Lodge Qualifications (if required): public representative	Governor	4/25/2010
Ms. Patti Scruggs, Whitefish Qualifications (if required): public representative	Governor	4/25/2010
Ms. Marie Pierce, Sidney Qualifications (if required): disabilities community representative	Governor	4/25/2010

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Interagency Disabilities Advisory Council (Administration)		
Mr. Terry Galle, Deer Lodge Qualifications (if required): public representative	Governor	4/25/2010
Ms. Bryher Herak, Basin Qualifications (if required): disabilities community representative	Governor	4/25/2010
Ms. Margaret Elson, Bozeman Qualifications (if required): disabilities community representative	Governor	4/25/2010
Ms. Martha Carstensen, Billings Qualifications (if required): disabilities community representative	Governor	4/25/2010
Ms. Robin Ray, Missoula Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. Jim Brown, Billings Qualifications (if required): public representative	Governor	4/25/2010
Library Commission (State Library)		
Ms. Marsha Hinch, Choteau Qualifications (if required): public representative	Governor	5/22/2010
Montana Cherry Commodity Advisory Committee (Agriculture)		
Mr. Oliver Dupuis, Polson Qualifications (if required): none specified	Director	5/3/2010

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Montana Cherry Commodity Advisory Committee (Agriculture) cont.		
Mr. Barry Hansen, Polson Qualifications (if required): none specified	Director	5/3/2010
Montana Election and Technology Advisory Council (Secretary of State)		
Ms. Bonnie Ramey, Boulder Qualifications (if required): Jefferson County Election Administrator	Secretary of State	4/9/2010
Ms. Vickie Zeier, Missoula Qualifications (if required): Missoula County Election Administrator	Secretary of State	4/9/2010
Ms. Janice Hoppes, Conrad Qualifications (if required): Pondera County Election Administrator	Secretary of State	4/9/2010
Ms. Sandi Boardman, Chinook Qualifications (if required): Blaine County Election Administrator	Secretary of State	4/9/2010
Ms. JoAnn Johnson, Fort Benton Qualifications (if required): Chouteau County Election Administrator	Secretary of State	4/9/2010
Mr. Duane Winslow, Billings Qualifications (if required): Yellowstone County Election Administrator	Secretary of State	4/9/2010
Ms. Kathy Newgard, Polson Qualifications (if required): Lake County Election Administrator	Secretary of State	4/9/2010
Ms. Jeri Custer, Forsyth Qualifications (if required): Rosebud County Election Administrator	Secretary of State	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Montana Election and Technology Advisory Council (Secretary of State) cont.		
Ms. Penni Lewis, Sidney	Secretary of State	4/9/2010
Qualifications (if required): Richland County Election Administrator		
Montana Heritage Preservation and Development Commission (Commerce)		
Mr. Randy Hafer, Billings	Governor	5/23/2010
Qualifications (if required): business person		
Ms. Marilyn Ross, Twin Bridges	Governor	5/23/2010
Qualifications (if required): historic preservation representative		
Mr. Colin Mathews, Virginia City	Governor	5/23/2010
Qualifications (if required): public representative		
Mr. Philip Maechling, Florence	Governor	5/23/2010
Qualifications (if required): community planner		
Montana Potato Commodity Advisory Committee (Agriculture)		
Mr. John Venhuizen, Manhattan	Director	5/20/2010
Qualifications (if required): not listed		
Mr. Don Steinbeisser Jr., Sidney	Director	5/20/2010
Qualifications (if required): not listed		
Montana State University Local Executive Board (University System)		
Ms. Sharon McDonald, Melville	Governor	4/15/2010
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Montana State University Local Executive Board - Billings (University System)		
Ms. Kris Carpenter, Billings	Governor	4/15/2010
Qualifications (if required): public representative		
Montana State University Local Executive Board - Northern (University System)		
Mr. Darrell Briese, Havre	Governor	4/15/2010
Qualifications (if required): public representative		
Montana State University-Great Falls College of Tech Local Board (University System)		
Ms. Joan Bennett, Great Falls	Governor	4/15/2010
Qualifications (if required): public representative		
Montana-Canadian Provinces Relations Advisory Council (Commerce)		
Rep. Hal Jacobson, Helena	Governor	4/9/2010
Qualifications (if required): Legislative representative		
Lt. Governor John Bohlinger, Helena	Governor	4/9/2010
Qualifications (if required): Lieutenant Governor		
Sen. Trudi Schmidt, Great Falls	Governor	4/9/2010
Qualifications (if required): Legislative representative		
Rep. Wayne Stahl, Saco	Governor	4/9/2010
Qualifications (if required): Legislative representative		
Rep. Kendall Van Dyk, Billings	Governor	4/9/2010
Qualifications (if required): Legislative representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
Southwestern Montana State Veterans' Home Site Selection Committee (Public Health and Human Services)		
Rep. Robert "Bob" Pavlovich, Butte	Governor	4/1/2010
Qualifications (if required): resident of Silver Bow County and honorably discharged veteran		
Mr. Bill Willing, Anaconda	Governor	4/1/2010
Qualifications (if required): resident of Deer Lodge County and honorably discharged veteran		
Mr. Larrey Lattin, Boulder	Governor	4/1/2010
Qualifications (if required): resident of Jefferson County and honorably discharged veteran		
Mr. Lyle Gillette, Deer Lodge	Governor	4/1/2010
Qualifications (if required): resident of Powell County and honorably discharged veteran		
Ms. Susan Cobb, Twin Bridges	Governor	4/1/2010
Qualifications (if required): resident of Madison County and an honorably discharged veteran		
University of Montana Local Executive Board (University System)		
Ms. Ann Boone, Missoula	Governor	4/15/2010
Qualifications (if required): public representative		
University of Montana Local Executive Board - Western (University System)		
Mr. William Kriegel, Dillon	Governor	4/15/2010
Qualifications (if required): public representative		
University of Montana-Helena College of Technology Local Executive Board (University System)		
Mr. Pat Clinch, Helena	Governor	4/15/2010
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2010 THROUGH MAY 31, 2010

Board/current position holder	Appointed by	Term end
University of Montana-Montana Tech Local Executive Board (University System)		
Mr. Tony Laslovich, Anaconda	Governor	4/15/2010
Qualifications (if required): public representative		