ISSUE NO. 20

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 repeal of ARM 4.14.303, relating to Montana Agricultural Loan Authority	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On November 18, 2010, at 3:00 p.m. 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 repeal of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on November 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 department proposes to repeal the following rule:

4.14.303 LOAN MAXIMUMS

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: The 2007 Farm Bill amended the bond amount for first time farmers/ranchers from $25,000 to $450,000 to be adjusted annually beginning in calendar year 2008 by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment for the calendar year.

Based upon these changes in federal law, the department would be required to change this rule annually. The department is required to follow the federal quidelines, thus there is no need for rule 4-14-03.

FINANCIAL IMPACT: There is no financial impact for this rule.

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 November 25, 2010.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 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.

6. 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.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, October 18, 2010.

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

In the matter of the amendment of ARM 6.6.2401, 6.6.2402, 6.6.2403, 6.6.2404, and 6.6.2405, and the adoption of New Rules I through V, pertaining to Group Coordination of Benefits	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 17, 2010, at 10:00 a.m., the Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, will hold a public hearing in the Dept. of Labor Conference Room, at the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing, or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 10, 2010, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.2401 PURPOSE ~~AND SCOPE~~ (1) The purpose of these rules is to:

(a) adopt the ~~Model Group~~ Coordination of Benefits Model Regulation~~s~~, as promulgated by the National Association of Insurance Commissioners (NAIC);~~.~~

(b) establish a uniform order of benefit determination under which plans pay claims; ~~These rules are intended to~~

(c) establish uniformity in the permissive use of overinsurance provisions and to avoid claim delays and misunderstandings that could otherwise result from the use of inconsistent or incompatible provisions among plans;~~.~~

~~(2) A coordination of benefits (COB) provision is one that is intended to avoid claims payment delays and duplication of benefits when a person is covered by two or more plans providing benefits or services for medical, dental or other care or treatment. It avoids claims payment delays by establishing an order in which plans pay their claims and providing the authority for the orderly transfer of information needed to pay claims promptly, and it avoids duplication of benefits by permitting a reduction of the benefits of a plan when, by these rules, it does not have to pay its benefits first.~~

(d) reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, pursuant to rules established by this subchapter, do not have to pay their benefits first; and

~~(3) These rules permit, but do not require, plans to include COB provisions.~~

~~(4) If a group contract includes a COB provision, it must be consistent with these rules. A plan that does not include such a provision may not take the benefits of another plan as defined in subsection (1) of ARM 6.6.2403 into account when it determines its benefits. There is one exception: a contract holder's coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage must be excess to any other parts of the plan provided by the contract holder~~.

(e) provide greater efficiency in the processing of claims when a person is covered under more than one plan.

AUTH: 33-1-313, MCA
IMP: ~~33-15-204(3),~~ 33-15-304, 33-18-201~~(6)~~, 33-22-225, 33-22-226, 33-22-502~~(2)~~, MCA

6.6.2402 APPLICABILITY AND SCOPE (1) These rules apply to each ~~group~~ contract~~,~~ providing health care benefits~~,~~ issued or delivered in Montana after the effective date of these rules, January 1, 2011.

(2) A ~~group~~ contract~~,~~ providing health care benefits~~,~~ issued or delivered in Montana before the effective date of these rules must be brought into compliance with these rules by the later of:

(a) the next anniversary date, ~~or~~ renewal date, or plan year of the ~~group~~ contract; or

(b) remains the same.

(3) For the transition period between the adoption of these rules and the timeframe for which plans are to be in compliance pursuant to (1), a plan that is subject to the prior coordination of benefits (COB) requirements shall not be considered a noncomplying plan by a plan subject to the new COB requirements; and, if there is a conflict between the prior COB requirements under the prior rules and the new COB requirements under the amended rules, the prior COB requirements shall apply.

AUTH: 33-1-313, MCA;
IMP: ~~33-15-204(3),~~ 33-15-304, 33-18-201~~(6)~~, 33-22-225, 33-22-226, 33-22-502~~(2)~~, MCA

6.6.2403 DEFINITIONS As used in these rules, these words and terms have the following meanings, unless the context clearly indicates otherwise:

~~(1) (a) A "plan" is a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the COB provision of that contract. The right to include a type of coverage is limited by subsection(1) of ARM 6.6.2403.~~

~~(b) A group contract that includes a COB provision may use any definition of "plan" that is consistent with the definition of "plan" in these rules.~~

~~(c) These rules use the term "plan". However, a group contract may, instead, use "program" or some other term.~~

~~(d) Except as provided in subsections (e) and (f) below, "plan" does not mean individual or family:~~

~~(i) insurance contracts;~~

~~(ii) subscriber contracts;~~

~~(iii) coverage through health maintenance organizations (HMOs); or~~

~~(iv) coverage under other prepayment, group practice, and individual practice plans.~~

~~(e) "Plan" means:~~

~~(i) group insurance and group subscriber contracts;~~

~~(ii) uninsured arrangements of group or group-type coverage;~~

~~(iii) Group or group-type coverage through HMOs and other prepayment, group practice, and individual practice plans; and~~

~~(iv) Group-type contracts. Group-type contracts are contracts that are not available to the general public and may be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts may be included in the definition of plan, at the option of the insurer, the health service corporation, or the service provider and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "franchise" or "blanket"). The use of payroll deductions by the employee, subscriber, or member to pay for the coverage does not, of itself, make an individual contract part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured.~~

~~(f) "Plan" may mean the medical benefits coverage in group and group-type automobile contracts.~~

~~(g) "Plan" may mean medicare or other governmental benefits. That part of the definition of "plan" may be limited to the hospital, medical, and surgical benefits of the governmental program. However, "plan" may not mean a state plan under medicaid or a plan established by law if by law its benefits are excess to those of any private insurance plan or other non-governmental plan.~~

~~(h) "Plan":~~

~~(i) may not be construed to mean group or group-type hospital indemnity benefits of $100 per day or less; but~~

~~(ii) may be construed to mean the amount by which group or group-type hospital indemnity benefits exceed $100 per day. "Hospital indemnity benefits" are those benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.~~

~~(i) "Plan" may not mean blanket accident-type only coverages or school accident-type coverages that cover grammar, high school, and college students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis~~

~~(2)(a) "This plan", in a COB provision, means the part of the group contract providing the health care benefits to which the COB provision applies and which may~~

~~be reduced on account of the benefits of other plans. Any other part of the group contract providing health care benefits is separate from this plan.~~

~~(b) A group contract may apply one COB provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.~~

~~(3) "Primary plan" means a plan under which benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. There may be more than one primary plan (for example, two plans that do not have order of benefit determination rules). A plan is a primary plan if either~~:

~~(a) the plan has no order of benefit determination rules, or it has rules that differ from those permitted by these rules; or~~

~~(b) all plans that cover the person use the order of benefit determination rules required by these rules and under those rules the plan determines its benefits first.~~

~~(4) "Secondary plan" means a plan that is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of these rules decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan that, under these rules, has its benefits determined before those of that secondary plan.~~

~~(5) (a) "Allowable expense" means a necessary, reasonable, and customary item of expense for health care if the item of expense is covered at least in part under any of the plans involved, unless a statute requires a different definition. However, items of expense under coverages such as dental care, vision care, prescription drug, or hearing aid programs may be excluded from the definition of allowable expense. A plan that provides benefits only for any such items of expense may limit its definition of allowable expenses to like items of expense~~.

~~(b) If a plan provides benefits in the form of services, the reasonable cash value of each service is considered as both an allowable expense and benefit paid.~~

~~(c) The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.~~

~~(d) If COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of "allowable expense" must include the corresponding expenses or services to which COB applies.~~

~~(6) Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:~~

~~(a) services (including supplies);~~

~~(b) payment for all or a portion of the expenses incurred;~~

~~(c) a combination of (a) and (b) above; or~~

~~(d) an indemnification.~~

~~(7) "Claim determination period" means:~~

~~(a) The period of time, which must not be less than 12 consecutive months, over which allowable expenses are compared with total benefits payable in the absence of COB to determine:~~

~~(i) whether overinsurance exists; and~~

~~(ii) how much each plan will pay or provide. The claim determination period usually is a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period.~~

~~(b) As each claim is submitted, each plan must determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. But that determination is subject to adjustment as later allowable expenses are incurred in the same claim determination period.~~

(1) "Allowable expense" means a necessary, reasonable, and customary item of expense for health care if the item of expense is covered at least in part under any of the plans involved, unless a statute requires a different definition, except as set forth in (a) through (g), or where a statute requires a different definition, means any health care expense, including coinsurance or copayments, and without reduction for any applicable deductible that is covered in full or in part by any of the plans covering the person:

(a) If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986;

(b) an expense or a portion of an expense that is not covered by any of the plans is not an allowable expense;

(c) any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense; and

(d) the following are examples of expenses that are not allowable expenses:

(i) If a person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses;

(ii) if a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense;

(iii) if a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense; and

(iv) if a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific

negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

(e) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drug, or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of allowable expense shall include similar expenses to which COB applies;

(f) when a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid; and

(g) the amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan:

(i) because the covered person does not comply with the plan provisions concerning second surgical opinions or precertification of admissions or services; or

(ii) because the covered person has a lower benefit because the covered person did not use a preferred provider.

(2) "Birthday" refers only to month and day in a calendar year and does not include the year in which the individual is born.

(3) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

(a) services (including supplies);

(b) payment for all or a portion of the expenses incurred;

(c) a combination of (a) and (b); or

(d) an indemnification.

(4) "Closed panel plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

(5) "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation pursuant to federal law.

(6) "Coordination of benefits" or "COB" means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(7) "Custodial parent" means:

(a) the parent awarded custody of a child by a court decree; or

(b) in the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.

(8) "Group-type contract" means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.

(a) "Group-type contract" does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll

deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.

(9) "High-deductible health plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(10) "Hospital indemnity benefits" means benefits not related to expenses incurred, but the term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(11) "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan:

(a) If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in this subsection. The definition of "plan" in the model COB provision in Appendix A in [New Rule IV] is an example;

(b) the term includes:

(i) group and nongroup health insurance contracts and subscriber contracts;

(ii) uninsured arrangements of group or group-type coverage;

(iii) group and nongroup coverage through closed panel plans;

(iv) group-type contracts;

(vi) Medicare or other governmental benefits, as permitted by law, except as provided in (11)(c)(viii). That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program.

(c) the term does not include:

(i) hospital indemnity coverage benefits or other fixed indemnity coverage;

(ii) accident-only coverage;

(iii) specified disease or specified accident coverage;

(iv) limited benefit health coverage, if the commissioner determines pursuant to 33-22-140 that the coverage qualifies as an "excepted benefit";

(v) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(vi) benefits provided in long-term care insurance policies for nonmedical services, for example: personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(vii) Medicare supplement policies;

(viii) a state plan under Medicaid; or

(ix) a governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan.

(12) "Policyholder" means the primary insured named in a nongroup insurance policy.

(13) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

(a) the plan either has no order of benefit determination rules, or its rules differ from those permitted by this subchapter; or

(b) all plans that cover the person use the order of benefit determination rules required by this subchapter, and under those rules the plan determines its benefits first.

(14) "Secondary plan" means a plan that is not a primary plan.

AUTH: 33-1-313, MCA
IMP: 33-15-304~~(3)~~, 33-18-201~~(6)~~, 33-22-225, 33-22-226, 33-22-502~~(2)~~, MCA

6.6.2404 USE OF MODEL COB CONTRACT PROVISION (1) ~~Subsection (4) of this rule~~ Appendix A in [New Rule IV] contains a model COB provision for use in group contracts. ~~Except as provided in subsection (4)(b) and (4)(c), of this rule and in ARM 6.6.2405, the model COB provision may be used in a group contract.~~ The use of this model COB provision is subject to the provisions of (2), (3), and (4), and to the provisions of ARM 6.6.2405.

(2) Appendix B in [New Rule V] is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which the two or more plans will pay for or provide benefits.

~~(2)~~(3) The COB provision contained in ~~a group contract~~ Appendix A in [New Rule IV], and the plain language explanation in Appendix B in [New Rule V] do ~~does~~ not have to use the specific words and format shown in ~~subsection (4) of this rule~~ Appendix A or Appendix B. ~~The language of the COB provision~~ Changes may be ~~changed~~ made to fit the language and style of the rest of the ~~group~~ contract or to reflect ~~the~~ differences among plans that provide services, pay benefits for expenses incurred, and indemnify. No substantive changes are permitted.~~:~~

~~(a) provide services;~~

~~(b) pay benefits for expenses incurred; and~~

~~(c) indemnify.~~

~~(3)~~(4) A COB provision ~~contract~~ may not ~~provide that its benefits are excess or always secondary to any plan defined in subsection (1) of ARM 6.6.2403, except in accordance with these rules. A group contract~~ be used that permits a plan to reduce its benefits on the ~~bases~~ basis that:

(a) another plan exists and the covered person did not enroll in that plan;

(b) ~~except with respect to part B of medicare,~~ a person is or could have been covered under another plan; or

(c) a person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

~~(4)~~(5) ~~If a plan covering a risk resident or to be performed in this state includes a COB provision, the COB provision must be consistent with the following~~

~~model COB provision.~~ No plan may contain a provision that its benefits are "always excess" or "always secondary" except in accordance with the rules permitted by this regulation.

~~(a)(i) This COB provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one plan.~~

~~(ii) If this COB provision applies, look first at the order of benefit determination rules set forth in subsection (4) (c) of this rule. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:~~

~~(A) may not be reduced if, under the order of benefit determination rules, this plan determines its benefits before another plan; but~~

~~(B) maybe reduced if, under the order of benefit determination rules, another plan determines its benefits first.~~

~~(b) Each insurance policy with a COB provision must define the following terms in the manner they are defined in ARM 6.6.2403: plan, this plan, primary plan, secondary plan, allowable expense, and claim determination period.~~

~~(c) The order of benefit determination rules are as follows:~~

~~(i) When there is a basis for a claim under this plan and another plan, this plan is a secondary plan that has its benefits determined after those of the other plan, unless:~~

~~(A) the other plan has rules coordinating its benefits with those of this plan; and~~

~~(B) both those rules and this plan's rules, in subparagraph (ii) below, require that this plan's benefits be determined before those of the other plan.~~

~~(ii) This plan determines its order using the first of the following rules that applies:~~

~~(A) The benefits of the plan that covers the person as an employee, member, or subscriber (that is, other than as a dependent) are determined before those of the plan that covers the person as a dependent.~~

~~(B) Except as otherwise provided in these rules, if this plan and another plan cover the same child as a dependent of different persons, not separated or divorced, called "parents":~~

~~(I) the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but~~

~~(II) if both parents have the same birthday, the benefits of the plan that covered the parent longer are determined before those of the plan that covered the other parent for a shorter period of time.~~

~~(C) If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:~~

~~(I) first, the plan of the parent with custody of the child;~~

~~(II) then, the plan of the spouse of the parent with the custody of the child; and~~

~~(III) finally, the plan of the parent not having custody of the child. However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those~~

terms, the benefits of that plan are determined first. This subsection does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

(D) The benefits of a plan that covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan that covers a person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this subsection does not apply.

(E) If none of the above rules determines the order of benefits, the benefits of the plan that covered an employee, member, or subscriber longer are determined before those of the plan that covered the person for the shorter time.

(d)(i) This subsection (d) applies when, in accordance with subsection (c) ,this plan is a secondary plan as to one or more other plans. If this subsection applies, the benefits of this plan maybe reduced under this section. Other plans are referred to as "the other plans" in subsection (d) (ii) immediately below.

(ii) The benefits of this plan are reduced when the allowable expenses in a claim determination period is less than or equal to the sum of:

(A) the benefits that would be payable for the allowable expenses under this plan in the absence of this COB provision; and

(B) the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made. In that case, the benefits of this plan are reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

If the benefits of this plan are reduced as described above, each benefit is reduced in proportion and charged against any applicable benefit limit of this plan.

(e) Certain facts are needed to apply these COB rules. [The XYZ Company] has the right to decide which facts it needs. It may obtain needed facts from or provide them to any other organization or person. [The XYZ Company] need not tell, or get the consent of, any person to obtain or provide needed facts. Each person claiming benefits under this plan must provide [The XYZ Company] any facts it needs to pay the claim.

(f) A payment made under another plan may include an amount that should have been paid under this plan. If it does, [The XYZ Company] may pay that amount to the organization that paid it. That amount will then be treated as though it were a benefit paid under this plan. [The XYZ Company] will not have to pay that amount again. The term "payment made" includes the provision of benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

(g) The amount of the payments made includes the reasonable cash value of any benefits provided in the form of services. If the amount of the payments made by [The XYZ Company] is more than it should have paid under this COB provision, it may recover the excess from one or more of:

(i) the persons it has paid or for whom it has paid;

(ii) insurers; or

(iii) other organizations.

(6) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use the provision of [New Rule I] of these rules to determine the amount it should pay for the benefit.

(7) No plan may use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of plan under ARM 6.6.2403(11).

AUTH: 33-1-313, MCA
IMP: 33-15-304~~(3)~~, 33-18-201~~(6)~~, 33-22-225, 33-22-226, 33-22-502,~~(2)~~ MCA

6.6.2405 RULES FOR COORDINATION OF BENEFITS (1)~~(a)~~ When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(a) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist;~~. A secondary plan may take the benefits of another plan into account only if, under these rules, it is secondary to that other plan.~~

~~(b)(i) The word "birthday" in the wording shown in subsection (4)(c)(ii)(B) of ARM 6.6.2404 refers only to month and day in a calendar year, not to the year in which the person was born.~~

~~(ii) A group contract that includes a COB provision and that is issued or renewed or has an anniversary date on or after the effective date of these rules must include the substance of the provision in subsection (4)(c)(ii)(B) of ARM 6.6.2404.~~

~~(c)(i) To determine the length of time a person has been covered under a plan, two plans are treated as one plan if the claimant was eligible under the second plan within 24 hours after the first plan ended. Thus, the start of a new plan does not include:~~

~~(A) a change in the amount or scope of a plan's benefits;~~

~~(B) a change in the entity that pays, provides, or administers the plan'' benefits; or~~

~~(C) a change from one type of plan to another (such as, from a single employer plan to that of a multiple employer plan).~~

~~(ii) The length of time that a claimant is covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group must be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.~~

(b) If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan;

(c) When multiple contracts providing coordinated coverage are treated as a single plan under this subchapter, this rule applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan shall be responsible for the plan's compliance with this subchapter; and

~~(2)(a) A secondary plan may reduce its benefits in the following manner or any manner that is more favorable to a covered person. When this alternative is used, a secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced must be used by the secondary plan to pay allowable expenses, not otherwise paid, that were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination.~~

~~(b) When this alternative is used, the suggested contract provision is as shown in subsection (4)(d)(ii) of ARM 6.6.2404.~~

~~(c) The last paragraph quoted in subsection (4)(d)(ii) of ARM 6.6.2404 may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.~~

~~(3) A secondary plan that provides benefits in the form of services may recover, from the primary plan, the reasonable cash value of providing the services, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this subsection may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.~~

~~(4)(a) Some plans with order of benefit determination rules not consistent with these rules declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because:~~

~~(i) certain plans may not be subject to insurance regulation; or~~

~~(ii) some group contracts have not yet been conformed with these rules pursuant to ARM 6.6.2402.~~

~~(b) A plan with order of benefit determination rules that comply with these rules (herein called a complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules which are inconsistent with those contained in these rules (herein called a noncomplying plan) on the following basis:~~

~~(i) If the complying plan is the primary plan, it must pay or provide its benefits on a primary basis.~~

~~(ii) If the complying plan is the secondary plan, it must, nevertheless, pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In such a situation, such payment is the limit of the complying plan's liability.~~

~~(iii) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan must assume that the benefits of the noncomplying plan~~

~~are identical to its own and must pay its benefits accordingly. However, the complying plan must adjust any payments it makes based on that assumption whenever information becomes available as to the actual benefits of the noncomplying plan.~~

~~(iv) If:~~

~~(A) the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan; and~~

(d) If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter decide the order in which secondary plans benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which under the rules of this subchapter, has its benefits determined before those of that secondary plan.

~~(B) governing state law allows the right of subrogation set forth below; then the complying plan must advance to or on behalf of the employee, subscriber, or member an amount equal to such difference. However, the complying plan may not advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of an advance, the complying plan must be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan. An advance by the complying plan must also be without prejudice to any claim it may have against the noncomplying plan in the absence of a subrogation.~~

~~(5) A term such as "unusual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the COB provision apply.~~

~~(6) The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.~~

(2) Except as provided in (a), a plan that does not contain order of benefit determination provisions that are consistent with this subchapter is always the primary plan unless the provisions of both plans, regardless of the provisions of this subsection, state that the complying plan is primary:

(a) Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(3) A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of this subchapter, it is secondary to that other plan.

(4) Each plan determines its order of benefits by using the first of the following rules that applies:

(a) regarding a nondependent or dependent:

(i) subject to (4)(a)(ii), the plan that covers the person other than as a dependent, for example as an employee, member, subscriber, policyholder, or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(ii) if the person is a Medicare beneficiary; and if as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

(A) secondary to the plan covering the person as a dependent;

(B) primary to the plan covering the person as other than a dependent (e.g. a retired employee); then

(C) the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder, or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(b) regarding a dependent child covered under more than one plan:

(i) unless there is a court decree stating otherwise, plans covering a dependent child under one plan shall determine the order of benefits as follows:

(A) for a dependent child whose parents are married or are living together, whether or not they have ever been married:

(I) the plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(II) if both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(B) for a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

(I) if a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage, and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This item shall not apply with respect to any plan year during which benefits are paid or provided before the entity has actual knowledge of the court decree provision;

(II) if a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (4)(a) shall determine the order of benefits;

(III) if a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (4)(a) shall determine the order of benefits.

(ii) if there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows:

(A) the plan covering the custodial parent;

(B) the plan covering the custodial parent's spouse;

(C) the plan covering the noncustodial parent; and then

(D) the plan covering the noncustodial parent's spouse.

(iii) for a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable, under (4)(b)(i)(A) or (B), as if those individuals were parents of the child.

(c) regarding an active employee, or retired, or laid-off employee:

(i) the plan that covers a person as an active employee, that is, an employee who is neither laid off nor retired or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan;

(ii) if the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule is ignored; and

(iii) this rule does not apply if (4)(a) can determine the order of benefits.

(d) regarding COBRA or state continuation coverage:

(i) if a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree, or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan;

(ii) if the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored; and

(iii) this rule does not apply if subsection (4)(a) can determine the order of benefits.

(e) regarding longer or shorter lengths of coverage:

(i) if the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan;

(ii) to determine the length of time a person has been covered under a plan, two successive plans shall be treated as one if the covered person was eligible under the second plan within 24 hours after coverage under the first plan ended;

(iii) the start of a new plan does not include:

(A) a change in the amount or scope of a plan's benefits;

(B) a change in the entity that pays, provides, or administers the plan's benefits; or

(C) a change from one type of plan to another, such as from a single employer plan to a multiple employer plan.

(iv) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) if none of the preceding rules determines the order of benefits, the allowable expenses shall be shared equally between the plans.

AUTH: 33-1-313, MCA
IMP: 33-15-304~~(3)~~, 33-18-201~~(6)~~, 33-22-225, 33-22-226, 33-22-502~~(2)~~, MCA

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

NEW RULE I PROCEDURE TO BE FOLLOWED BY SECONDARY PLAN TO CALCULATE BENEFITS AND PAY A CLAIM (1) In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the claim in the absence of other health care coverage, and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed 100 percent of the total allowable expense for that claim. In addition, the secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

AUTH: 33-1-313, MCA
IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

NEW RULE II NOTICE TO COVERED PERSONS (1) A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

AUTH: 33-1-313, MCA
IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

NEW RULE III MISCELLANEOUS PROVISIONS (1) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

(2) A plan with order of benefit determination rules that comply with this subchapter (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary," or that uses order of benefit determination rules that are inconsistent with those contained in this subchapter (noncomplying plan) on the following basis:

(a) If the complying plan is the primary plan, it shall pay or provide its benefits first;

(b) If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and

(c) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan must assume that the benefits of the noncomplying plan

are identical to its own, and shall pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

(3) If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth in (4) and (5), then the complying plan shall advance to the covered person, or on behalf of the covered person, an amount equal to the difference.

(4) In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(5) COB differs from subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(6) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.

AUTH: 33-1-313, MCA
IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

NEW RULE IV APPENDIX "A" MODEL COB CONTRACT PROVISIONS

(1) The model COB contract provisions are set forth in this rule and referred to as "appendix A:"

(a) **APPENDIX A. MODEL COB CONTRACT PROVISIONS**

COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one Plan. Plan is defined below.

The order of benefit determination rules govern the order in which each Plan will pay a claim for benefits. The Plan that pays first is called the Primary plan. The Primary plan must pay benefits in accordance with its policy terms without regard to the possibility that another Plan may cover some expenses. The Plan that pays after the Primary plan is the Secondary plan. The Secondary plan may reduce the benefits it pays so that payments from all Plans does not exceed 100% of the total

allowable expense.

DEFINITIONS

A. A Plan is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) Plan includes: group and nongroup health insurance contracts, health maintenance organization (HMO) contracts, closed panel plans or other forms of group or group type coverage (whether insured or uninsured); medical care components of long-term care contracts, such as skilled nursing care; and Medicare or any other federal governmental plan, as permitted by law.

(2) Plan does not include: hospital indemnity coverage or other fixed indemnity coverage; accident only coverage; specified disease or specified accident coverage; limited benefit health coverage, if determined by the commissioner to be "excepted benefits" as defined in 33-22-140, MCA; school accident type coverage; benefits for non-medical components of long-term care policies; Medicare supplement policies; Medicaid policies; or coverage under other federal governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate Plan. If a Plan has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate Plan.

B. This plan means, in a COB provision, the part of the contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one COB provision to certain benefits, such as dental benefits, coordinating only with similar benefits, and may apply another COB provision to coordinate other benefits.

C. The order of benefit determination rules determine whether This plan is a Primary plan or Secondary plan when the person has health care coverage under more than one Plan.

When This plan is primary, it determines payment for its benefits first before those of any other Plan without considering any other Plan's benefits. When This plan is secondary, it determines its benefits after those of another Plan and may reduce the benefits it pays so that all Plan benefits do not exceed 100% of the total Allowable expense.

D. Allowable expense is a health care expense, including deductibles, coinsurance and copayments, that is covered at least in part by any Plan covering the person. When a Plan provides benefits in the form of services, the reasonable cash value of each service will be considered an Allowable expense and a benefit paid. An expense that is not covered by any Plan covering the person is not an Allowable expense. In addition, any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an Allowable expense.

The following are examples of expenses that are not Allowable expenses:

(1) The difference between the cost of a semi-private hospital room and a private hospital room is not an Allowable expense, unless one of the Plans provides coverage for private hospital room expenses.

(2) If a person is covered by two or more Plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an Allowable expense.

(3) If a person is covered by two or more Plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an Allowable expense.

(4) If a person is covered by one Plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and another Plan that provides its benefits or services on the basis of negotiated fees, the Primary plan's payment arrangement shall be the Allowable expense for all Plans. However, if the provider has contracted with the Secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the Primary plan's payment arrangement and if the provider's contract permits, the negotiated fee or payment shall be the Allowable expense used by the Secondary plan to determine its benefits.

(5) The amount of any benefit reduction by the Primary plan because a covered person has failed to comply with the Plan provisions is not an Allowable expense. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.

E. Closed panel plan is a Plan that provides health care benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the Plan, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. Custodial parent is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one half of the calendar year excluding any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When a person is covered by two or more Plans, the rules for determining the order of benefit payments are as follows:

A. The Primary plan pays or provides its benefits according to its terms of coverage and without regard to the benefits of under any other Plan.

B. (1) Except as provided in Paragraph (2), a Plan that does not contain a coordination of benefits provision that is consistent with this regulation is always primary unless the provisions of both Plans state that the complying plan is primary.

(2) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage shall be excess to any other parts of the Plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a Closed panel plan to provide out-of-network benefits.

C. A Plan may consider the benefits paid or provided by another Plan in calculating payment of its benefits only when it is secondary to that other Plan.

D. Each Plan determines its order of benefits using the first of the following rules that apply:

(1) Non-Dependent or Dependent. The Plan that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber or retiree is the Primary plan and the Plan that covers the person as a dependent is the Secondary plan. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the Plan covering the person as a dependent; and primary to the Plan covering the person as other than a dependent (e.g. a retired employee); then the order of benefits between the two Plans is reversed so that the Plan covering the person as an employee, member, policyholder, subscriber or retiree is the Secondary plan and the other Plan is the Primary plan.

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court decree stating otherwise, when a dependent child is covered by more than one Plan the order of benefits is determined as follows:

(a) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

- The Plan of the parent whose birthday falls earlier in the calendar year is the Primary plan; or
- If both parents have the same birthday, the Plan that has covered the parent the longest is the Primary plan.

(b) For a dependent child whose parents are divorced or separated or not living together, whether or not they have ever been married:

(i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the Plan of that parent has actual knowledge of those terms, that Plan is primary. This rule applies to plan years commencing after the Plan is given notice of the court decree;

(ii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (a) above shall determine the order of benefits;

(iii) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (a) above shall determine the order of benefits; or

(iv) If there is no court decree allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child are as follows:

- The **Plan** covering the **Custodial parent**;
- The **Plan** covering the spouse of the **Custodial parent**;
- The **Plan** covering the **non-custodial parent**; and then
- The **Plan** covering the spouse of the **non-custodial parent**.

(c) For a dependent child covered under more than one **Plan** of individuals who are the parents of the child, the provisions of (a) or (b) above shall determine the order of benefits as if those individuals were the parents of the child.

(3) Active Employee or Retired or Laid-off Employee. The **Plan** that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the **Primary plan**. The **Plan** covering that same person as a retired or laid-off employee is the **Secondary plan**. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided pursuant to COBRA or under a right of continuation provided by state or other federal law is covered under another **Plan**, the **Plan** covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the **Primary plan** and the COBRA or state or other federal continuation coverage is the **Secondary plan**. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The **Plan** that covered the person as an employee, member, policyholder, subscriber or retiree longer is the **Primary plan** and the **Plan** that covered the person the shorter period of time is the **Secondary plan**.

(6) If the preceding rules do not determine the order of benefits, the **Allowable expenses** shall be shared equally between the **Plans** meeting the definition of **Plan**. In addition, **This plan** will not pay more than it would have paid had it been the **Primary plan**.

EFFECT ON THE BENEFITS OF THIS PLAN

A. When **This plan** is secondary, it may reduce its benefits so that the total benefits paid or provided by all **Plans** during a plan year are not more than the total **Allowable expenses**. In determining the amount to be paid for any claim, the **Secondary plan** will calculate the benefits it would have paid in the absence of other health care coverage and apply that calculated amount to any **Allowable expense** under its **Plan** that is unpaid by the **Primary plan**. The **Secondary plan** may then reduce its payment by the amount so that, when combined with the amount paid by the **Primary plan**, the total benefits

paid or provided by all **Plans** for the claim do not exceed the total **Allowable expense** for that claim. In addition, the **Secondary plan** shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

B. If a covered person is enrolled in two or more **Closed panel plans** and if, for any reason, including the provision of service by a non-panel provider, benefits are not payable by one **Closed panel plan**, **COB** shall not apply between that **Plan** and other **Closed panel plans**.

RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to apply these **COB** rules and to determine benefits payable under **This plan** and other **Plans**. [Organization responsible for **COB** administration] may get the facts it needs from or give them to other organizations or persons for the purpose of applying these rules and determining benefits payable under **This plan** and other **Plans** covering the person claiming benefits. [Organization responsible for **COB** administration] need not tell, or get the consent of, any person to do this. Each person claiming benefits under **This plan** must give [Organization responsible for **COB** administration] any facts it needs to apply those rules and determine benefits payable.

FACILITY OF PAYMENT

A payment made under another **Plan** may include an amount that should have been paid under **This plan**. If it does, [Organization responsible for **COB** administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under **This plan**. [Organization responsible for **COB** administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means the reasonable cash value of the benefits provided in the form of services.

RIGHT OF RECOVERY

If the amount of the payments made by [Organization responsible for **COB** administration] is more than it should have paid under this **COB** provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid; or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

AUTH: 33-1-313, MCA
IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

NEW RULE V APPENDIX "B" MODEL COB CONSUMER EXPLANATORY BOOKLET. (1) The provisions of the model COB consumer explanatory booklet are set forth in this rule and referred to as "appendix B:"

(a) **APPENDIX B. CONSUMER EXPLANATORY BOOKLET**

COORDINATION OF BENEFITS

IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits your insurers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

When This Plan is Primary

If you or a family member are covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

- The claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

Your Spouse's Expenses

- The claim is for your spouse, who is covered by Medicare, and you are not both retired.

Your Child's Expenses

- The claim is for the health care expenses of your child who is covered by this plan; and

- You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule;" or

- You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses; **YOU MUST INFORM US WHEN A COURT DECRESS MAKES YOU RESPONSIBLE FOR THE CHILD'S HEALTH CARE EXPENSE;** or

- There is no court decree, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits in accordance with the terms of your contract, just as if you had no other health care coverage under any other plan.

How We Pay Claims When We Are Secondary

We will be secondary whenever the rules do not require us to be primary.

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care expense covered by one of the plans, including copayments, coinsurance and deductibles.

- If there is a difference between the amount the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and preferred provider organizations (PPOs) usually have contracts with their providers.

- We will determine our payment by subtracting the amount the primary plan paid from the amount we would have paid if we had been primary. We may reduce our payment by any amount so that, when combined with the amount paid by the primary plan, the total benefits paid do not exceed the total allowable expense for your claim. We will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible.

- If the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.

- We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain pre-certification, as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

Questions About Coordination of Benefits?
Contact Your State Insurance Department
At 406-444-2040 or 1-800-332-6148

AUTH: 33-1-313, MCA
IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

5. STATEMENT OF REASONABLE NECESSITY: It is necessary to make amendments to the existing rules on coordination of benefits and to add New Rules I through V in order to adopt the most recent version of the NAIC Coordination of Benefits Model Regulation. The purpose of this subchapter originally was to adopt the NAIC Coordination of Benefits Model Regulation, and that remains the purpose for adopting these revisions and new rules. The model was updated in order to reflect current practices in the health insurance market, provide greater efficiency in the processing of claims when a person is under more than one plan, allow coordination with other health plans that are not "group," and increase the clarity of the rules.

The rules have been amended to allow coordination of benefits between group health insurance products and individual health insurance products. This change is central to one of the purposes of the updated rules, which is to "reduce

duplication of benefits by permitting a reduction of the benefits to be paid by plans that, pursuant to rules established by this subchapter, do not have to pay their benefits first." Under the old rules, only group health plans could coordinate benefits. Under these proposed changes, both group and individual health insurance can coordinate benefits with each other.

Another original purpose of these rules was to "establish uniformity in the permissive use of overinsurance provisions and to avoid claim delays and misunderstandings that could otherwise result from the use of inconsistent or incompatible provisions among plans." In order to fulfill that purpose, it is necessary to adopt the most recent version of the NAIC Coordination of Benefits Model Regulations.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, General Counsel, Office of the Commissioner of Securities and Insurance, State Auditor, Monica Lindeen, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail cgoe@mt.gov, and must be received no later than 5:00 p.m., November 25, 2010.

7. Christina L. Goe, General Counsel, has been designated to preside over and conduct this hearing.

8. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, Office of the Commissioner of Securities and Insurance, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3499; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Christina L. Goe
Christina L. Goe
Rules Reviewer

/s/ Robert W. Moon
Robert W. Moon
Deputy Insurance Commissioner

Certified to the Secretary of State October 18, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.9.102, 18.9.108, 18.9.109, 18.9.112, 18.9.117, 18.9.205, 18.9.303, 18.10.104, 18.10.302, 18.10.314, 18.10.322, 18.10.323, 18.10.324 pertaining to licensed distributors and special fuel users and the repeal of ARM 18.9.106, 18.9.107, 18.10.102 pertaining to invoice errors, multi-distributor invoice requirements, and special fuel users	))))))))))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 29, 2010, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on November 19, 2010, to advise us of the nature of the accommodation that you need. Please contact Robert A. Turner, Department of Transportation, P. O. Box 201001, Helena, Montana, 59620; telephone (406) 444-7672; fax (406) 444-6032; TTY (406) 444-7696; or e-mail boturner@mt.gov.

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

18.9.102 DISTRIBUTOR'S BOND (1) and (2) remain the same.

~~(3) Upon written application by a distributor and the showing of good cause, the department may, at its discretion, accept a bond, collateral security, or indemnity in an amount less than twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax if the distributor reports and pays its tax more frequently than monthly. For example, if the distributor pays his tax weekly, his bond would be the estimated weekly tax payment.~~

AUTH: 15-70-104, MCA
IMP: 15-70-202, 15-70-204, 15-70-341, MCA

REASON: The proposed amendment is necessary because under the motor fuel statutes, licensed distributors are required to pay motor fuel taxes only once a month. Section (3) is therefore archaic and contains outdated language which is no longer applicable.

18.9.108 WHOLESALE DISTRIBUTOR (1) and (1)(a) remain the same.

(b) elects to become licensed under 15-70-201 and 15-70-301, MCA, to assume the Montana state gasoline, special fuel, or aviation fuel tax liability and the other obligations of a "distributor" pursuant to Title 15, chapter 70, parts 2 and 3, MCA, and these rules.

(2) and (3) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-201, 15-70-301, MCA

REASON: The proposed amendment is necessary because this administrative rule currently references only the gasoline statute and needs also to reference the diesel statute since a distributor can be licensed under both gasoline and diesel statutes.

18.9.109 WHOLESALE DISTRIBUTOR'S OBLIGATIONS (1) remains the same.

AUTH: 15-70-104, MCA
IMP: 15-70-201, 15-70-202, 15-70-301, 15-70-341, MCA

REASON: The proposed amendment is necessary because this administrative rule currently only implements the gasoline statute and needs also to implement the diesel statute since a distributor can be licensed under both gasoline and diesel statutes.

18.9.112 DEFINITIONS (1) remains the same.

AUTH: 15-70-104, 15-70-522, MCA
IMP: 15-70-201, ~~15-70-204,~~ 15-70-205, 15-70-301, 15-70-344, MCA, ~~Ch. 568, L. 2001~~

REASON: The proposed amendment is necessary because the administrative rule currently does not implement the tax rate for gasoline. This administrative rule defining "bulk storage" affects a licensed distributor's diesel statement as it does their gasoline statement, thus a reference to 15-70-344, MCA, on distributor's statement is necessary.

18.9.117 DISTRIBUTOR - SUPPORTING DOCUMENTATION FOR BAD DEBT CREDIT (1) remains the same.

AUTH: 15-70-104, MCA
IMP: 15-70-221, 15-70-225, 15-70-328, 15-70-364, MCA

REASON: The proposed amendment is necessary because this administrative rule currently implements the gasoline statute that allows for a bad debt credit, thus a reference to 15-70-221, MCA, on refund or credit being authorized is necessary.

18.9.205 EXEMPTION - U.S. AND OTHER STATES (1) Licensed distributors making sales of gasoline, special fuel, or aviation fuel, to the United States government or a state entity FOB rack for use by the purchaser out of the state of Montana must report the sale as a credit to the amount of gasoline, special fuel, or aviation fuel distributed on the distributor's monthly statement as an export required by 15-70-205 and 15-70-344, MCA.

AUTH: 15-70-104, MCA;
IMP: 15-70-204, 15-70-205, 15-70-321, 15-70-344, MCA

REASON: The proposed amendment is necessary because this administrative rule currently references only the gasoline statute and needs also to reference the diesel statute since a distributor can be licensed under both gasoline and diesel statutes. Therefore, a reference to 15-70-344, MCA, on distributor's statement is necessary.

18.9.303 FILING INVOICES (1) remains the same.

~~(2) Each licensed seller is required to file for approval a completed sample set of invoices that will be issued covering sales to refund applicants. A sample invoice must be filed annually regardless if the invoice changed.~~

AUTH: 15-70-104, MCA
IMP: 15-70-222, 15-70-361, MCA

REASON: The proposed amendment is necessary because the requirement that retail fuel sellers be licensed has been eliminated, thus (2) which contains archaic language on "licensed sellers" must be deleted.

18.10.104 LIABILITY FOR USE ON GOVERNMENT MAINTAINED ROADS (1) remains the same.

AUTH: 15-70-104, MCA
IMP: 15-70-301, ~~15-70-322~~, MCA

REASON: The proposed amendment is necessary because 15-70-322, MCA, has been repealed, thus the reference to the statute in the rule must be deleted.

18.10.302 PERMIT DETAILS (1) through (4) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-121, 15-70-302, 15-70-303, MCA

REASON: The proposed amendment is necessary because the administrative rule also implements 15-70-303, MCA, which contains the application process for a special fuel users permit.

18.10.314 CONFISCATION OF CERTAIN PERMIT COPIES (1) and (2) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-302, 15-70-311, MCA

REASON: The proposed amendment is necessary because this administrative rule also implements 15-70-311, MCA, that applies to special fuel user's temporary trip permits.

18.10.322 RECORDS WHEN BULK STORAGE INVOLVED (1) and (2) remain the same.

(3) A special fuel user who is subject to 15-70-302, MCA, is exempt from the above provisions if the special fuel user uses fuel on which state fuel tax has been paid and if the special fuel user does not request a motor fuel tax refund.

AUTH: 15-70-104, MCA
IMP: 15-70-121, 15-70-302, 15-70-323, MCA

REASON: The proposed amendment is necessary because the 2005 Legislature amended the record-keeping requirements of contractors to exempt permitted special fuel users as long as they did not request a refund for nontaxable use. The proposed new (3) will implement that statutory change.

18.10.323 TRIP AND FUEL CONSUMPTION RECORDS (1) Every special fuel user subject to 15-70-302, MCA, operating a vehicle permitted under International Fuel Tax Agreement (IFTA) requirements must maintain a record of all trips made by each vehicle in connection with the special fuel used. Operating records must detail the date and points of beginning and ending of each one way trip; proper designation of highways of operation; total miles traveled; miles traveled in each state; and a complete listing of all purchases of special fuel into vehicles showing quantity, date, and location received during each trip. The average miles per gallon (ampg) of each vehicle must also be determined. All operating information must be compiled separately for each vehicle during the calendar month.

(2) remains the same.

(3) Every special fuel user subject to 15-70-302, MCA, operating a vehicle equipped with an apparatus which permits the consumption of special fuel must maintain a record, including invoices of all special fuel used and placed into the special fuel supply tank of each vehicle. Special fuel users, excluding those subject to 15-70-302, MCA, IFTA requirements, who do not request a refund are exempt from keeping records of special fuel placed into supply tanks of vehicles.

AUTH: 15-70-104, MCA
IMP: 15-70-121, 15-70-302, 15-70-323, MCA

REASON: The proposed amendment is necessary because (1) applies to special fuel users who are licensed under the International Fuel Tax Agreement (IFTA) and the proposed language will clarify that distinction. The proposed amendment to (3) is necessary because the 2005 Legislature amended the record-keeping requirements of contractors if the contractor did not request a refund for nontaxable use. The

proposed amendment will also add a reference to 15-70-302, MCA, which is also implemented in this rule.

18.10.324 FAILURE TO MAINTAIN RECORDS (1) through (4) remain the same.

(a) trucks and truck tractors whose manufacturers gross vehicle weight rating is 9,000 lbs. or more, ~~4.5~~ 4.0 ampg;

(b) through (5) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-121, 15-70-306, 15-70-323, MCA

REASON: The proposed amendment is necessary because this amendment is made to reconcile the administrative rule with 15-70-224 and 15-70-363, MCA, which allow for a 4.0 mpg when no records or other information are available.

4. The department proposes to repeal the following rules:

18.9.106 INVOICE ERROR

AUTH: 15-70-104, MCA
IMP: 15-70-207, 15-70-348, MCA

REASON: The proposed repeal is necessary because this administrative rule is no longer needed since the "bill of lading" has taken the place of the "invoice" for tracking the movement of fuel.

18.9.107 MULTI-DISTRIBUTOR INVOICE REQUIREMENTS

AUTH: 15-70-104, MCA
IMP: 15-70-207, MCA

REASON: The proposed repeal is necessary because this administrative rule is no longer needed since the "bill of lading" has taken the place of the "invoice" for tracking the movement of fuel.

18.10.102 DETERMINATION OF USER

AUTH: 15-70-104, MCA
IMP: 15-70-301, MCA

REASON: The proposed repeal is necessary because a special fuel user is defined in 15-70-301, MCA, and does not need to be defined in administrative rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Robert A. Turner, Department of Transportation, P. O. Box 201001, Helena, Montana, 59620; telephone (406) 444-

7672; fax (406) 444-6032; or e-mail boturner@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Robert A. Turner at the above address no later than 5:00 p.m., November 26, 2010.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 persons based on the number of licensed distributors, and special fuel permit holders.

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/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Jim Lynch
Jim Lynch
Director
Department of Transportation

Certified to the Secretary of State October 18, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.9.111, 18.9.401, 18.9.402, 18.9.403, 18.9.501, 18.9.601, 18.9.602, 18.9.603, 18.9.605, 18.9.606, 18.9.608, and 18.9.704 pertaining to gasohol and alcohol blended fuel	)))))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 29, 2010, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on November 19, 2010, to advise us of the nature of the accommodation that you need. Please contact Robert A. Turner, Department of Transportation, P. O. Box 201001, Helena, Montana, 59620; telephone (406) 444-7672; fax (406) 444-6032; TTY (406) 444-7696; or e-mail boturner@mt.gov.

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

18.9.111 ~~GASOHOL~~ ETHANOL-BLENDED GASOLINE BLENDERS

(1) Pursuant to 15-70-201, MCA, a person who blends ~~alcohol~~ ethanol with gasoline to produce ~~gasohol~~ ethanol-blended gasoline is a "distributor" if no tax has been paid on the ~~alcohol~~ ethanol or gasoline blended to produce ~~gasohol~~ ethanol-blended gasoline. As a distributor, the ~~gasohol~~ ethanol-blended gasoline blender is responsible for paying the tax on all the ~~alcohol~~ ethanol and gasoline which has not been taxed and which is used to produce ~~gasohol~~ ethanol-blended gasoline. If the person qualifies as a distributor solely on the basis of blending ~~alcohol~~ ethanol and gasoline, the person is a distributor only with respect to the ~~alcohol~~ ethanol and gasoline used to produce ~~gasohol~~ ethanol-blended gasoline.

(2) The blending of ~~alcohol~~ ethanol with gasoline to produce ~~gasohol~~ ethanol-blended gasoline does not make the ~~gasohol~~ ethanol-blended gasoline blender a distributor for the purpose of the payment of the tax due on gasoline not blended with ~~alcohol~~ ethanol to produce ~~gasohol~~ ethanol-blended gasoline. If the ~~gasohol~~ ethanol-blended gasoline blender receives gasoline upon which no tax has been paid and not used to produce ~~gasohol~~ ethanol-blended gasoline, the blender must qualify as and meet all the requirements to be either a distributor under 15-70-201, MCA, or a "wholesale distributor" under 15-70-201, MCA, and pay the tax. Sections 15-70-201 and 15-70-301, MCA, are the requirements for being a distributor or

wholesale distributor on a basis other than being a ~~gasohol~~ ethanol-blended gasoline blender. Only if the ~~gasohol~~ ethanol-blended gasoline blender qualifies under these other requirements can that blender purchase gasoline without tax for resale as gasoline.

(3) The ~~gasohol~~ ethanol-blended gasoline blender must comply with all the laws and rules which apply to distributors.

AUTH: 15-70-104, MCA
IMP: 15-70-201, 15-70-204, 15-70-301, MCA

18.9.401 TREATMENT OF ~~GASOHOL~~ ETHANOL-BLENDED GASOLINE (1) For the purposes of Title 15, chapter 70, reference to gasoline includes~~,~~ ~~gasohol~~ ethanol-blended gasoline (regardless of where produced and how produced). Gasoline and ~~gasohol~~ ethanol-blended gasoline are taxed at the rate specified in 15-70-204, MCA.

(2) remains the same.

AUTH: 15-70-104, MCA
IMP: 15-70-201, 15-70-204 , MCA

18.9.402 AGRICULTURAL PRODUCTS (1) As used in the definition of ~~gasohol~~ ethanol-blended gasoline (15-70-201, MCA), the term "agricultural products" includes timber.

AUTH: 15-70-104, MCA
IMP: 15-70-201, MCA

18.9.403 ETHANOL CONTENT (1) A product consisting of 100% anhydrous ethanol is not considered to be ~~gasohol~~ ethanol-blended gasoline.

AUTH: 15-70-104, MCA
IMP: 15-70-201, MCA

18.9.501 ~~ALCOHOL~~ ETHANOL DISTRIBUTORS (1) It is the responsibility of the ~~alcohol~~ ethanol distributor, including anyone who imports ~~alcohol~~ ethanol, to collect and remit to the Department of Transportation the tax that is due on the ~~alcohol~~ ethanol pursuant to 15-70-204~~(3)~~, MCA.

(2) remains the same.

AUTH: 15-70-104, MCA
IMP: 15-70-512, 15-70-523, MCA

18.9.601 INTENT (1) The following rules are intended to implement the ~~Alcohol~~ Ethanol Tax Incentive and Administration Act, Title 15, chapter 70, part 5, MCA, and are designed to facilitate the efficient payment of the ~~alcohol~~ ethanol tax incentive while insuring against fraud, waste, and abuse under the act.

(2) remains the same.

AUTH: 15-70-104, MCA
IMP: ~~Title 15, chapter 70, part 5~~ 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

18.9.602 DEFINITIONS (1) remains the same.

(2) The following definitions also apply:

(a) "Act" means the "~~Alcohol~~ Ethanol Tax Incentive and Administration Act," Title 15, chapter 70, part 5, MCA.

~~(b)~~ (d) "~~Alcohol~~ Ethanol" means anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products, or from non-Montana agricultural products when Montana products are not available.

(c) and (d) remain the same but are renumbered (b) and (c).

(e) "Written plan" means a detailed proposed business plan providing information that allows the department to estimate the ~~alcohol~~ ethanol incentive tax reservation of funds.

AUTH: 15-70-104, 15-70-522, MCA
IMP: ~~Title 15, chapter 70, part 5~~ 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

18.9.603 PROCESSING OF THE TAX INCENTIVE PAYMENT (1) The ~~alcohol~~ ethanol distributor shall make one application, on forms available from the administration division, for the payment of the tax incentive to the division not later than the 25th day of the calendar month following the month or months during which the ~~alcohol~~ ethanol was sold and delivered to the ~~gasohol~~ ethanol-blended gasoline dealer or ~~alcohol~~ ethanol purchaser. The ~~alcohol~~ ethanol distributor may not submit more than one application during a month. If ~~alcohol~~ ethanol is omitted from one month's application, it may be applied for in the application for a subsequent month.

(2) The application must be accompanied by the original or a copy of the production records and invoices for all the ~~alcohol~~ ethanol for which the ~~alcohol~~ ethanol distributor is applying for the tax incentive payment.

(3) The application must contain:

(a) the name of the ~~alcohol~~ ethanol distributor;

(b) the license number of the ~~alcohol~~ ethanol distributor;

(c) the total number of gallons of ~~alcohol~~ ethanol manufactured, exported, or imported by the distributor during the preceding calendar month;

(d) the name of each ~~gasohol~~ ethanol-blended gasoline dealer to whom the ~~alcohol~~ ethanol was sold;

(e) the gasoline distributor license number of the ~~gasohol~~ ethanol-blended gasoline dealer;

(f) the number of gallons of ~~alcohol~~ ethanol sold to each dealer or purchaser; and

(g) the date and the place the ~~alcohol~~ ethanol was blended with gasoline to produce ~~gasohol~~ ethanol-blended gasoline.

(4) If the application includes ~~alcohol~~ ethanol which was exported from Montana prior to being blended with gasoline to produce ~~gasohol~~ ethanol-blended

gasoline, the application must be accompanied by a certificate of blending from the ~~alcohol~~ ethanol purchaser on a form which is furnished by the division. The certificate must be completed and signed by the out-of-state ~~alcohol~~ ethanol purchaser and must include:

(a) the license number or numbers, if any, of the purchaser in the state or states where the ~~gasohol~~ ethanol-blended gasoline was distributed;

(b) the address and telephone number of the ~~alcohol~~ ethanol purchaser;

(c) the number of gallons of ~~gasohol~~ ethanol-blended gasoline which were produced by the purchaser from the ~~alcohol~~ ethanol which was produced in Montana;

(d) the statement that the ~~alcohol~~ ethanol was blended with gasoline at a ratio of at least one gallon of ~~alcohol~~ ethanol to nine gallons of gasoline; and

(e) the name, license number, and address of the person who actually blended the ~~alcohol~~ ethanol with gasoline and the number of gallons of ~~gasohol~~ ethanol-blended gasoline which was produced if he is not the ~~alcohol~~ ethanol purchaser.

(5) remains the same.

(6) If the information on the ~~alcohol~~ ethanol tax incentive payment application by the ~~alcohol~~ ethanol distributor does not match the information on the gasoline distributor's report or other information supplied to the division, the division will withhold payment of the ~~alcohol~~ ethanol tax incentive until such time as the division can determine the accuracy of the ~~alcohol~~ ethanol tax incentive application.

(7) The report may include an application for refund of the basic gasoline license tax on gasoline which was used to denature ~~alcohol~~ ethanol. The application for refund shall include:

(a) the gallons of ~~anhydrous alcohol~~ ethanol which were denatured by the ~~alcohol~~ ethanol distributors;

(b) and (c) remain the same.

(8) Original bills of lading, or invoices, or copies shall be attached to each report which contains an application for refund of the basic gasoline license tax on gasoline which was used to denature ~~alcohol~~ ethanol.

AUTH: 15-70-104, 15-70-522, MCA
IMP: 15-70-522, MCA

18.9.605 OFFSETS (1) The division shall offset against any ~~alcohol~~ ethanol tax incentive payments which are due under the act:

(a) any overpayment or unauthorized payment made on prior ~~alcohol~~ ethanol tax incentive applications; and

(b) any finally assessed tax due from the ~~alcohol~~ ethanol distributor under Title 15, MCA.

AUTH: 15-70-104, MCA
IMP: 15-70-523, MCA

18.9.606 QUARTERLY REPORTS (1) The department may require quarterly reports from the applicant ~~during the 18-month grace period~~ to ensure ~~alcohol~~ ethanol implementation is on schedule.

AUTH: 15-70-104, 15-70-522, MCA
IMP: 15-70-512, 15-70-522, MCA

18.9.608 USE OF MONTANA PRODUCTS (1) The payment of the ~~alcohol~~ ethanol tax incentive will be based solely on the percentage of Montana products, including Montana wood or wood products, that are used in the production of anhydrous ethanol.

AUTH: 15-70-522, MCA
IMP: 15-70-522, MCA

18.9.704 DEFINITIONS (1) remains the same.

(2) "~~Gasohol~~ Ethanol-blended gasoline" means a fuel blend containing at least 10% ~~alcohol~~ ethanol, with the balance being gasoline and other additives. ~~Gasohol~~ Ethanol-blended gasoline is also known as "E-10".

(3) and (4) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-201, 15-70-204, 15-70-301, 15-70-311, 15-70-321, MCA

REASON: The proposed changes are necessary because the 2007 Legislature changed "alcohol" to "ethanol" and gasohol" to "ethanol-blended" gasoline. The changes in these rules are to comply with Ch. 100 of the 2007 Legislature, codified in Title 15, Chapter 70, Part 5. The proposed amendments will also codify in ARM 18.9.606 that the 18-month grace period was deleted from statute in 2007.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Robert A. Turner, Department of Transportation, P. O. Box 201001, Helena, Montana, 59620; telephone (406) 444-7672; fax (406) 444-6032; or e-mail boturner@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Robert A. Turner at the above address no later than 5:00 p.m., November 26, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 14 persons based on 140 motor fuel distributors licensed with the department.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on 6/23/10.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Jim Lynch
Jim Lynch
Director
Department of Transportation

Certified to the Secretary of State October 18, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI, the amendment of ARM 24.21.401, 24.21.411, and 24.21.421, and the repeal of ARM 24.21.101, 24.21.201, 24.21.301, and 24.21.425, all pertaining to apprenticeship training programs	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 19, 2010, at 10:30 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 15, 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: Mark Maki, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3556; fax (406) 444-3037; TDD (406) 444-0532; or e-mail mmaki@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to amend and adopt rules in order to maintain the department's status as the federally-recognized state apprenticeship registration agency for Montana. The United States Department of Labor, Employment and Training Administration, Office of Apprenticeship has adopted revised federal regulations that provide that state apprenticeship registration agencies will be recognized for federal purposes only if the state agency adopts rules that meet certain criteria and are not otherwise inconsistent with those federal rules. The department believes that failure to amend and adopt rules will lead to the likely loss of the existing recognition of the department as the state apprenticeship recognition agency, to the detriment of Montana employers who rely on the use of registered apprentices either due to occupational licensing requirements or for work on public works (prevailing wage) contracts, and to Montana's workforce which relies on the practical and technical training afforded by the apprenticeship process. The department believes that it is more likely to provide better local customer service to Montana employers, apprentices, and industry by maintaining its status as the recognized registration agency in Montana than would occur if registration could only occur at the federal level via the U.S. Department of Labor.

This general statement of reasonable necessity applies to all of the rules proposed for adoption, amendment, and repeal and will be supplemented as necessary for any given rule.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this this subchapter, the following definitions apply:

(1) "Apprenticeship agreement" has the meaning provided for by 39-6-104, MCA, and includes an indenture agreement.

(2) "Department" means the Department of Labor and Industry, as provided for by 2-15-1701, MCA.

(3) "Indenture agreement" means the specific written agreement between a sponsor and an individual apprentice regarding the terms and conditions of the apprentice's apprenticeship.

(4) "Joint apprenticeship committee" means a local or statewide committee operating pursuant to 39-6-104, MCA, and recognized by the department.

(5) "Registered apprentice" means an individual whose indenture agreement has been officially recognized and registered with a registration agency.

(6) "Registration agency" means any of the following:

(a) the department;

(b) the U.S. Department of Labor, acting through its employment and training administration; and

(c) the federally recognized apprenticeship registration agency of another state or U.S. territory.

(7) "Sponsor" means an employer or a joint apprenticeship committee which operates an apprenticeship training program recognized by the department.

(8) "State apprenticeship advisory council" means the advisory body designated by the department pursuant to [NEW RULE III].

(9) "State apprenticeship and training program" means the organizational unit of the department described in [NEW RULE II].

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

NEW RULE II STATE APPRENTICESHIP AND TRAINING PROGRAM

(1) There exists with the department's workforce services division an office which operates the state's apprenticeship and training program. The office functions as Montana's state apprenticeship agency and state office for apprenticeship, as those terms are used within 29 CFR part 29. The office organized as the apprenticeship and training program within the 21st century workforce technology, apprenticeship, and training bureau of the workforce services division of the department.

(2) The state apprenticeship and training program is responsible for:

(a) the approval of apprenticeship standards;

(b) the adoption of apprentice wage rates pursuant to 39-6-108, MCA;

(c) the approval of sponsors;

(d) the registration of individual apprentices;

(e) maintaining records related to apprentice's progress and completion;

(f) providing technical assistance to sponsors;

(g) monitoring and evaluating apprentice and sponsor performance with respect to an apprenticeship program, including:

(i) requiring corrective actions when appropriate; or

(ii) terminating or cancelling an apprenticeship agreement;

(h) issuing completion certificates to apprentices as appropriate; and

(i) otherwise administering the state apprenticeship and training program, including promoting the use of apprenticeship as a means of workforce training.

(3) The state apprenticeship and training program uses the state apprenticeship advisory council established in [NEW RULE III] in an advisory and consultative role regarding matters of interest to the program and the apprenticeship community. The apprenticeship and training program uses the state apprenticeship advisory council as an additional means of fostering dialogue and communication between the program and sponsors, apprentices, employers, industry, and educators.

(4) The state apprenticeship and training program's main office is located at the Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana, 59601.

(a) The office mailing address is P.O. Box 1728, Helena, MT 59624-1728.

(b) The office telephone numbers are:

(i) for voice calls, 406.444.3998;

(ii) for fax transmissions, 406.444.3037; and

(iii) for TDD/TTY calls, 406.444.0532.

(c) The office contract e-mail address is: mmaki@mt.gov.

(d) The state apprenticeship and training program operates various web sites, including:

(i) http://wsd.dli.mt.gov/apprenticeship; and

(ii) http://exploreapprenticeship.mt.gov.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: There is reasonable necessity to adopt NEW RULE II to clarify how the department has organized itself to carry out its responsibilities regarding apprenticeship, and to differentiate the roles of the state apprenticeship and training program (the state registration agency) from that of the advisory body described in NEW RULE III. The identification of the registration agency and contact information, as well as an identification of the roles of the state apprenticeship agency and the apprenticeship council are required for federal recognition.

NEW RULE III STATE APPRENTICESHIP ADVISORY COUNCIL TO BE ESTABLISHED (1) The department shall establish on a continuing basis a state apprenticeship advisory council pursuant to the provisions of 29 CFR part 29, and in accordance with 2-15-122, MCA. The state apprenticeship advisory council is a state apprenticeship council, operating as an advisory body, within the definitions contained in 29 CFR section 29.2.

(2) Members of the state apprenticeship advisory council are appointed by the commissioner of labor and industry.

(3) The commissioner shall appoint members of the state apprenticeship advisory council that, to the greatest extent feasible:

(a) equitably reflect the geographic and social diversity of apprenticeship within the state; and

(b) equitably reflect the balance between apprentice sponsors whose members are affiliated with labor organizations and those whose members are not signatories to collective bargaining agreements.

(4) The council consists of at least 7, but not more than 25, appointed, voting members. The members must be familiar with apprenticeable occupations.

(a) The council must have an equal number of representatives of employer and employee organizations.

(b) At least one member of the council must be a public member who is not directly affiliated with an employer, a sponsor, or a labor organization. The total number of public members may not exceed the number of members who serve as a representative of an employee or an employer organization.

(c) The commissioner, or the commissioner's delegate, shall serve as an ex-officio member of the council.

(d) The department may designate appropriate individuals, such as department employees, to provide support functions for the council as needed. Such individuals are not voting members of the council, but may be given a voice at council meetings at the discretion of the council's presiding officer.

(5) Meetings of the state apprenticeship advisory council are open, public meetings within the meaning of Title 2, chapter 3, part 2, MCA.

AUTH: 39-6-101, MCA
IMP: 2-3-203, 2-15-122, 39-6-101, MCA

REASON: There is reasonable necessity to adopt NEW RULE III in order to satisfy one of the conditions required by 29 CFR section 29.13 for the U.S. Department of Labor to recognize a state apprenticeship agency, namely the establishment of a state apprenticeship council. While the federal regulations allow either a "regulatory" or an "advisory" council, Montana law (2-15-123, MCA) does not allow executive branch agencies to create new regulatory agencies. Accordingly, the department concludes that establishing an advisory body, pursuant to 2-15-122, MCA, is the most feasible way to satisfy the provisions of 29 CFR section 29.13(a)(2). Section 2-15-122, MCA, allows an agency head to create an advisory body, with the approval of the governor, and sets various requirements. The department believes that it cannot, in the rule itself, establish the advisory council, but that the rule creates a duty for the department to take the necessary steps to establish the advisory council. The department also believes that it is appropriate to expressly note and recognize within the text of the rule that the state apprenticeship advisory council meetings are subject to Montana's open meeting laws.

NEW RULE IV FEDERAL REGULATIONS INCORPORATED BY REFERENCE (1) The department adopts and incorporates by reference the

following federal regulations for use in the operation of its state apprenticeship and training program:

(a) 29 CFR section 29.3, eligibility and criteria for registration of an apprenticeship program, as in effect on July 1, 2010;

(b) 29 CFR section 29.4, criteria for apprenticeable occupations, as in effect on July 1, 2010;

(c) 29 CFR section 29.5, standards of apprenticeship, as in effect on July 1, 2010;

(d) 29 CFR section 29.6, program performance standards, as in effect on July 1, 2010;

(e) 29 CFR section 29.7, apprenticeship agreement, as in effect on July 1, 2010;

(f) 29 CFR section 29.8, deregistration of a registered program, as in effect on July 1, 2010;

(g) 29 CFR section 29.10, hearings for deregistration, as in effect on July 1, 2010, except that the appellate provisions of 29 CFR section 29.10(c) will not apply to the extent they are in conflict with the judicial review provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, part 7, MCA);

(h) 29 CFR section 29.11, limitations, as in effect on July 1, 2010; and

(i) 29 CFR part 30, equal employment opportunity in apprenticeship and training, as in effect on July 1, 2010.

(2) The department is not formally adopting by reference the various other portions of 29 CFR part 29 because those portions either address matters related to the internal operations of government or are otherwise addressed by the administrative rules contained in this subchapter. As an example, the provisions of 29 CFR section 12, regarding complaint procedures, are addressed in ARM 24.21.416, and more generally under the Montana Administrative Procedure Act. Likewise, while the department is subject to 29 CFR section 29.13 for purposes of its recognition as the state apprenticeship agency, those provisions are by their terms not applicable to sponsors, employers, apprentices, or the public at large.

(3) Copies of the regulations incorporated by reference are available as follows:

(a) A printed copy of the regulations incorporated by reference is available for inspection and purchase at cost from the department and the U.S. Government printing office. The address for the department is listed in [NEW RULE II]. The address of the U.S. Government printing office is: U.S. Government Bookstore, 710 North Capitol Street N.W., Washington, D.C.

(b) An electronic copy of the regulations incorporated by reference is available via the internet by following the links at the following web sites:

(i) http://wsd.dli.mt.gov/apprenticeship/ (Montana Department of Labor and Industry web site); or

(ii) http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1 (National Archives and Records Administration web site).

AUTH: 2-4-201, 39-6-101, MCA
IMP: 2-4-201, 39-6-101, MCA

REASON: There is reasonable necessity to adopt NEW RULE IV to incorporate by reference the federal regulations, rather than to reprint them within the text of the Administrative Rules of Montana (ARM). The federal regulations are readily available in print and on-line, and the department believes that it will be more convenient for the public (including current and potential sponsors, employers, apprentices, and instructors) to directly refer to the Code of Federal Regulations than to locate materials within the ARM. In addition, there is a savings to the department of not having to reprint federal regulations verbatim in this Notice of Public Hearing, as well as in printing and mailing costs. The Montana Administrative Procedure Act specifically provides (in 2-4-307, MCA) that agencies may incorporate standard references, such as the CFRs, via the rulemaking process.

There is also reasonable necessity to include an explanation of the basis upon which various portions of the federal regulations are not being adopted by reference. Those portions of the federal regulations not being incorporated by reference are ones which either apply to the internal operations of government, or are otherwise addressed by Montana rules or statutes. The department acknowledges that in order for it to be recognized as the state apprenticeship agency by the U.S. Department of Labor, and to continue to function as the state registration agency, it will have to operate in a manner consistent with the provisions of 29 CFR part 29.

NEW RULE V INTERIM CREDENTIALS (1) The state apprenticeship and training program shall award interim credentials to apprentices who demonstrate the appropriate competencies, when requested to do so by program sponsors, as provided by 29 CFR section 29.5, as adopted by the department in [New Rule IV].

(2) The state apprenticeship and training program will work with interested program sponsors to develop appropriate benchmarks and competency testing that will apply to the sponsor's apprenticeship program.

(3) Competency testing will not be recognized for a given apprentice until the benchmarks and testing protocols are incorporated into the apprenticeship program's standards.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: There is reasonable necessity to adopt NEW RULE V in order to satisfy one of the conditions required by 29 CFR section 29.13 for the U.S. Department of Labor to recognize a state apprenticeship agency, namely the ability to obtain interim credentials for qualified apprenticeship programs that request such interim credentials.

NEW RULE VI PERFORMANCE EVALUATIONS – WITHDRAWAL OF REGISTRATION (1) The state apprenticeship and training program shall conduct periodic performance evaluations, as provided for by 29 CFR section 29.6 as adopted by the department in [NEW RULE IV], for each apprenticeship program operating in Montana.

(2) The state apprenticeship and training program may withdraw the registration of an apprenticeship program ("deregister the apprenticeship program") if the apprenticeship program does not comply with the requirements of the applicable statutes or administrative rules. Registration may not be withdrawn before the program sponsor is afforded notice and an opportunity to be heard.

(3) Notice and an opportunity to be heard will be afforded pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, and in accordance with the hearings provisions of ARM 24.21.416.

(4) For good cause shown, a person directly affected by a proposed withdrawal of registration of an apprenticeship program may intervene in a proceeding provided for by (3).

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: There is reasonable necessity to adopt NEW RULE VI in order to satisfy one of the conditions required by 29 CFR section 29.13 for the U.S. Department of Labor to recognize a state apprenticeship agency, namely the performance of periodic performance evaluations, along with the providing for the deregistration of an apprenticeship program that does not comply with the required minimum standards.

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

24.21.401 REGISTRATION POLICY AND PROCEDURES (1) In order that a standard of training be maintained and upheld for all apprenticeable occupations, ~~the following policy must be satisfied~~ before approval and registration will be granted a program sponsor~~: All~~ all provisions of the apprenticeship program ~~approval~~ must either meet or exceed those recognized in the immediate geographical or state wide area where applicable. These provisions apply to all those listed in ARM 24.21.411 Minimum Guidelines for Registration of Apprenticeship Programs, including wages.

(2) The department will also apply the provisions of 29 CFR part 29 that are incorporated by reference in [NEW RULE IV] to determine whether a particular apprenticeship program will be approved and registered. A new apprenticeship program proposed for registration is subject to the provisional registration provisions of 29 CFR section 29.3, as adopted by the department in [NEW RULE IV].

~~(2)~~(3) Apprenticeship programs and standards of employers and unions ~~in other than the building and construction industry,~~ which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of Title 29 Code of Federal Regulations, Part 29 as ~~adopted February 15, 1977~~ in effect on July 1, 2010, by any ~~recognized State Apprenticeship Agency/Council or by the Bureau of Apprenticeship and Training, U.S. Department of Labor,~~ registration agency shall be accorded approval reciprocity by the ~~Apprenticeship Bureau~~ state apprenticeship and training program, if such reciprocity is requested by the sponsoring entity. An apprenticeship program must comply with Montana's statutes and administrative rules, including but not limited to:

(a) the applicable ratio requirements; and
(b) the apprenticeship wage rates established pursuant to 39-6-108, MCA.

AUTH: 39-6-101~~(2)(b)~~, MCA
IMP: 39-6-101, 39-6-108, MCA

REASON: There is reasonable necessity to amend ARM 24.21.401 to reference the federal regulations that are being incorporated by reference. In addition, there is reasonable necessity to clarify that, in accordance with federal regulations, reciprocity is available for all apprenticeable occupations, including those in the building and construction industry. Finally, there is reasonable necessity to amend the implementation citation to delete an incorrect internal reference within the cited statute and to add the citation to an additional statute which the rule implements.

24.21.411 MINIMUM GUIDELINES FOR REGISTRATION OF PROGRAMS
(1) remains the same.
(2) The standards must conform to the requirements of 29 CFR section 29.5, as adopted by the department in [NEW RULE IV].

AUTH: 39-6-101, MCA
IMP: 39-6-106, MCA

REASON: There is reasonable necessity to amend ARM 24.21.411 to reference the federal regulations that are being incorporated by reference. In addition, there is reasonable necessity to amend the implementation citation to delete an incorrect internal reference within the cited statute.

24.21.421 EQUAL EMPLOYMENT OPPORTUNITY (1) remains the same.
~~(2) Title 29, C.F.R. Part 5A is a federal regulation concerning employment of apprentices in federally financed projected where no apprenticeship program is in existence. In cases such as this, all provisions of this subchapter apply.~~

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: There is reasonable necessity to amend ARM 24.21.421, as part of general revision and updating of apprenticeship rules, in order to delete a reference to a portion of the federal regulations which is no longer in existence. In addition, to the extent that (2) purported to address federally financed projects, federal regulations will apply as a matter of law to federal projects. Section 39-6-108, MCA, addresses the wage requirements for apprentices employed on Montana public works projects, in conjunction with the requirements of Title 18, chapter 2, part 4, MCA.

6. The department proposes to repeal the following rules:

24.21.101 FUNCTIONS OF THE APPRENTICESHIP BUREAU found at ARM page 24-1327.

AUTH: 39-6-101(2)(b), MCA
IMP: 39-6-101, MCA

24.21.201 RULES OF THE BUREAU found at ARM page 24-1337.

AUTH: 39-6-101(2)(b), MCA
IMP: 39-6-101, MCA

24.21.301 RECORDS OF THE BUREAU found at ARM page 24-1347.

AUTH: 39-6-101(2)(b), MCA
IMP: 39-6-101, MCA

24.21.425 APPROVAL FOR APPRENTICESHIP PROGRAM WHEN EMPLOYER IS PARTICIPANT IN COLLECTIVE BARGAINING AGREEMENT found at ARM page 24-1381.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: There is reasonable necessity to repeal ARM 24.21.101, 24.21.201, 24.21.301, and 24.21.425 in light of the proposed adoption of the New Rules. In addition, the rules proposed for repeal are antiquated and no longer accurately reflect the organization of the department's workforce services division. The subject matter of ARM 24.21.425 is addressed within the regulations being adopted by reference in NEW RULE IV.

7. The federal regulations proposed to be incorporated by reference in NEW RULE IV are available for review and inspection at the department's offices, 1327 Lockey Ave., Helena, Montana. Printed copies of the federal regulations are also available in many public libraries. In addition, links to the federal regulations are posted at: http://wsd.dli.mt.gov/apprenticeship/ (Montana Department of Labor and Industry web site) and at: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1 (National Archives and Records Administration web site).

8. 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: Mark Maki, Apprenticeship Program, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-3037; or by e-mail to mmaki@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

9. 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.

10. 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.

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

12. The department intends to take final action on this proposal so that the amendments, adoptions, and repeals are effective no later than December 28, 2010.

13. 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 October 18, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of 24.29.2701, regarding silicosis benefits; the adoption of NEW RULES I through V; regarding the subsequent injury fund; and the repeal of ARM 24.29.2601, regarding the subsequent injury fund	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 19, 2010, at 2:00 p.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 amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 17, 2010, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Department, Department of Labor and Industry, Attn: Bruce R. Chamberlain, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-7732; fax (406) 444-7710; TDD (406) 444-5549; or e-mail bchamberlain1@mt.gov.

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

<u>24.29.2701 PAYMENT OF SILICOSIS BENEFITS</u> (1) The Department of Labor and Industry will pay silicosis benefits to persons entitled to receive those benefits pursuant to Title 39, chapter 73, MCA. Such persons include the victim of silicosis, the surviving spouse of such a victim, or an appropriate representative of the victim or surviving spouse ~~of the victim~~.

(2) The monthly amount paid as silicosis benefits is established by the legislature, and is subject to a funding level appropriated by the Legislature for payment of monthly silicosis benefits.

~~(a) For the state fiscal biennium 2000-2001, the monthly amount paid as silicosis benefits is $225.00, except for persons who are the surviving spouse of a victim who died prior to March 14, 1974, or the representative of such a surviving spouse. The monthly amount payable to the surviving spouse of a victim who died prior to March 14, 1974, or the representative of such a surviving spouse, is $125.00.~~

(3) After the death of a recipient of benefits, any payment issued by the department for which there is no entitlement to benefits must be reimbursed to the department for deposit in the fund.

AUTH: 39-73-102, MCA
IMP: 39-73-104, 39-73-107, 39-73-108, 39-73-109, 39-73-111, MCA

REASON: There is reasonable necessity to amend this rule to clarify that the benefits paid by the department after the death of a silicosis benefit recipient are to be reimbursed to the department, since the right to receive benefits is personal to the beneficiary and exists only during the beneficiary's life. In addition, because the amount of silicosis benefits are now set by the Montana Legislature, there is reasonable necessity to repeal the benefit rate information. Department records show that no beneficiaries of persons who died prior to March 14, 1974, exist, and therefore this portion of the rule may be repealed.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Applicant" means a person with a disability who applies to the department for SIF certification.

(2) "Certified" and "certification" mean the department has determined an individual has a permanent physical or mental impairment that constitutes a substantial obstacle to employment, based upon review of the SIF application, the medical evidence of impairment form, and rehabilitation evaluation, if applicable.

(3) "Department" means the department of labor and industry.

(4) "Indemnity benefits" means any payment made by an insurer directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights. The term does not include expense reimbursements for items such as meals, travel, or lodging.

(5) "Maximum medical improvement" means the same as provided by 39-71-116, MCA.

(6) "Permanent impairment" means a significant deviation, loss, or loss of use of any body structure or function in an individual, with respect to a health condition, disorder, or disease that has reached maximum medical improvement.

(7) "Reemployment" means placement with the time-of-injury employer in a new or modified position, with or without accommodations made for the certified worker's permanent impairment.

(8) "Referring agent" means a person or agency that assists an individual in preparing an SIF application.

(9) "SIF" means the subsequent injury fund, which is administered by the department.

(10) "Treating physician" means the same as provided by 39-71-116, MCA.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-116, 39-71-901, 39-71-905, MCA

REASON: It is reasonably necessary to adopt NEW RULE I to define the significant terms used in the rules related to the SIF, as used in NEW RULES II through V.

NEW RULE II INTRODUCTION (1) The department administers the subsequent injury fund (SIF), as provided by 39-71-901, et seq, MCA.

(2) A person with a permanent impairment that is a substantial obstacle to employment may seek certification by the department. Only an individual may be certified by the department, not a specific body part or condition.

(3) The department shall use the SIF to reimburse eligible expenses incurred by an insurer for:

(a) Causally related medical payments made on behalf of a certified individual 104 weeks after the occurrence of a subsequent injury or onset of an occupational disease; and

(b) Indemnity payments made to a certified individual after the insurer has paid a total of 104 weeks of indemnity payments.

(4) The SIF may not reimburse administrative expenses incurred by an insurer to process a claim.

(5) The department must receive timely and appropriate notice from the insurer pursuant to [NEW RULE V] before the department may reimburse an insurer.

(6) The department may require an insurer of a certified individual to submit reports of periodic medical examinations of the certified individual.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-901, 39-71-905, 39-71-907, 39-71-908, MCA

REASON: There is reasonable necessity to adopt NEW RULE II for the purpose of explaining the general procedures of application, certification, and reimbursement to insurers pursuant to the Subsequent Injury Fund program. This proposed rule, together with NEW RULES I, III, IV, and V, proposed as part of this notice, describe SIF procedures with specificity. The proposed rule clarifies that only an individual may obtain certification under the SIF.

NEW RULE III CERTIFICATION PROCESS (1) A person with a permanent impairment that is a substantial obstacle to employment may apply for SIF certification. Application for SIF certification is voluntary on the part of the applicant.

(2) Application for certification requires the following documentation:

(a) a completed SIF application form signed by the applicant, which includes:

(i) information regarding applicant's education, training, and job skills;

(ii) the applicant's employment history for the past ten years;

(iii) the applicant's assessment of the impact of applicant's permanent impairment on future employment; and

(iv) a description of any modifications to employment reasonably necessary to accommodate work restrictions; and

(b) a completed SIF medical evidence of permanent impairment form signed by a treating physician, which includes:

(i) an assessment of applicant's permanent impairment;

(ii) an assessment of the impact of applicant's permanent impairment on applicant's employability, including a description of permanent work-related restrictions and limitations;

(iii) copy of a treating physician's notes documenting applicant's permanent impairment and obstacles to employment, including any work restrictions, if available; and

(iv) evidence the applicant has achieved maximum medical improvement.

(3) The department shall review the application, the medical evidence of permanent impairment form, and other supporting documentation. The department shall evaluate whether the applicant qualifies for certification, in accordance with the requirements set forth by [NEW RULE IV].

(4) The department encourages persons with a permanent impairment that is a substantial obstacle to obtaining employment or reemployment to apply for certification when a treating physician has not completed the medical evidence form. The department shall notify the applicant in writing when a medical evidence of form or other supporting information is needed to complete the certification process.

(5) The applicant may submit a signed release to the department that authorizes the department to contact, notify, and confer with a referring agent, a designated representative, or applicant's medical provider.

(6) When the department approves an application, the department shall notify the applicant and referring agent, if applicable, and provide the applicant with an SIF certification card.

(7) The department shall retain an incomplete application for a period of one year. When an application remains incomplete one year after submission, the department shall deny the application.

(8) When the department denies an application, the department shall inform the applicant and referring agent, if applicable, in writing of the reasons for denial.

(9) Upon the written petition of the applicant, the department shall reconsider the denial of an application, pursuant to the administrative review process outlined by ARM 24.29.206. The applicant shall submit the petition for administrative review and any additional information for department consideration within six months following a denial.

(10) After an administrative review that affirms the denial of an application, the applicant may submit a written request to the department for a contested case hearing, pursuant to ARM 24.29.207.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-905, MCA

REASON: It is reasonably necessary to adopt NEW RULE III to establish consistency, accuracy, and equity in the SIF application and evaluation process. The proposed rule sets forth the formal process for applying for SIF certification and allows for referring agents to assist applicants in the preparation of an application and to confer with the department on the applicant's behalf. The proposed rule establishes notice requirements for the department and a process for administrative reconsideration and dispute resolution.

NEW RULE IV CERTIFICATION REQUIREMENTS (1) The department shall grant SIF certification to an individual when all of the following requirements are met:

(a) The applicant has documented the existence of a permanent physical or mental impairment that adversely impacts the applicant's employability, in accordance with [NEW RULE III]. The applicant's permanent impairment may result from a congenital condition, trauma, or disease. The permanent impairment does not have to be caused by a work-related injury or occupational disease;

(b) The medical evidence of applicant's permanent impairment is not more than six months old at the time of application;

(c) The medical evidence of permanent impairment relates directly to the condition identified on the application form;

(d) A treating physician has provided written documentation that the applicant is permanently impaired; and

(e) A treating physician has provided written documentation of employment restrictions or limitations due to the applicant's permanent impairment that demonstrates the impairment presents a substantial obstacle to employment or reemployment.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-905, MCA

REASON: It is reasonably necessary to adopt NEW RULE IV to set forth specific requirements for certification with the SIF. The proposed rule clarifies that a permanent impairment may or may not be the result of a work-related injury. To ensure that the medical information available for department review is reasonably current, the proposed rule establishes a requirement that medical evidence must be less than six months old, unless the applicant has stabilized at maximum medical improvement. The proposed rule requires the applicant to submit documentation of employment restrictions or limitations as evidence of the substantial obstacle to employment or reemployment experienced by the applicant.

NEW RULE V REIMBURSEMENT PROCESS (1) The department shall determine the right of an insurer to SIF reimbursement of medical and indemnity payments to an SIF-certified individual in accordance with the criteria outlined by this rule.

(2) The insurer shall provide written notice to the department no sooner than 150 days or later than 90 days before the SIF becomes liable to reimburse the insurer for medical or indemnity benefits paid on behalf of the SIF-certified individual.

(3) After an insurer's right to SIF reimbursement has been established, the department recommends the insurer request SIF reimbursement in writing at six-month intervals.

(a) The department may not reimburse the insurer for medical benefits paid to or on behalf of an SIF-certified individual during the first 104 weeks following the date of injury. The insurer shall submit copies of the SIF-certified individual's first report of injury and all related medical reports for department review.

(b) The department may not reimburse an insurer for indemnity benefits until after the insurer has paid a total of 104 weeks of indemnity benefits to the SIF-certified individual.

(4) Each reimbursement request must state the amount of reimbursement claimed for medical and indemnity payments and include the following documentation for the six-month reimbursement period:

(a) computer printout or comparable listing that identifies the type of indemnity payment to the SIF-certified individual (temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability) and includes check numbers, dates checks were issued, dates of indemnity, total weeks of indemnity, and the total amount paid;

(b) computer printout or comparable listing of all medical bills paid, including check numbers, dates checks were issued, provider names, and dates of service; and

(c) copies of all medical bills with the corresponding explanations of benefits and directly related medical records.

(5) The insurer shall notify the SIF representative and the department at the outset of settlement negotiations involving an injured individual who is SIF-certified. The insurer shall waive the right to SIF contribution by failing to notify the department at the outset of settlement negotiations.

(6) The insurer shall submit any negotiated settlement agreement to the SIF representative and the department for approval prior to final settlement.

(7) Disputes arising over payment or reimbursement between the department and the insurer may be resolved by the contested case hearing process, pursuant to ARM 24.29.207, at the written request of the either party.

AUTH: 39-71-203, 39-71-904, MCA
IMP: 39-71-907, 39-71-908, 39-71-909, 39-71-912, 39-71-920, MCA

REASON: It is reasonably necessary to adopt NEW RULE V to identify time thresholds critical to the reimbursement of insurers and to outline the documentation required to support a reimbursement request. To comport with 39-71-920, MCA, the proposed rule requires insurers to obtain concurrence of the department's SIF representative before a settlement agreement between the insurer and claimant is finalized. The proposed rule provides explicit direction for dispute resolution.

5. The department proposes to repeal the following rule:

24.29.2601 NOTIFICATION WHEN COMPENSATION TO BE CONTINUED BEYOND 104 WEEKS , found at page 24-2285 of the ARM.

AUTH: 39-71-904, MCA
IMP: 39-71-904, MCA

REASON: There is reasonable necessity to repeal this rule and adopt NEW RULES I through V to more fully explain the procedures of application, certification, and reimbursement to insurers pursuant to the SIF program.

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: Bruce R. Chamberlain, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-7710; or by e-mail to bchamberlain1@mt.gov and must be received no later than 5:00 p.m., November 26, 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 not apply.

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 October 18, 2010

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.6.712, pertaining to food safety and inspection service (meat, poultry)	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 30, 2010 the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 22, 2010 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone (406) 444-9321; TTD number 1-800-253-4091; fax (406) 444-1929; e-mail cmackay@mt.gov.

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

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

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

(5) The Department of Livestock incorporates by reference the following as they were amended effective September 8, 2010.

(a) 9 CFR 422.

(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The proposed amendment to ARM 32.6.712 is necessary for the Montana State Meat and Poultry Inspection program to maintain its "equal to" status. The proposed amendment was brought to Department of Livestock's attention by the review staff with USDA FSIS. The proposed amendment in (5) will adopt the 2010 amendments to 9 CFR 309 dealing with quantity of contents labeling and procedures requirements for accurate weights.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929,

or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., November 29, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. November 29, 2010.

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

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

8. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State October 18, 2010.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.220 and 32.3.401 pertaining to semen shipped into Montana and brucellosis definitions, and the adoption of new rules I through V pertaining to designated surveillance area and penalties	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

1. On November 23, 2010 at 3:00 p.m. the Department of Livestock (department) will hold a public hearing at the fairgrounds in Twin Bridges, Montana, to consider the amendment and adoption of the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 15, 2010 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.220 SEMEN SHIPPED INTO MONTANA; PERMIT REQUIRED

(1) through (6) remain the same.

~~(7) Equine semen from all equine, used for production of semen in artificial insemination, must test negative for:~~

~~(a) equine infectious anemia; and~~

~~(b) equine viral arteritis every six months by a test approved by the state veterinarian.~~

(8) and (9) remain the same but are renumbered (7) and (8).

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

REASON: Testing of equine semen is no longer required in this section.

32.3.401 DEFINITIONS (1) The "administrator" is the individual as defined in 81-1-301, MCA, or that individual's designee.

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

(3) An "approved brucella vaccine" is a brucella product approved by and produced under license of the United States Department of Agriculture for injection into cattle or bison to enhance their immune response to brucella.

(4) "Bison" are all animals in the genus bison.

(5) remains the same.

~~(2)~~ (6) "Brucellosis" is ~~an~~ the contagious, infectious, and ~~transmissible~~ communicable disease of animals and ~~man~~ humans caused by bacteria of the genus brucella, brucella ~~aborutus~~ abortus, brucella suis, or brucella melitensis, which are referred to in these rules collectively as brucella organisms or individually as a brucella organism. ~~Disease control in animals shall be in compliance with Title 9 CFR part 8 and USDA APHIS brucellosis eradication Uniform Method and Rules (UM&R).~~

(a) Brucellosis is also known as bangs disease and undulant fever.

(7) A "brucellosis surveillance herd management plan" (herd plan) is a document outlining brucellosis mitigation and surveillance practices that will be or have been instituted by an individual designated surveillance area producer or DSA production unit.

(a) To reflect these practices, a "herd plan" may also outline variances to some testing requirements.

(b) A "herd plan" is mutually agreed upon by the producer and the Department of Livestock and should be reviewed annually.

(8) "Cattle" are all animals in the genus bos.

(9) A "Designated Surveillance Area (DSA)" is a geographically defined region as specified in [New Rule II] in which cattle may be exposed to brucellosis from wildlife.

(10) A "Montana approved livestock market" is a livestock market that is approved by the United States Department of Agriculture (USDA) and/or the administrator. The animals must be secured within the market facility.

(11) An "official adult vaccinate" (AV) is a sexually intact animal of the genus bos or bison vaccinated with an approved brucella vaccine, using approved procedures, and of an age older than that permitted for official calfhood vaccination.

(12) An "official brucellosis test" (test) is a laboratory protocol for the brucellosis classification of animals as approved by the administrator.

(13) An "official calfhood vaccinate" (OCV) is an animal vaccinated at an official calfhood vaccination eligible age with an approved brucella vaccine using approved procedures.

(14) "Official calfhood vaccination eligible animals" (OCV eligible) means sexually intact female cattle or domestic bison of the age, as designated by the administrator, which may be vaccinated with an approved brucella vaccine to become an official calfhood vaccinate.

(15) "Official Individual Identification" is the unique individual identification of cattle or domestic bison as approved by the administrator.

(4) remains the same but is renumbered (16).

(3) remains the same but is renumbered (17).

(18) A "recognized slaughtering establishment" is any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or a state meat inspection act.

(19) "Test eligible animals" means sexually intact cattle or domestic bison twelve months of age or older.

(20) "Vaccinate" (as it pertains to [New Rules I-VI]) refers to Official Adult Vaccination or Official Calfhood Vaccination.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: The preceding terms are inadequately defined or absent in existing rule. These definitions provide for the readability and clarity of these laws and rules. The definitions are derived from scientific literature and/or are typical meanings of the words.

4. The proposed new rules provide as follows:

NEW RULE I DESIGNATED SURVEILLANCE AREA (1) The designated surveillance area (DSA) of Montana is described as:

(a) Park County – south of Interstate 90;

(b) Gallatin County – south of Interstate 90 from Park-Gallatin County line to Bozeman, then south of Highway 84 from Bozeman to Gallatin-Madison County line;

(c) Madison County – south of Highway 84 from Gallatin-Madison County line to Norris, then east of U.S. Highway 287 from Norris to Ennis, then south of State Highway 287 from Ennis to Alder, then east of State Rd. 357 (Upper Ruby Road - becomes Centennial Divide Road) to Madison-Beaverhead County line; and

(d) Beaverhead County – from Madison-Beaverhead County line, east of Forest Route 100 (becomes Road 204 - Gravelly Range Road), continuing east of 204 to Stibel Lane (Road 202) - south of South Valley Rd. (State Road 509) approximately 1 mile, then east of Price Peet Rd. (Road 207) running south to the Montana/Idaho border.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: The DSA circumscribes the geographical area in southwest Montana where brucellosis-positive elk are known or thought to exist during the hunting season or at other times of the year. In this area, co-mingling of elk and livestock, and livestock exposure to tissue containing brucella are possible. This area has been defined by MDOL with consultations from Montana Department of Fish, Wildlife and Parks (FWP). Inputs from FWP include professional knowledge as well as data on distribution, movement patterns, numbers, and brucellosis testing results compiled during routine elk surveys, research, hunter check stations, or other management actions.

NEW RULE II ANIMAL IDENTIFICATION WITHIN THE DSA (1) All sexually intact cattle and domestic bison 12 months of age and older within the DSA must be identified with official individual identification.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: Individual identification is imperative for disease surveillance and traceability.

NEW RULE III TESTING WITHIN THE DSA (1) The following official brucellosis test requirements apply to all test eligible animals that are or have been located within the DSA boundaries at any time between January 15 and June 15 of any calendar year:

(a) an annual test;

(b) a test within 30 days prior to movement out of the DSA or change of ownership, unless that movement is to an approved Montana livestock market or directly to a slaughter facility that will test upon arrival.

(2) A test completed July 16 or after is accepted through February 15 of the following year.

(3) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on a brucellosis surveillance herd management plan.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: Testing within the DSA is intended to prevent the movement of potentially infected cattle out of an area in which diseased wildlife exist. Additionally, testing associated with this area promotes trading partner confidence in the disease-free status of exported livestock from the entire state of Montana. It is consistent with the USDA-APHIS concept paper and the new direction of the brucellosis eradication program. Animals associated with the DSA may be tested multiple times within a 30-day period due to multiple changes in ownership and/or movement, reflecting the continued risk of exposure to wildlife reservoirs.

NEW RULE IV VACCINATION WITHIN THE COUNTIES IN WHICH THE DSA IS LOCATED (1) Official Calfhood Vaccination (OCV) is required within the entirety of counties in which the DSA is located.

(a) Female cattle or domestic bison that are not OCV eligible may become Official Adult Vaccinates (AV) following a negative brucellosis test.

(b) Variances or exceptions to requirements will be considered on an individual basis by the administrator.

AUTH 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: Vaccination is imperative for the protection of the breeding population in Montana. Required OCV within the counties in which the DSA is located simply makes mandatory the brucellosis program utilized by USDA-APHIS to eradicate brucellosis from livestock in the United States and improves the immunity of, and reduces the number of nonvaccinated animals within the breeding herd throughout the entire state of Montana.

NEW RULE V PENALTIES (1) Persons found to be in violation of rules or laws relating to brucellosis are subject to:

(a) a $100 fee to the Department of Livestock, per animal, for failure to comply with ARM 32.3.438 (REF 81-2-102(c), MCA);

(b) any additional departmental expenses regarding the investigation if a violation of law has taken place, as defined in 81-2-109, MCA.

(2) Disputes will be heard by the Board of Livestock according to contested case rules of MAPA.

(3) In addition to the fees and expenses imposed in (1) any person, persons, firm, or corporation that fails to comply:

(a) may be guilty of a misdemeanor as described in 81-2-113, MCA; or

(b) may face civil liability as described in 81-2-114, MCA.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-109, 81-2-110, 81-2-111, 81-2-113, 81-2-114, MCA

REASON: It will likely be a rare occurrence that a penalty or noncompliance fee is warranted. However, a producer who fails to comply will be required to pay a fee to the MDOL as a penalty in addition to paying for expenses such as the hourly wage of a MDOL investigator, per diem, mileage, lodging, and other miscellaneous expenses as per 81-2-102(c), 81-2-109, MCA

ECONOMIC IMPACT NEW RULE I: The boundaries themselves create no economic impact. However, a boundary may transect/divide a production unit or ranch and therefore may require a change in management due to the variation in risk (and therefore testing requirements) on each side of the boundary.

NEW RULE II: Vaccinated animals are officially individually identified as part of the required procedure at the time of OCV. Tagging cost is generally built into the cost per head of OCV. USDA silver tags are another choice, supplied to the producer for individual identification of other classes of animals at no cost. RFID tags are currently supplied to DSA producers at no charge. Additional labor may be required for retagging. However, if done at the same time as another handling event, the time required and the identification cost is negligible.

NEW RULE III: One economic concern includes the need for an additional handling event. Most producers handle their adult cattle at least once annually either for some management event (pregnancy check, etc.). To address this, the Montana Department of Livestock (MDOL) has in most cases allowed for the blood sampling to occur concurrently with routine ranch operations to minimize the number of handling events and to make efficient use of labor already available. Additionally,

MDOL has frequently allowed for field personnel to be available for blood sampling or to assist the local veterinarian and producer with paperwork, sample handling, and labor. Animals originating from within the DSA moving through a Montana Livestock Auction for change of ownership do not need to be handled on the ranch; they are tested at the market or at slaughter at no additional cost to the seller.

Shrink (weight loss) is a possible concern. Anytime livestock are handled some shrink will occur. For this reason, blood sampling is typically scheduled at the same time as another routine handling event and therefore, shrink is already expected. Generally, testing is done on adult cattle not immediately going for sale or slaughter making this concern negligible.

Another concern is damage and wear to equipment and/or handling facilities. Anytime livestock are handled, some wear will occur along with the possibility of damage to equipment or facilities. For this reason, test sampling is typically scheduled at the same time as another handling event. Additionally, MDOL maintains some cattle handling equipment for use if needed. As of July 1, 2010 two dollars ($2) became available for reimbursement to the producer for each sample taken on the ranch to help defray equipment and labor costs.

NEW RULE IV: Approximately 70 percent of all female calves are OCV each year in Montana. Within the DSA this percentage is likely higher. Because the majority of producers in this area are currently practicing OCV, the additional impact will be minimal. OCV typically costs the producer $2-$5.50 per head.

NEW RULE V: Penalties do not apply to producers in compliance with requirements. A "typical" noncompliant producer will move only a couple test eligible or non-OCV animals and therefore the fee reflects an expense that reasonably reduces or altogether removes any single financial benefit of noncompliance. Some producers may refuse to comply with entire herd testing and may have fees associated that reflect herd sizes of 20 or more cattle.

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: Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., November 29, 2010.

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

7. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to

cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

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

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State October 18, 2010.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.108, 32.3.206, 32.3.212, 32.3.224, 32.3.302, 32.3.306, 32.3.311, 32.3.312, 32.3.401, 32.3.411, 32.3.412, 32.3.456, 32.3.608, 32.3.611, 32.3.1307, 32.3.1402, 32.3.2303, 32.4.101, 32.4.201, 32.4.301, 32.4.302, 32.4.401 through 32.4.404, 32.4.501 32.4.502, 32.4.601, 32.4.602, 32.4.701, 32.4.702, 32.4.801, 32.4.802, 32.4.901, 32.4.1001, 32.4.1301 through 32.4.1304, 32.4.1309, 32.4.1311 through 32.4.1313, 32.4.1319, 32.4.1320, 32.15.203, 32.15.208, 32.15.210 pertaining to game farm regulations and deputy state veterinarians	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 29, 2010, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 22, 2010 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

<u>32.3.108 QUARANTINE AND RELEASE OF QUARANTINE</u> (1) through (6) remain the same.

(7) Quarantine may be removed by or with the approval of the <u>deputy state</u> veterinarian issuing the quarantine or by any authorized quarantine agent of the Department of Livestock when he is satisfied that, according to generally accepted veterinary practice, the animals are not affected with or have not been directly exposed to a quarantinable disease.

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

32.3.206 OFFICIAL HEALTH CERTIFICATE (1) and (2) remain the same.

(3) The accredited veterinarian issuing the health certificate must certify that the animals shown thereon are free from evidence of any infectious, contagious, or communicable disease or known exposure thereto.

(4) remains the same.

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) Except as provided in (a), (b), (c), and (d) no female cattle over the age of four months may be imported into the state of Montana for any purpose other than immediate slaughter unless they are officially vaccinated, by an ~~licensed~~ accredited veterinarian approved in his or her state to administer the vaccination, with a Brucella abortus vaccine approved by the Veterinary Biologics Division, U.S. Department of Agriculture except as follows:

(a) through (5) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-2-703, MCA

32.3.224 BISON (1) through (1)(b) remain the same.

(c) female bison must be officially calfhood vaccinated by a~~n accredited~~ deputy state veterinarian prior to entry into Montana, with a Brucella abortus vaccine approved by the administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture except the following:

(i) and (ii) remain the same.

(iii) nonvaccinated bison four to 11 months of age placed under quarantine upon arrival, for official calfhood vaccination or spaying by a~~n accredited~~ deputy state veterinarian, within 30 days of their entry;

(iv) nonvaccinated bison less than four months of age, imported without their dams, placed under quarantine upon arrival, for official calfhood vaccination or spaying by a~~n accredited~~ deputy state veterinarian, within six months of their entry; and

(v) and (d) remain the same.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.302 REPORTING OF PSEUDORABIES (1) Any swine producer or person in custody of swine who has reason to suspect the presence of pseudorabies infection shall report that fact immediately to the state veterinarian or a practicing ~~accredited~~ deputy state veterinarian of his choice.

(2) A~~n accredited~~ deputy state veterinarian who suspects or has reason to

suspect the presence of pseudorabies in Montana swine shall immediately report the particulars to the state veterinarian's office by the fastest means possible.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.306 USE OF PSEUDORABIES VACCINE (1) and (2) remain the same.

(3) The use of pseudorabies vaccine in Montana is prohibited, except when used under the official supervision of a licensed ~~accredited~~ deputy state veterinarian by persons approved by the state veterinarian with:

(a) through (4) remain the same.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.311 PROCEDURE UPON DETECTION OF PSEUDORABIES

(1) remains the same.

(2) Upon request of the owner of the infected herd, the investigation in ~~paragraph~~ (1) may be conducted with assistance and participation of a ~~licensed~~ deputy state veterinarian selected and paid for by the owner.

(3) remains the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.3.312 MEMORANDUM OF UNDERSTANDING (1) through (1)(b) remain the same.

(c) The owner may select, at his expense, a ~~licensed~~ deputy state veterinarian to participate in the preparation of the memorandum and eradication plan.

(d) through (4) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.3.401 DEFINITIONS (1) through (5)(b) remain the same.

(c) All official tests used for qualifying rams for interstate shipment must be done by a ~~licensed~~ deputy state veterinarian. The blood samples must be submitted to an approved laboratory for testing. Individual identification of tested rams must be recorded and accompany the blood samples to the laboratory. Costs for veterinary service and laboratory test fees are to be borne by the owner.

AUTH: 81-1-102, 81-2-103, MCA
IMP: 81-1-102, MCA

32.3.411 PROCEDURE UPON DETECTION OF BRUCELLOSIS

(1) Immediately upon quarantine of a herd for brucellosis a ~~district~~ deputy state veterinarian shall conduct an epidemiological investigation of the infected herd and premises involved to determine the specific methods and actions necessary to eradicate the disease from the herd and to determine contact herds and animals.

(2) Upon request of the owner of the infected herd, the investigation provided for in (1) ~~of this rule~~ may be conducted with the assistance and participation of a ~~licensed~~ deputy state veterinarian selected and paid for by the owner.

(3) and (4) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.3.412 MEMORANDUM OF UNDERSTANDING (1) through (1)(c) remain the same.

(2) This memorandum of understanding will be developed with the participation of a ~~licensed~~ deputy state veterinarian selected by the owner if the owner so desires.

(3) and (4) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.3.456 REPORTING OF DEATH LOSS (1) Within seven days after discovery of the death of an animal belonging to a herd quarantined for brucellosis, the owner or his agent shall notify the ~~district~~ Department of Livestock veterinarian supervising the quarantine of the fact of the death and supply him with the ear tag numbers of the quarantined dead animal or animals.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.3.608 REPORTING DEATH OF ANIMAL FROM A TUBERCULOSIS-QUARANTINED HERD (1) The owner or his agent-in-charge shall report in writing to the state veterinarian the death of any quarantined animal. All man-made identification shall be salvaged and turned over to the ~~regulatory~~ state veterinarian in charge of the herd.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.611 DUTIES OF VETERINARIANS AND MEAT INSPECTORS UPON FINDING TUBERCULOSIS LESIONS IN ANIMALS

(1) Deputy state ~~V~~veterinarians and meat inspectors who detect suspected tuberculosis lesions in animals shall take possession of the hide from that animal.

(2) and (3) remain the same.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-103, MCA

32.3.1307 SAMPLE COLLECTION (1) The owner of the flock or his or her agent will have a~~n accredited~~ deputy state veterinarian collect and submit tissues from animals reported pursuant to 9 CFR 79.2 at paragraph (a)(2)(ii) to an APHIS-designated laboratory.

AUTH: 81-2-103, MCA
IMP: 81-2-102, MCA

32.3.1402 BLOOD TESTING PROCEDURES (1) Equine blood samples collected for official EIA tests shall be collected by a state or federal animal health official or a deputy state veterinarian who is licensed, deputized, and accredited in the state in which the animal being tested is located.

(2) Official EIA test samples shall be accompanied to the testing laboratory by a completed official EIA test report form. The deputy state veterinarian or animal health official collecting the EIA test samples shall record the date the samples were collected and affix his/her signature to the official EIA test report.

(3) remains the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, 81-2-103, MCA

32.3.2303 DIAGNOSTIC TESTS (1) remains the same.

(2) Each report of a diagnostic test must be signed by the licensed veterinarian obtaining the blood and making a diagnostic test, and shall contain a complete statement of identification by means of ear tag numbers, registration numbers, tattoo numbers, holding brands, or other acceptable identification; also the name and address of the owner and actual results of the test and action taken.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

32.4.101 DEFINITIONS remains the same.

~~(1)~~ (2) "Alternative livestock veterinarian" means a deputy state veterinarian who has been trained and approved by the department to perform regulatory work on ~~game farm animals~~ alternative livestock.

~~(2)~~ (3) "Bill of sale" means the ~~game farm~~ alternative livestock invoice and bill of sale form utilized by the Department of Livestock to document the valid transfer of ownership of ~~game farm animals~~ alternative livestock.

~~(3)~~ (4) "Catch pen" means a fenced enclosure used in conjunction with the handling facility to hold ~~game farm animals~~ alternative livestock for individual inspection, marking, or treatment.

~~(4)~~ (5) "Certificate of veterinary inspection" means the Department of Livestock inspection certificate form designed to fulfill the requirements of a certificate of inspection under ARM 32.18.201, and conforming to the requirements of the health certificate under ARM 32.3.206, for the inspection of ~~game farm~~

~~animals~~ alternative livestock. The form must include the number, species, age, sex, individual animal identification, owner, ~~game~~ alternative livestock farm information and the reason for the inspection.

(5) through (10) remain the same but are renumbered (6) through (11).

~~(11)~~ (12) "Emergency" means a sudden unexpected medical condition demanding immediate medical care not available on the ~~game~~ alternative livestock farm whereby if medical treatment is not obtained immediately, the animal may die.

~~(12)~~ (13) "Game farm" means the enclosed land area upon which ~~game farm animals~~ alternative livestock may be kept, as defined by 87-4-406(3), MCA.

~~(13)~~ (1) "~~Game farm animal~~ Alternative livestock" means the animals defined as ~~game farm animals~~ alternative livestock and cloven hoofed ungulates in 87-4-406, MCA except domestic water buffalo (*Bubalus bubalis*).

(14) "Game parts" means parts of an ~~game farm animal~~ alternative livestock carcass that may be taken from an ~~game~~ alternative livestock farm in accordance with the provisions of 87-4-415 and 87-4-416, MCA. Game parts does not include the regenerable parts harvested annually from ~~game farm animals~~ alternative livestock.

(15) remains the same.

(16) "Handling device" means a mechanical structure or animal restraining device (such as a squeeze chute) that facilitates inspection and handling of individual ~~game farm animals~~ alternative livestock.

(17) and (18) remain the same.

(19) "Herd tattoo" means the recorded whole herd mark or brand required by 81-3-104, MCA for ~~game farm animal~~ alternative livestock identification.

(20) and (21) remain the same.

(22) "Montana official ear tag" means an ~~game farm animal~~ alternative livestock identification tag provided by the Department of Livestock that meets the requirements of 87-4-414(4), MCA.

(23) remains the same.

(24) "Prohibited ~~game farm animals~~ alternative livestock" means animals that are prohibited from importation for purposes of ~~game~~ alternative livestock farming pursuant to 87-4-424, MCA.

(25) "Quarantine facility" means a department-approved enclosure, separate from the catch pen and handling device, used to isolate newly acquired or diseased ~~game farm animals~~ alternative livestock.

(26) "Restricted ~~game farm animals~~ alternative livestock" means animal species, subspecies, and their hybrids subject to specific importation restrictions.

(27) and (28) remain the same.

(29) "Transfer" means the change in ownership interest or any part of an ownership interest in ~~a game farm animal~~ alternative livestock.

(30) "Transportation" means the movement of ~~a game farm animal~~ alternative livestock to or from a licensed ~~game~~ alternative livestock farm to another licensed ~~game~~ alternative livestock farm, a market, or any other approved destination.

(31) remains the same.

(32) "Whole herd mark" means an artificial mark or brand recorded by the department for the exclusive sole use of the individual in whose name the mark or

brand is recorded. The whole herd mark assigned by the department for ~~game farm animals~~ alternative livestock is the herd tattoo.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.201 IDENTIFICATION OF ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK WITH THE EXCLUSION OF OMNIVORES AND CARNIVORES

(1) ~~Game farm animals~~ Alternative livestock owned or transferred to any ~~game~~ alternative livestock farm within the state of Montana must be individually identified by the method prescribed by the department.

(2) Every ~~game farm~~ alternative livestock animal must be marked with a whole herd mark (herd tattoo) registered to the ~~game~~ alternative livestock farm animal owner and placed in the location on the animal identified by the department's recorder of marks and brands.

(a) The herd tattoo placed in an animal born on or imported to the ~~game~~ alternative livestock farm shall be that of the owner of the animal and is recognized as the original tattoo.

(b) and (c) remain the same.

(3) Under the authority of 87-4-414, MCA, each ~~game farm animal~~ alternative livestock will be marked with a Montana official ear tag issued by the department.

(a) remains the same.

(b) USDA official ear tags and Montana official ear tags are nontransferable and can only be removed from an ~~game farm~~ alternative livestock animal by a department-designated agent.

(c) Montana official ear tags that are lost from ~~a game farm animal~~ alternative livestock must be surrendered to a department designated agent or the department as soon as possible after the retrieval of the tag.

(d) All animal identification tags retrieved from ~~game farm animals~~ alternative livestock by the department-designated agent shall be submitted to the department Helena office.

(4) and (5) remain the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.301 INSPECTION OF ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) Prior to the sale, transfer of ownership, or transportation of a live animal from a licensed ~~game~~ alternative livestock farm, with the exclusion of omnivores and carnivores, the animal must be inspected by the department-designated agent with the following exceptions:

(a) The department may waive the inspection if the sale or transfer of ownership of the ~~game farm~~ alternative livestock animals is between members of the same family and if no change in location of the animals occurs;

(b) ~~Game farm animals~~ Alternative livestock may be moved without inspection between ~~game~~ alternative livestock farm properties under one license;

(c) and (i) remain the same.

(ii) An inspection must be completed by a designated agent of the department prior to movement from the vet clinic and return to the ~~game~~ alternative livestock farm; and

(iii) Any untagged and untattooed ~~game farm animal~~ alternative livestock must be tagged and marked in compliance with 87-4-414, MCA and 81-3-102, MCA prior to return to the ~~game~~ alternative livestock farm; and

(d) through (2) remain the same.

(a) If the animal has been tagged or marked, a department designated agent must remove the official ear tags from the animal and all of the identification tags from the animal must be submitted to the department with a completed certificate of veterinary inspection. The department may allow the animal to be inspected at a location off of the ~~game~~ alternative livestock farm and transported in accordance to the procedures outlined in (3)(a).

(b) remains the same.

(3) ~~Game farm animals~~ Alternative livestock that are marketed for hunting purposes or an animal slaughtered on the ~~game~~ alternative livestock farm must be inspected by a department designated agent.

(a) The ~~game farm animal~~ alternative livestock including but not limited to the carcass, parts, or meat must be inspected prior to removal from the licensed ~~game~~ alternative livestock farm property unless:

(i) remains the same.

(ii) The department (Helena office) must give permission for the owner or owner's agent to move the animal from the ~~game~~ alternative livestock farm. A transport number or certificate of identification number will be given to the ~~game~~ alternative livestock farmer. This number must be listed on the bill of sale for the animal or other department-specified form. The valid bill of sale for the animal or department-approved form must accompany the animal to its destination.

(iii) Prior to the movement of the animal from the property, a department designated agent must be informed by the ~~game~~ alternative livestock farm licensee of the immediate destination of the animal. The department-designated agent shall inspect the animal and retrieve the identification tags from the animal. All identification tags, bill of sale (or other approved form), and completed certificate of veterinary inspection must be submitted to the department within five days of completion of the inspection.

(b) If a department-designated agent is present on the licensed ~~game~~ alternative livestock farm at the time of the hunt or slaughter, the department will waive the requirement to inform the Helena office and the inspection of the animal pursuant to 87-4-416, MCA, must be completed prior to movement of the animal carcass, meat, or parts from the ~~game~~ alternative livestock farm.

(4) remains the same.

(a) Transfer of ownership of ~~game farm animals~~ alternative livestock must meet all of the requirements of ARM 32.18.106. The valid bill of sale must bear the signature of one of the recorded owner(s) of the recorded whole herd mark or his assigns.

(b) remains the same.

(c) A copy of the bill of sale must be kept in records maintained by the ~~game~~ alternative livestock farm licensee.

(5) The ~~game~~ alternative livestock farm licensee shall present ~~game farm animals~~ alternative livestock for inspection under conditions where the designated agent for the department can safely read all marks and identification on the animals.

(6) The inspection shall permit the movement of the ~~game farm animals~~ alternative livestock from the place of inspection immediately to the destination shown on the inspection certificate. No diversion or off-loading of the ~~game farm animals~~ alternative livestock will be permitted without approval from the department and further inspection. A certificate of inspection shall permit the movement of the ~~game farm animals~~ alternative livestock identified thereon for no more than 72 hours after time of issue.

(7) remains the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.302 INSPECTION OF ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK AND INTERNAL FACILITIES (1) An authorized agent of the department may enter the ~~game~~ alternative livestock farm and conduct an inspection of the internal facilities and/or animals under the following conditions:

(a) For routine inspection purposes, after contacting the owner/manager of a licensed ~~game~~ alternative livestock farm, an authorized agent of the department may enter at reasonable times on the ~~game~~ alternative livestock farm to inspect the ~~game farm animals~~ alternative livestock and the internal facilities.

(b) If the department has reasonable cause to believe that a violation of Title 87, chapter 4, Title 81, chapter 3, MCA, or any rule made under the authority of 87-4-422, MCA, has occurred, an unannounced inspection of the ~~game~~ alternative livestock farm internal facilities and/or animals may be conducted.

(c) Upon request, the ~~game~~ alternative livestock farm licensee shall present the ~~game farm animals~~ alternative livestock for inspection under the conditions required by ARM 32.4.301.

(d) The ~~game~~ alternative livestock farm licensee is responsible for assembling, handling, and restraining animals and for all subsequent costs incurred to present the animals for inspection.

(2) The department may require the inspection of ~~an~~ escaped, recaptured ~~game farm animal~~ alternative livestock.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.401 CHANGE OF OWNERSHIP TESTING REQUIREMENTS FOR ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) Prior to a change of ownership, movement, transfer, or sale of ~~game farm animals~~ alternative livestock within Montana, the animals must meet all testing requirements mandated by the state veterinarian under ARM Title 32, chapter 3, subchapters 4 and 6.

(2) The department may waive change of ownership and transportation testing requirements of ~~game farm animals~~ alternative livestock consigned for sale as shooters and/or slaughter on the immediate ~~game~~ alternative livestock farm

premises, or consigned to an out-of-state destination with the following conditions:

(a) and (b) remain the same.

32.4.402 ELK-RED DEER HYBRIDIZATION TESTS (1) and (2) remain the same.

(3) The licensee shall test all elk born between January 1, 2000 and December 31, 2001 for elk-red deer hybridization by January 1 of the year following the year of birth or when the animal is sold or transported from the ~~game~~ alternative livestock farm, whichever comes first.

(4) remains the same.

(5) The elk-red deer hybrid test procedures for all ~~game~~ alternative livestock farm elk is as follows:

(a) Blood samples must be drawn and submitted by an ~~designated~~ alternative livestock veterinarian.

(b) through (6) remain the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.403 REQUIREMENTS FOR ~~GAME FARM ANIMAL~~ ALTERNATIVE LIVESTOCK GAMETES (OVA AND SEMEN) AND EMBRYOS (1) The use of semen within the state of Montana and the import of semen into the state, for artificial insemination of ~~game farm animals~~ alternative livestock must meet all of the requirements of 81-2-403, MCA, rules promulgated under the authority of 81-2-402, MCA and any order of the state veterinarian.

(2) The sale and importation of gametes and embryos in the state of Montana must meet the requirements for the sale and transfer of ~~game farm animals~~ alternative livestock, which include, but are not limited to:

(a) through (c) remain the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.404 REQUIREMENTS FOR ESCAPED, RECAPTURED ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) The state veterinarian may require disease testing of an escaped, recaptured ~~game farm animal~~ alternative livestock prior to reintroduction to the herd.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.501 POSSESSION OF RESTRICTED OR PROHIBITED ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) remains the same.

(2) The transportation or disposition of any restricted or prohibited species must meet all department testing, transportation, sale, slaughter, and inspection requirements for ~~game farm animals~~ alternative livestock.

(3) and (4) remain the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.502 IMPORTATION OF RESTRICTED OR PROHIBITED ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) The department has designated the following ~~game farm animals~~ alternative livestock as "restricted species" on the basis of specific animal health risks that they pose to wildlife and/or domestic livestock:

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

(c) Wild or captive elk, mule deer, and whitetail deer may not be imported or transported from a geographic area or ~~game~~ alternative livestock farm where chronic wasting disease is endemic or has been diagnosed unless they meet all importation requirements, transportation requirements, and any other requirements mandated by statute, rule, or order of the state veterinarian under the authority of Title 81, chapter 2, MCA.

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

(3) The department shall restrict from importation for purposes of ~~game~~ alternative livestock farming any cloven hoofed ungulate species or subspecies and their hybrids with native species that have been classified by the Department of Fish, Wildlife and Parks under the authority of 87-4-424, MCA, as posing a threat to native wildlife or livestock.

(4) remains the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.601 IMPORTATION OF ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) ~~Game farm animals~~ Alternative livestock imported into Montana must meet all requirements of ARM Title 32, chapter 3, subchapter 2, Title 81, chapter 2, part 7, MCA, and any other orders issued by the department under the authority of 81-2-102, MCA.

(2) remains the same.

(3) Animals must be consigned to an ~~game~~ alternative livestock farm licensee. The ~~game~~ alternative livestock farm licensee must have a valid license for the species being imported.

(4) ~~Game farm animals~~ Alternative livestock shall be accompanied by an official health certificate and a permit, which must be attached to the waybill or be in the possession of the driver of the vehicle or person in charge of the animals. When a single health certificate and/or permit is issued for animals being moved in more than one vehicle, the driver of each vehicle shall have in his/her possession a copy of the health certificate or permit.

(a) The official health certificate must meet all of the requirements of ARM 32.3.206 and the accredited veterinarian issuing the health certificate must certify that the following conditions are true:

(i) remains the same.

(ii) The accredited veterinarian issuing the health certificate shall assess the herd of origin and determine if the ~~game farm animals~~ alternative livestock have

been infected by or exposed to Mycobacterium paratuberculosis (Johnes disease). A statement summarizing his findings shall be included on the health certificate. No animal exposed to or infected with M. paratuberculosis may be imported;

(iii) through (b)(ii)(C) remain the same.

(D) the final ~~game~~ alternative livestock farm destination; and

(E) through (5) remain the same.

(6) Prior to shipment, all ~~game farm animals~~ alternative livestock with the exclusion of omnivores and carnivores must be marked with a USDA official ear tag or its Canadian equivalent called an H of A tag.

(7) All ~~game farm animals~~ alternative livestock must be quarantined upon arrival in Montana until all testing requirements have been met and the animal is tagged and marked as required by 87-4-414 and 81-3-102, MCA.

(8) No person consigning, transporting, or receiving ~~game farm animals~~ alternative livestock into Montana may authorize, order, or carry out diversion of such animals to a destination or consignee other than set forth on the health certificate or permit without first obtaining written authorization from the state veterinarian of Montana or his designee to make such a diversion.

(9) remains the same.

(10) Importation of ~~game farm animal~~ alternative livestock semen must meet the applicable requirements of ARM 32.2.220.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.602 EXPORTATION OF ~~GAME FARM ANIMALS~~ ALTERNATIVE LIVESTOCK (1) Any ~~game farm animal~~ alternative livestock exported must be tagged and marked in compliance with 81-3-102(2) and 87-4-414, MCA.

(2) The animal must meet the inspection requirements for change of ownership and movement of ~~game farm animals~~ alternative livestock prior to movement from the ~~game~~ alternative livestock farm in accordance to ARM 32.4.301.

(3) remains the same.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.701 TRANSPORT WITHIN AND INTO MONTANA (1) Prior to movement of ~~game farm animals~~ alternative livestock within Montana, the animals must be inspected pursuant to 81-3-203(1) through (3), MCA, excluding those exceptions outlined in ARM 32.3.301.

(2) When transporting ~~game farm animals~~ alternative livestock within and into Montana, the animal shipment shall be accompanied by the inspection certificate and if a change of ownership has occurred, a valid bill of sale must accompany the shipment. If the animals are moved in more than one vehicle, the driver of each vehicle shall have in his possession a copy of the inspection certificate and bill of sale.

(3) remains the same.

(4) Movement of ~~game farm animals~~ alternative livestock must be in a

secured and enclosed vehicle.

(5) Movement of ~~game farm animals~~ alternative livestock from ~~game~~ alternative livestock farm property to ~~game~~ alternative livestock farm property under one license must be within a secured and enclosed vehicle unless the following conditions have been met:

(a) remains the same.

(b) the ~~game~~ alternative livestock farm licensee must submit to the department for review and approval a proposed alternative method of transportation or movement of animals between separated properties. This shall include but is not limited to the movement of animals from pasture to pasture across public or private roads, easements, and rights of way.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.702 TRANSPORT THROUGH MONTANA (1) ~~Game farm animals~~ Alternative livestock may be transported from out of the state through Montana if:

(a) remains the same.

(b) an official health certificate is obtained from the state of origin to show destination, origin, and proof of ownership of any ~~game farm animals~~ alternative livestock being transported;

(c) remains the same.

(d) in emergencies, ~~game farm animals~~ alternative livestock in transit are unloaded and temporarily held with prior approval from the department (Helena office). Animals must be held in compliance with quarantine rules promulgated by the department.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.801 CATCH PEN AND HANDLING DEVICE (1) All ~~game~~ alternative livestock farm licensees must have a catch pen and a handling device that enables the licensee to test, inspect, mark, and tag all ~~game farm animals~~ alternative livestock on the premises.

(2) A permanent or portable handling device must be on the ~~game~~ alternative livestock farm at all times. The handling device must be of a size appropriate for the species of animal and must provide for the safety of the animal and the handler.

(3) Each licensed ~~game~~ alternative livestock farm property must have a catch pen within the perimeter fencing to facilitate the confinement, handling, and movement of animals. ~~Game~~ Alternative livestock farm properties with a physical separation distance between pastures are required to maintain a catch pen in each pasture.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.802 QUARANTINE FACILITY (1) Each licensed ~~game~~ alternative

livestock farm must have a department-approved quarantine facility within its perimeter fence or submit a quarantine action plan to the department that guarantees the licensee unlimited access to an approved quarantine facility on another licensed ~~game~~ alternative livestock farm within the state of Montana.

(2) An ~~game~~ alternative livestock farm license or the approval for expansion of the ~~game~~ alternative livestock farm shall not be granted by the Department of Fish, Wildlife and Parks until the license applicant receives department approval of the quarantine facility and handling facilities.

(3) The applicant for an ~~game~~ alternative livestock farm license shall submit the following to the department and Department of Fish, Wildlife and Parks at the time the application (or application for an expansion) for the ~~game~~ alternative livestock farm license is submitted to the Department of Fish, Wildlife and Parks:

(a) design plans for the applicant's ~~game~~ alternative livestock farm catch pen and handling facilities required under ARM 32.4.801;

(b) detailed design specifications for a quarantine facility on the property owned or leased by the applicant and identified on the ~~game~~ alternative livestock farm license application; or

(c) a quarantine plan for the quarantine of animals at an approved quarantine facility located on another ~~licensed~~ alternative livestock ~~game~~ farm (host). This plan must include:

(i) remains the same.

(ii) a signed statement from the ~~game~~ alternative livestock farm licensee (host) who is allowing the applicant unrestricted use of his quarantine facility. This statement must define the period of time for which the applicant/licensee has permission to use the quarantine facility; and

(iii) if the ~~game~~ alternative livestock farm licensee (host) revokes the privilege to use his quarantine facility, or if the privilege is consensual for a defined period of time which has expired, the applicant/licensee has 30 days to design his own facilities and submit the plans to the department for approval. The applicant/licensee must construct the facility within 90 days of department approval of the plans.

(4) Design specifications for a quarantine facility shall include all measured dimensions of the proposed facility (heights and perimeters) and shall include the location and materials for fences, location of any shelters, feeding or water sources, location of the quarantine facility within the licensed ~~game~~ alternative livestock farm property, streams, slopes of property, gates, and access to holding facilities. The specifications for a quarantine facility must meet the following:

(a) through (c)(i) remain the same.

(ii) fecal wastes and water must not drain from the quarantine pen to any other pens or area of the ~~game~~ alternative livestock farm, or into an area outside the ~~game~~ alternative livestock farm where wildlife, animals, livestock, or people could come into contact with such wastes. The department may require additional measures be implemented to prevent run off from the quarantine pen into state waters; and

(iii) through (6) remain the same.

AUTH: 87-4-442, MCA

IMP: 87-4-422, MCA

32.4.901 IMPOSITION OF QUARANTINE (1) Imported ~~game farm animals~~ alternative livestock shall be placed under quarantine until:

(a) and (b) remain the same.

(2) Any animals placed in quarantine shall be immediately presented by the licensee to the department for testing and/or inspection upon request. Failure to present animals may be interpreted as the negligent or willful misconduct of the ~~game~~ alternative livestock farm operation and also a threat to the public safety.

(3) remains the same.

(a) the required testing for exposed and infected ~~game farm animals~~ alternative livestock placed under quarantine and any testing required for other animals on the ~~game~~ alternative livestock farm and adjacent properties;

(b) and (c) remain the same.

(d) disposal of animal~~s~~ wastes and carcasses on the ~~game~~ alternative livestock farm property; and

(e) any other measures deemed necessary for the elimination of disease on the ~~game~~ alternative livestock farm.

(4) The disposal of tuberculosis-infected ~~game farm animals~~ alternative livestock as determined by physical examination or tuberculin test must meet all requirements of ARM Title 32, chapters 3 and 6 and orders by the state veterinarian.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.1001 DUTY TO REPORT CONTAGIOUS DISEASES (1) Any person, including an ~~game farm~~ alternative livestock licensee who has reason to believe that ~~game farm animals~~ alternative livestock have or have been exposed to a dangerous or communicable disease, must give notice to the department immediately.

AUTH: 87-4-442, MCA
IMP: 87-4-422, MCA

32.4.1301 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 87-4-406, MCA, ARM 32.4.101, and any subsequent department rule or order.

(1) remains the same.

(2) "Cervidae" or "cervid" means all members of the Cervidae family including deer, elk, moose, caribou, reindeer, and related species and hybrids thereof. Cervidae includes wild cervids, those animals on ~~game~~ alternative livestock farms, and those animals owned by zoos and other public or private captive facilities not licensed as ~~game~~ alternative livestock farms.

(3) through (7) remain the same.

(8) "CWD monitored cervid herd" means a herd of ~~game~~ alternative livestock farm cervids that has complied with the CWD surveillance requirements outlined in ARM 32.4.1302.

(9) "CWD monitored herd status" means a designation made by the department that indicates the number of years an ~~game~~ alternative livestock farm cervid herd has complied with CWD surveillance criteria.

(10) through (17) remain the same.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1302 REQUIREMENTS FOR MANDATORY SURVEILLANCE OF MONTANA ~~GAME~~ ALTERNATIVE LIVESTOCK FARM CERVIDAE FOR CHRONIC WASTING DISEASE (1) The licensee must present his entire herd annually for inspection by a designated agent of the department. The department will verify each ~~game~~ alternative livestock farm animal's identification and the ~~game farm animal~~ alternative livestock inventory must reconcile with the department's records.

(2) The licensee must report all ~~game farm animal~~ alternative livestock deaths to the department (Helena office) within one day of the discovery of death as required by 87-4-415, MCA.

(3) Upon the discovery of dead cervids, the licensee must immediately request an inspection of the ~~game farm animal~~ alternative livestock as required by ARM 32.4.301. At the time of the inspection of the dead animal, the alternative livestock veterinarian shall remove the currently required tissue samples and/or specimens and submit them to a department-approved laboratory for testing for chronic wasting disease (CWD).

(a) Tissue samples and/or specimens must be submitted from all CWD test-eligible ~~game~~ alternative livestock farm cervids unless a waiver to tissue sample and/or specimen submission has been granted by the state veterinarian in accordance to (3)(b).

(b) The state veterinarian may, at his discretion, grant a waiver to tissue sample and/or specimen submission from ~~game~~ alternative livestock farm cervids if the following conditions are met:

(i) remains the same.

(ii) The animal for which a waiver is requested must have resided on the licensee's ~~game~~ alternative livestock farm for 12 months or have resided in the herd from which it is transported for a period of 12 months.

(iii) remains the same.

(iv) The licensed ~~game~~ alternative livestock farm must have no documented cases of ingress of wild cervids or egress of ~~game farm animals~~ alternative livestock within the 18-month period immediately preceding the request for a waiver. If it is determined by the state veterinarian there has been no compromise in the surveillance status of the herd, this criteria may be waived in the application for a waiver to CWD surveillance.

(v) There have been no breaches in perimeter fence integrity that may have compromised the CWD surveillance status on the ~~game farm~~ alternative livestock herd.

(c) The state veterinarian may grant a waiver with stipulations that may include, but is not limited to, additional whole herd inspections. A waiver from CWD surveillance does not exempt the licensee from any other requirements for

inspection or testing of ~~game farm animals~~ alternative livestock.

(d) remains the same.

(e) The licensee is responsible for all costs incurred for the examination of ~~game~~ alternative livestock farm cervids, the inspection services, the collection and submission of tissue sample and/or specimens, and the laboratory diagnostic costs.

(4) through (4)(c) remain the same.

(5) Any person having knowledge that an ~~game~~ alternative livestock farm cervid has been diagnosed as affected with CWD or exposed to CWD must report that knowledge to the department as required by ARM 32.4.1001.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1303 ~~GAME~~ ALTERNATIVE LIVESTOCK FARM MONITORED HERD STATUS FOR CHRONIC WASTING DISEASE (1) The ~~game farm~~ alternative livestock cervid herd shall be assigned a monitored herd status by the department at the conclusion of each year of mandatory CWD surveillance as follows:

(a) through (c) remain the same.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1304 CHANGES IN MONITORED HERD STATUS FOLLOWING CERVID ADDITIONS TO AN ~~GAME FARM~~ ALTERNATIVE LIVESTOCK HERD

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

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1309 IMPORT REQUIREMENTS FOR CERVIDS (1) All imported cervids, including wild cervids, ~~game~~ alternative livestock farm and publicly or privately owned captive animals, must meet the import requirements of ARM Title 32, chapter 3, subchapter 2, Title 81, chapter 2, part 7, MCA, ARM 32.4.601, and any other rules or orders issued by the department under the authority of 81-2-103, MCA.

(2) through (4) remain the same.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1311 MANAGEMENT OF ~~GAME FARM~~ ALTERNATIVE LIVESTOCK CERVID HERDS IDENTIFIED AS CWD TRACE HERDS (1) The requirements for the disposition of ~~game farm~~ alternative livestock cervid CWD trace herds is as follows:

(a) through (f) remain the same.

AUTH: 81-2-103, 87-4-442, MCA

IMP: 81-2-103, 87-4-422, MCA

32.4.1312 MANAGEMENT OF ~~GAME FARM~~ ALTERNATIVE LIVESTOCK CERVID HERDS WITH AT LEAST ONE ANIMAL DIAGNOSED WITH CWD AND WITH LOW PROBABILITY OF CWD TRANSMISSION (1) through (1)(f) remain the same.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1313 MANAGEMENT OF ~~GAME FARM~~ ALTERNATIVE LIVESTOCK CERVID HERDS WITH AT LEAST ONE ANIMAL DIAGNOSED WITH CWD AND WITH THE PROBABILITY OF CWD TRANSMISSION (1) through (1)(f) remain the same.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1319 ENHANCEMENT OF TRACE BACK AND OBSERVATION CAPABILITIES (1) All high-risk animals shall be identified with a unique, easily read identification tag provided by the department. This identification may be in addition to the ~~game farm~~ alternative livestock identification required in 87-4-414, MCA and subsequent rules.

(2) remains the same.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1320 REQUIREMENTS FOR CAPTIVE CERVIDAE, OWNED BY OR IN THE POSSESSION OF ZOOS, INDIVIDUALS, OR OTHER PUBLIC FACILITIES NOT LICENSED AS ~~GAME~~ ALTERNATIVE LIVESTOCK FARMS (1) The owner or manager of a public or privately owned zoo or confinement facility not licensed as an ~~game~~ alternative livestock farm must comply with the requirements of ARM 32.4.1302 and ARM 32.4.1309.

AUTH: 81-2-103, 87-4-442, MCA
IMP: 81-2-103, 87-4-422, MCA

32.15.203 VETERINARY INSPECTION FACILITIES (1) and (2) remain the same.

(3) Office space with adequate facilities for the deputy state veterinarian to make necessary tests and reports, keep necessary tests and reports, and keep necessary equipment and materials, must be provided by each livestock market.

AUTH: 81-2-102, 81-8-231, MCA
IMP: 81-2-102, 81-8-231, MCA

32.15.208 DUTIES OF STATE-APPOINTED MARKET VETERINARIANS

(1) A deputy state veterinarian provided at the expense of the livestock market, but authorized by the Montana Department of Livestock, Animal Health Division must inspect all livestock coming into livestock markets, make and keep records of the proper disposition of any animal showing evidence of disease or any animal condemned by the Montana Department of Livestock or the United States Department of Agriculture, and determine the brucellosis status of all female cattle and bulls.

AUTH: 81-2-102, 81-8-231, MCA
IMP: 81-2-102, 81-8-231, MCA

32.15.210 PERSONS AUTHORIZED TO TEST, VACCINATE, OR ISSUE HEALTH CERTIFICATES (1) The issuing of health certificates, necessary testing, and vaccinating may be done by either the veterinarian representing the Montana Department of Livestock, Animal Health Division, or by another ~~accredited~~ deputy state veterinarian.

AUTH: 81-2-102, 81-8-231, MCA
IMP: 81-2-102, 81-8-231, MCA

Reason: The department is changing the phrases and terms used to describe game farm animals and ranches to agree with the changes implemented by Senate Bill 361 in the 1999 Legislature. The bill revised definitions and terminology related to game farms and game farm animals to mean alternative livestock ranches and alternative livestock.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., November 29, 2010.

5. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. November 29, 2010.

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

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

8. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State October 18, 2010

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

In the matter of the amendment of ARM 37.87.1331 pertaining to home and community-based services (HCBS) for youth with serious emotional disturbance (SED)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 23, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.1331 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PROVIDER REQUIREMENTS

(1) Services funded through the program may only be provided by or through a provider that:

(a) and (b) remain the same.

(c) has been determined by the department to be qualified to provide services to youth with serious emotional disturbance in accordance with the criteria set forth in these rules;

(i) a wraparound facilitator and home-based therapist cannot be employed by the same agency when serving on the treatment team and providing services to a specific youth enrolled in the HCBS waiver for youth with serious emotional disturbance.

(d) through (2) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.87.1331 pertaining to home and community-based services (HCBS) for youth with serious emotional disturbance (SED).

The department is proposing to add new language that a wraparound facilitator and a home-based therapist cannot be employed by the same agency for the provision of waiver services to an enrolled youth. The wraparound facilitator is responsible for developing the plan of care and arranging for all the services provided to the youth enrolled in the waiver program. There is a concern that if the wraparound facilitator and the home-based therapist are employed by the same agency, that the youth and family may feel obligated to choose a home-based therapist from the agency that employs the wraparound facilitator. There is also financial incentive for the wraparound facilitator to use the home-based therapist from the same agency that employs both.

The proposed changes will remove any concerns of financial gains or conflicts of interest that may occur if the wraparound facilitator and the home-based therapist are employed by the same agency. Furthermore, the youth and families are often in crisis at the time the youth is enrolled into the program and may feel obligated or pressured to use the home-based therapist that is employed by the same provider. The youth will be able to benefit from a diversified team approach when the home-based therapy is provided outside the agency that employs the wraparound facilitator.

The department chose to add this language in order to avoid any conflicts of interest or financial gains for the providers. This will allow the families and youth the opportunities to select home-based therapists from a list of enrolled providers in the communities. The wraparound facilitator and the home-based therapist are key providers of waiver services and the best approach for continual evaluation and oversight is having these two waiver service providers not employed by the same provider.

Fiscal Impact

The youth enrolled in the HCBS Waiver program will not be affected by the proposed rule amendment. There are no providers currently providing home-based therapy services and wraparound facilitation services to youth who are enrolled in the HCBS Waiver program. The department is not proposing to cut services or reimbursement.

The HCBS Waiver for Youth with SED is not available statewide and has the capacity to serve up to 100 youth upon full implementation. Waiver Year Four begins October 1, 2010 with the capacity to serve 80 youth. Enrollment has never been at maximum capacity; 37 youth to date have been served in the waiver since it became operational in February 2008.

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

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 18, 2010.

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

In the matter of the amendment of ARM 37.78.102 and 37.78.420 pertaining to Temporary Assistance for Needy Families (TANF)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 18, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~August 1~~ October 1, 2010 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-601, MCA

37.78.420 TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) through (3)(b) remain the same.

(4) The GMI standards, NMI standards, and benefits standards are as follows:

(a) Gross monthly income standards are compared with the assistance unit's gross monthly income as defined in ARM 37.78.406.

GROSS MONTHLY INCOME STANDARDS (GMI)

Number of Persons in Household	Gross Monthly Income (GMI)
1	$ ~~638~~ 557
2	~~858~~ 777
3	~~1,079~~ 979
4	~~1,299~~ 1,178
5	~~1,519~~ 1,378
6	~~1,739~~ 1,580
7	~~1,961~~ 1,780
8	~~2,181~~ 1,980
9	~~2,401~~ 2,179
10	~~2,621~~ 2,381
11	~~2,842~~ 2,581
12	~~3,062~~ 2,781
13	~~3,282~~ 2,980
14	~~3,502~~ 3,182
15	~~3,722~~ 3,382
16	~~3,944~~ 3,582
17	~~4,164~~ 3,783
18	~~4,385~~ 3,983
19	~~4,605~~ 4,183
20	~~4,825~~ 4,383

(b) Net monthly income standards are used to compute gross monthly income standards (GMI).

NET MONTHLY INCOME STANDARDS (NMI)

1	$ ~~345~~ 312
2	~~464~~ 420
3	~~583~~ 529
4	~~702~~ 637
5	~~821~~ 745
6	~~940~~ 854
7	~~1,060~~ 962
8	~~1,179~~ 1,070
9	~~1,298~~ 1,178
10	~~1,417~~ 1,287
11	~~1,536~~ 1,395
12	~~1,655~~ 1,503
13	~~1,744~~ 1,611
14	~~1,893~~ 1,720
15	~~2,012~~ 1,828
16	~~2,132~~ 1,936
17	~~2,251~~ 2,045
18	~~2,370~~ 2,153
19	~~2,489~~ 2,261
20	~~2,608~~ 2,369

(c) Benefit standards are compared with the assistance unit's countable income as defined in ARM 37.78.406.

BENEFITS STANDARDS

1	$ ~~271~~ 245
2	~~364~~ 330
3	~~458~~ 415

4	~~551~~ 500
5	~~644~~ 585
6	~~738~~ 670
7	~~832~~ 755
8	~~926~~ 840
9	~~1,019~~ 925
10	~~1,112~~ 1,010
11	~~1,206~~ 1,095
12	~~1,299~~ 1,180
13	~~1,393~~ 1,265
14	~~1,486~~ 1,350
15	~~1,579~~ 1,435
16	~~1,674~~ 1,520
17	~~1,767~~ 1,605
18	~~1,860~~ 1,690
19	~~1,954~~ 1,775
20	~~2,047~~ 1,860

(d) through (5) remain the same.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-241, 53-4-601, MCA

4. The Department of Public Health and Human Services (department) is proposing amendment to ARM 37.78.102 and 37.78.420 pertaining to Temporary Assistance for Needy Families (TANF).

ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective January 1, 2010. The department proposes to make some revisions to this manual that will take effect on October 1, 2010. The proposed amendments to ARM 37.78.102 are necessary to incorporate into the Administrative Rules of Montana the revised versions of the policy manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect

approximately 9,363 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov.

ARM 37.78.420

ARM 37.79.420 has also been updated to reflect the decrease in the TANF eligibility standards from 30 percent of the 2009 federal poverty guidelines to 30 percent of the 2006 federal poverty guidelines. This decrease was approved in the 2009 Legislative Session under House Bill 645 and is a result of funding through the American Recovery and Reinvestment Act. The department estimates this could impact a monthly average of at most, 267 cases being ineligible for TANF cash assistance with an average monthly fiscal savings of $134,568 based on the payment standard of $504 for a family of three.

Following is a brief overview of the TANF manual material with substantive changes related to the above rule changes:

TANF 001 - Monthly Income Standards

This manual provision has been updated to reflect the decrease in the TANF eligibility standards from 30 percent of the 2009 Federal Poverty Guidelines to 30 percent of the 2006 Federal Poverty Guidelines. This decrease was approved in the 2009 Legislative Session under House Bill 645 and is a result of funding through the American Recovery and Reinvestment Act. The department estimates this could impact a monthly average of at most, 267 cases being ineligible for TANF cash assistance with an average monthly fiscal savings of $134,568 based on the payment standard of $504 for a family of three.

5. The department intends to apply these rules retroactively to October 1, 2010. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

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

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

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State October 18, 2010.

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

In the matter of the adoption of New Rule I and II and the amendment of ARM 37.79.102, 37.79.326, 37.79.503, and 37.79.505 pertaining to Healthy Montana Kids	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 17, 2010, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PREMIUM ASSISTANCE (1) The department may pay employer-sponsored plan premiums for an HMK eligible child with access to an employer-sponsored group health plan if the premiums are cost effective and the coverage is equivalent to a benchmark plan.

(a) The child must apply for HMK coverage and meet all eligibility requirements for the HMK coverage group to qualify for premium assistance.

(b) Premium assistance reimbursement may be paid to either the employer or directly to the insured coverage group member.

(c) The employer or insured group member must provide the department with proof of premiums paid in order to receive reimbursement.

(d) The employer must contribute at least 40 percent of the cost of the premium for the employee for an HMK eligible child to receive premium assistance.

(2) In order for a child to continue receiving premium assistance, the child must be redetermined annually as eligible for the HMK coverage group and meet all premium assistance criteria.

(3) An HMK eligible child may choose to end their participation in the premium assistance program at month end and seamlessly transfer to the HMK coverage group effective the first of the following month.

AUTH: 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1007, 53-4-1108, MCA

NEW RULE II PRESUMPTIVE ELIGIBILITY (1) A family applies for a period of presumptive eligibility (PE), defined as temporary enrollment in the HMK coverage group not to exceed two consecutive calendar months within a 12-month period, for all of their uninsured children less than 19 years of age.

(a) To apply for PE, a parent or guardian submits a PE application to a qualified entity (QE).

(i) The parent or guardian must complete the entire PE application and sign it as indicated.

(b) The QE makes a determination of PE based on self-declared information provided by the applicant on the PE application including family size, gross monthly income, citizenship, and residency.

(i) PE determinations are effective beginning the date a QE makes the determination through the earlier of:

(A) the last day of the month following the PE determination month; or

(B) the date the department makes an eligibility determination.

(ii) If the children are approved for PE, the QE provides the parent or guardian with an HMK Plan application and explains how to submit the application and all needed documentation to HMK.

(iii) If the child(ren) are determined ineligible for PE, the QE provides the parent or guardian with the specific reason for the PE denial.

(c) The parent or guardian is responsible for submitting a completed HMK application and all needed documentation to HMK no later than the last day of the month following the month of the PE determination.

(d) The department makes the HMK coverage group determination based on information provided on a completed HMK Plan application that includes documentation. If eligible, a child remains enrolled in the HMK Plan. If ineligible, the child is disenrolled.

(e) Presumptively eligible children receive the same benefits as all children in the HMK coverage group.

(f) Children may not have more than one PE period during a 12-month span. The 12-month span begins with the date a QE determines eligibility.

AUTH: 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1004, 53-4-1102, 53-4-1103, 53-4-1104, 53-4-1105, 53-4-1108, MCA

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

37.79.102 DEFINITIONS Definitions as used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (3) remain the same.

(4) "Benchmark plan" means a health benefit plan which is actuarially equivalent to the state of Montana employee group health plan.

(4) through (6) remain the same but are renumbered (5) through (7).

(8) "Cost effective" means the total amount paid in expenses on behalf of a child under an employer-sponsored plan is less than the department would pay for equivalent services for a child enrolled in HMK.

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

(12) "Employer-sponsored plan" means any plan, including a self-insured plan, that meets HMK requirements for creditable coverage and provides health care to employees, former employees, or the families of such employees.

(10) through (17) remain the same but are renumbered (13) through (20).

~~(18)~~ (21) "Healthy Montana Kids (HMK) Plan" means the two health care coverage groups, Healthy Montana Kids (HMK) and Healthy Montana Kids ~~(HMK)~~ Plus (HMK Plus), which pay for covered health care services to qualified individuals until their 19th birthday. The HMK coverage group was formerly referred to as CHIP and the provisions of Title 53, chapter 4, part 10, MCA apply. The HMK Plus coverage group is also referred to as children's Medicaid and the provisions of Title 53, chapter 6, MCA apply.

(19) through (29) remain the same but are renumbered (22) through (32).

(33) "Premium assistance" means a program to help subsidize the purchase of qualified employer-sponsored health care coverage for children eligible for the HMK coverage group.

(34) "Presumptive eligibility (PE)" means a temporary period of HMK medical assistance not to exceed two consecutive calendar months in a 12-month period for uninsured children through the month of their 19th birthday, pending a decision of HMK Plan eligibility.

(30) remains the same but is renumbered (35).

(36) "Qualified entity (QE)" means a health care facility, individual, or other approved entity designated and trained by HMK to make a presumptive eligibility determination for a child on behalf of HMK.

(31) through (36) remain the same but are renumbered (37) through (42).

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, 53-4-1108, MCA

37.79.326 DENTAL BENEFITS (1) The maximum dental benefits paid under the basic dental plan will be 85 percent of the billed services received. ~~up~~ Up to $1,200 in basic dental care will be paid per benefit year for each enrollee. For example, $1,412 in services received ~~would result~~ results in $1,200 paid.

(a) through (2) remain the same.

(3) The following procedures are not a benefit of the HMK coverage group Dental Program:

(a) remains the same.

~~(b) D6000 through D6199 implant services;~~

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

(4) remains the same.

(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the HMK coverage group Extended Dental Plan (EDP). The EDP program is dependent on legislative appropriation for the program.

(a) remains the same.

(b) The ~~type of~~ services covered by the EDP are the same ~~type of~~ services covered under the basic dental plan.

(c) through (7) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.503 ENROLLMENT (1) through (3)(b) remain the same.

(4) For presumptively eligible children, enrollment begins the date the qualified entity (QE) determines eligibility and may not exceed two consecutive calendar months in a 12-month period.

(a) The QE will give the enrollee a copy of the signed presumptive eligibility (PE) determination to verify PE for service providers during the enrollment period.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1007, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, MCA

37.79.505 DISENROLLMENT (1) through (1)(b) remain the same.

(2) Disenrollment takes effect, at the earliest, the first day of the month after the department receives the request for disenrollment, but no later than the first day of the second calendar month after the request for disenrollment is received.

(a) The enrollee remains enrolled in the HMK coverage group and the HMK coverage group program is responsible for benefits covered under the contract until the effective date of disenrollment, which is ~~always~~ the first day of a month.

(b) The department will disenroll a presumptively eligible child the earlier of:

(i) the last day of the month following the PE determination month; or

(ii) the date the department makes an eligibility determination.

(3) remains the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, MCA

5. The Department of Public Health and Human Services (the department) is proposing the adoption of New Rule I and II and the amendment of ARM 37.79.102, 37.79.326, 37.79.503, and 37.79.505 pertaining to Healthy Montana Kids.

The department administers the Healthy Montana Kids (HMK) Plan, which is funded by the state and federal government to pay for covered health care services to low income Montana children. The department is proposing amendments and additions to the rules to amend current rules to comply with requirements of the Patient

Protection and Affordable Care Act of 2010 (PPACA), to adopt or amend current rules to reflect requirements and options of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, to adopt or amend current rules to reflect requirements and recommendations in Montana I-155, the Healthy Montana Kids Plan, and to amend current rules to reflect program policy changes.

New Rule I

This new rule is necessary to enable premium assistance for HMK eligible children who have access to one or more qualified employer sponsored health insurance plans. Premium assistance allows an HMK eligible child access to employer sponsored insurance on a family policy if, without assistance, the family cannot afford the portion of the premium designated for the child's coverage. In addition, a premium assistance option provides an opportunity for families to evaluate the benefits and costs of the employer sponsored plan compared to the benefits and costs of HMK, and select the best choice for their family if there is no additional cost to the state. HMK proposes to implement premium assistance in accordance with recommendations found in the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, Public Law 111-3, Title III(A)(301)(a), and Montana Initiative 155 (Healthy Montana Kids Plan).

New Rule II

Section 53-4-1105, MCA, directs the department to provide for presumptive eligibility. The HMK coverage group proposes to pay the cost of covered health care services during a period of presumptive eligibility, not to exceed more than two consecutive calendar months, for previously unenrolled children less than 19 years of age who meet specified eligibility requirements. Children are determined presumptively eligible by a qualified entity certified by the state. The determination is based upon a child's estimated gross monthly family income after simple disregards. Presumptive eligibility allows children access to health care services pending the screening and final determination of plan eligibility. Presumptive eligibility assures payment to HMK participating providers for covered services. The implementation date is January 1, 2011.

ARM 37.79.102

The department proposes to add definitions for benchmark plan, cost effective, group health plan, premium assistance, presumptive eligibility, and qualified entity.

The new definitions will clarify the meaning of terminology used in the proposed rules.

ARM 37.79.326

The department proposes to amend this rule to add coverage for medically necessary dental implants with prior authorization. The change will delete language

stating dental implants are a noncovered service. This change is necessary to align HMK dental benefits with those of the state of Montana employee dental plan. HMK uses the state's dental benefit plan as a benchmark for its benefit structure. HMK is required by Children's Health Insurance Program Reauthorization Act (CHIPRA) to maintain equal or superior benefits to retain its designation as a benchmark plan.

ARM 37.79.503

The department proposes to amend this rule to add enrollment for a presumptively eligible child begins the date the qualified entity determines eligibility and may not exceed two consecutive calendar months. The new language provides the specific enrollment requirements for presumptive eligibility.

ARM 37.79.505

The department proposes to amend this rule to delete language stating the effective date of disenrollment is always the first day of a month. The department will disenroll a presumptively eligible child on the date the child is determined ineligible. The new language will clarify the difference between the HMK coverage group disenrollment rule and the new date requirement for presumptive eligibility.

Proposed changes are necessary to come into compliance with CHIPRA, the Patient Protection and Affordable Care Act (PPACA) of 2010 and Montana Initiative 155 (Healthy Montana Kids Plan).

Fiscal Impact

It is estimated that 19,000 HMK enrollees and approximately 5,808 HMK participating providers may be impacted by the proposed rule amendments. The annual fiscal impact of these changes will be $309,398 in state fiscal year 2011 and $1,241,986 in state fiscal year 2012. The annual fiscal impact of these changes will be $590,522.40 in federal fiscal year 2011 and $1,053,273.60 in federal fiscal year 2012.

6. The department intends the rule amendments to be applied effective January 1, 2011.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

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

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

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

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

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State October 18, 2010.

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

In the matter of the amendment of ARM 37.81.304, 37.86.1005, 37.86.1006, 37.86.1101, 37.86.1105, 37.86.1802, 37.86.1807, and 37.86.2207 and repeal of ARM 37.83.812 pertaining to Big Sky RX benefit, Medicaid dental services, outpatient drugs, prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS), early and periodic screening, diagnostic and treatment (EPSDT), and qualified Medicare beneficiaries chiropractic services	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 18, 2010, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~$37.55~~ $37.47 per month. The benefit amount will not exceed ~~$37.55~~ $37.47 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~$37.55~~ $37.47 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~$37.55~~ $37.47, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

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

37.86.1005 DENTAL SERVICES, REIMBURSEMENT (1) through (3) remain the same.

(4) Payment for ~~denture~~ all dentures includes:

(a) payment for any tissue conditioners provided;

(b) the first three adjustments after the dentures are placed; and

(c) adjustments during the first year after delivery of the dentures is available only to a dentist or denturist who did not make the dentures.

(5) and (6) remain the same.

(7) Payment for orthodontia is limited to an overall lifetime cap of $7,000 for interceptive and full band orthodontia phases unless otherwise provided by these rules. Services included in the separate phases including monthly visits, are as listed in the department's orthodontic coverage and reimbursement guidelines. Surgeries are not included in this lifetime cap. ~~will be as follows:~~

~~(a) Full band orthodontia for Medicaid recipients who have cleft lip/palate, craniofacial anomalies or malocclusions caused by traumatic injury and interceptive orthodontia for Medicaid recipients who have posterior crossbite with shift, anterior crossbite and/or anterior deep bite at 80% or greater vertical incisor overbite, will be reimbursed at 85% of the provider's usual and customary charge, subject to the maximum allowable charge as published in the department's Dental and Denturist Program Provider Manual effective July 2009.~~

~~(b) Payment will be based upon a treatment plan submitted by the provider which will include at a minimum, a description of the plan of treatment, estimated usual and customary charge and time line for treatment. The department will reimburse 40% of the Medicaid allowed amount up front for application of appliances, the remainder being paid in monthly installments as determined by the time line defined in the provider's treatment plan for completing orthodontic care.~~

~~(c) Recipients are limited to an overall lifetime cap of $7000.00 for interceptive and full band orthodontia phases unless otherwise provided by these rules. Services included in the separate phases including monthly visits, are as listed in the department's orthodontic coverage and reimbursement guidelines. Surgeries are not included in this lifetime cap.~~

~~(d) Maximum allowable charges for each phase of orthodontic treatment, time lines for orthodontic phases of care, and the services included in each phase of orthodontic care are listed in the department's Dental and Denturist Program Provider Manual. The department adopts and incorporates by reference the department's Dental and Denturist Program Provider Manual effective July 2009. The guidelines, issued by the department to all providers of orthodontic services,~~

~~inform providers of the requirements applicable to the delivery of services. A copy of the department's Dental and Denturist Program Provider Manual is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

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

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) through (4) remain the same.

(5) Covered services for adults age 21 and over include:

(a) and (b) remain the same.

(c) basic restorative services including prefabricated crowns; ~~and~~

(d) extractions~~.~~; and

(e) porcelain fused to base metal crowns with prior authorization, limited to two per person per year, total. For second molars base metal crowns only.

(6) through (8)(a) remain the same.

(9) Coverage of all denture services is subject to the following requirements and limitations:

(a) A denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed in writing by a dentist. The prescription must be signed and dated within 90 days and must be maintained in the patient file.

(b) through (17) remain the same.

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

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) through (3) remain the same.

(4) "Estimated acquisition cost (EAC)" means the calculation of the provider's estimated cost of a drug for which no federal maximum allowable cost (FMAC) or state maximum allowable cost (SMAC) price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. If actual wholesale cost is not available the EAC is 85 percent of average wholesale price.

(5) "Federal maximum allowable cost" (FMAC) means the per unit amount the department reimburses a provider for a prescription drug included in the federal upper limit program. FMAC is the federal upper limit the department will pay for multi-source drugs as published by the Centers for Medicare and Medicaid Services (CMS) at https://www.cms.gov/Reimbursement/05_FederalUpperLimits.asp.

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

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) Drugs will be paid for on the basis of the Montana "estimated acquisition cost", "the federal maximum allowable cost", or the "state maximum allowable cost", plus a dispensing fee established by the department, or the provider's "usual and customary charge", whichever is lower; except that the "federal maximum allowable cost", or the "state maximum allowable cost" limitation shall not apply in those cases where a physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the Medicaid program certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient. An example of an acceptable certification would be the notation "brand necessary" or "brand required". A check-off box on a form or a rubber stamp is not acceptable.

(2) through (7) remain the same.

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

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. Montana Medicaid adopts Medicare coverage criteria for Medicare covered durable medical equipment as outlined in the Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) dated January ~~2010~~ 2011. For prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare coverage will be determined by the department. The items must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (January 1, ~~2010~~ 2011), which is adopted and incorporated by reference. A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria outlined in the Medicare

Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, (January 1, ~~2010~~ 2011), Local Coverage Determination (LCD) and policy articles (January 1, ~~2010~~ 2011), and National Coverage Determination (NCD) (January 1, ~~2010~~ 2011), which are adopted and incorporated by reference. The Medicare criteria specify the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The Medicare criteria also specify the medical documentation and laboratory evidence required to support medical necessity. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(c) through (7) remain the same.

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

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective January ~~2010~~ 2011, which is adopted and incorporated by reference. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (4) remain the same.

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT (EPSDT) SERVICES, REIMBURSEMENT (1) through (8) remain the same.

(9) Reimbursements for school-based health related services are specified in the School-Based Health Service Fee Schedule dated ~~October 2010~~ January 2011, which is adopted and incorporated by reference. A copy of the School-Based Health Service Fee Schedule is posted at http://medicaidprovider.hhs.mt.gov. Rates are adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

(10) and (11) remain the same.

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

4. The department proposes to repeal the following rule:

37.83.812 QUALIFIED MEDICARE BENEFICIARIES, PAYMENT FOR CHIROPRACTIC SERVICES AS MEDICARE SERVICES NOT COVERED BY FULL MEDICAID, is found on page 37-19152 of the Administrative Rules of Montana.

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

5. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.81.304, 37.86.1005, 37.86.1006, 37.86.1101, 37.86.1105, 37.86.1802, 37.86.1807, and 37.86.2207 and repeal of ARM 37.83.812 pertaining to Big Sky RX benefit, Medicaid dental services, outpatient drugs, prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS), early and periodic screening, diagnostic and treatment (EPSDT), and qualified Medicare beneficiaries chiropractic services. The proposed rule change is necessary to update the Big Sky Rx benefit to match the regional benchmark, to the eliminate chiropractic care benefit for qualified Medicare beneficiaries, establish a Medicaid resource based fee schedule for orthodontics, define and reinstate the federal maximum allowable cost (FMAC) into the pharmacy pricing algorithm, to properly cite Medicare policy for durable medical equipment and associated fee schedule and to properly cite the fee schedule for school-based services.

ARM 37.81.304

The amendment to ARM 37.81.304(1) changes the maximum premium assistance amount from $37.55 to $37.47 to reflect the regional low income subsidy benchmark effective January 1, 2011.

ARM 37.86.1005

The proposed amendment to ARM 37.86.1005(4) clarifies denture reimbursement criteria and ARM 37.86.1005(7) removes the percent of billed charges reimbursement methodology for orthodontics and the percent of up-front payment for the application of appliances.

ARM 37.86.1006

The proposed amendment to ARM 37.86.1006(4) establishes limits for porcelain fused crowns and proposed amendment to ARM 37.86.1006(9) clarifies coverage for all dentures and clarifies dental prescription requirements.

ARM 37.86.1101

The proposed amendment to ARM 37.86.1101(5) defines federal maximum allowable cost and renumbers the section (6) through (10).

ARM 37.86.1105

The proposed amendment to ARM 37.86.1105(1) returns the federal maximum allowable cost into the department's pricing algorithm which was inadvertently removed when the department established the ARM for a state maximum allowable cost.

ARM 37.86.1802

The proposed amendment to ARM 37.86.1802(2) updates the reference to the current Medicare Supplier Manual, Medicare's local and national coverage determinations and policy articles to January 2011.

ARM 37.86.1807

The proposed amendment to ARM 37.86.1807(2) changes the fee schedule date from January 2010 to January 2011.

ARM 37.86.2207

The proposed amendment to ARM 37.86.2207(9) changes the school-based health services fee schedule date from October 2010 to January 2011.

ARM 37.83.812

The department is repealing ARM 37.83.812 to consistently reflect the Medicaid policy of not paying healthcare services for qualified Medicare beneficiaries.

These proposed rule changes are necessary to update the fee schedule dates and update reimbursement rules to reflect current policy are to clarify the department's policies for better understanding by providers and the public.

Rules that needed an effective date of January 1 2011 were identified either because of fee schedule expiration or because of updated references were identified. Additional rules for clarification or housekeeping have been included based on feedback from various sources such as Centers for Medicare and Medicaid Services (CMS), new relative values or through routine course of business where weaknesses have been identified.

Fiscal impact and number of persons effected

ARM 37.81.304

The annual estimated cost savings to state special revenue is $2,834.88. The estimated number of persons affected is 2,953 recipients.

ARM 37.83.812

The repeal of this rule would result in an annual estimated cost savings to the general fund is ($2,991). The number of people affected by this change is 161 recipients and 45 providers.

ARM 37.86.1005 and 37.86.1006

The annual estimated impact to the general fund is $0. The estimated number of persons affected 25,077 recipients and 342 dental providers.

ARM 37.86.1005

Changes the payment methodology for orthodontia services from the 'by report' method to the RVD scale method. The annual estimated cost savings to the general fund is $10,160. The number of persons affected is as high as 366 recipients and 21 orthodontia providers.

ARM 37.86.1006

The annual estimated cost savings to the general fund is $80,789. The number of persons affected is 515 people and 360 providers.

ARM 37.86.1101 and 37.86.1105

The annual estimated impact to the general fund is $0. The estimated number of persons affected 26,938 recipients and 327 pharmacy providers.

ARM 37.86.1802 and 37.86.1807

The annual estimated impact to the general fund is $0. The estimated number of persons affected 13,149 recipients and 637 DME providers.

ARM 37.86.2207

The annual estimated impact to the general fund is $0. The estimated number of persons affected 20,138 recipients and 119 schools.

6. The department intends the rule amendments to be applied effective January 1, 2011.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 26, 2010.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 18, 2010.

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

In the matter of the amendment of ARM 38.5.2202 and 38.5.2302, pertaining to pipeline safety	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 1, 2010, the Department of Public Service Regulation (PSC) proposes to amend the above stated rules.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 4:00 p.m. on November 18, 2010, to advise us of the nature of the accommodation you need. Please contact Verna Stewart, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail vstewart@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 31, 2009~~ October 31, 2010. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 31, 2009~~ October 31, 2010. A copy of the referenced

CFRs is available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

4. Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the PSC to administer the most recent version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs.

5. Concerned persons may submit their written data, views, or arguments (original and 10 copies) to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than November 29, 2010, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at http://psc.mt.gov (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later than November 29, 2010. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-10.10.1-RUL.")

6. The Montana Consumer Counsel, 111 North Last Chance Gulch, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Justin Kraske, Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., November 29, 2010.

8. If the PSC receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 entities based on the 27 entities affected.

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

person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Verna Stewart at (406) 444-7618, e-mailed to vstewart@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Al Brogan
Al Brogan
Rule Reviewer

Certified to the Secretary of State, October 18, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IV relating to telecommunication services for corporation license taxes	))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 9, 2010, the Department of Revenue published MAR Notice No. 42-2-845 regarding a public hearing to be held on October 6, 2010, at 1:00 p.m., to consider the adoption of the above-stated rules at page 1968 of the 2010 Montana Administrative Register, Issue Number 17.

The department determined there was public interest in having an economic impact statement (EIS) prepared for these rules. Based on that understanding, the department advised the Revenue and Transportation Interim Committee that the rule hearing previously scheduled for October 6, 2010, would be postponed pending the preparation of an EIS.

Accordingly, the department has changed the date of the public hearing.

2. The department will conduct the public hearing on this matter on November 22, 2010, at 1:30, p.m., in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

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

3. The text of all proposed rule actions remains as originally published.

4. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than December 3, 2010.

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

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 42.22.101, 42.22.105, and 42.22.110 relating to centrally assessed property	))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 9, 2010, the Department of Revenue published MAR Notice No. 42-2-846 regarding a public hearing to be held on October 6, 2010, at 3:30 p.m., to consider the adoption and amendment of the above-stated rules at page 1977 of the 2010 Montana Administrative Register, Issue Number 17.

The department determined that there was public interest in having an economic impact statement (EIS) prepared for these rules. Based on that understanding, the department advised the Revenue and Transportation Interim Committee that the rule hearing previously scheduled for October 6, 2010, would be postponed pending the preparation of an EIS.

Accordingly, the department has changed the date of the public hearing.

2. The department will conduct the public hearing on this matter on November 22, 2010, at 3:30, p.m., in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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

3. The text of all proposed rule actions remains as originally published.

4. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than December 3, 2010.

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

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.107 relating to the valuation methods for commercial properties	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 17, 2010, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.20.107 VALUATION METHODS FOR COMMERCIAL PROPERTIES

(1) and (2) remain the same.

(3) The International Association of Assessing Officers' (IAAO) standards for choice of method guide the department's appraisal decisions. The generally preferred method is the income method to valuation. The department will document in the official record the reason(s) for choosing an alternative method.

AUTH: 15-1-201, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.107 to inform the public of the department's use of the IAAO appraisal standards to valuing commercial property. The amendment also provides taxpayers with information as to how the department reached the value of their commercial property using a methodology other than the income method.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box

7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than November 26, 2010.

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

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401, 42.19.406, and 42.19.501, relating to property tax assistance programs for the disabled veterans and elderly homeowners	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 17, 2010, at 3:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make annual application through the local department office, in order to receive the benefit provided for in 15-6-134, MCA. An application must be ~~made~~ filed on a form available from the local ~~county appraisal/assessment~~ department office ~~in~~ on or before April 15 of the year for which the benefit is sought. Applications received after April 15 will not be considered for that year unless the department determines the following conditions were met:

(a) ~~For the 2010 and subsequent tax years, applications postmarked after April 15 will not be considered for that tax year unless the department determines~~ the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness~~.~~; and

~~(2)~~(b) ~~These~~ these impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application, but in no case later than July 1.

(2) Telephone extensions and written extensions will be granted through July 1 of the current year for the above-listed reasons. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(3) The applicant is required to list total household income from all sources, excluding losses, depletion, and depreciation, that is attributable to all owner occupants who are applying for the assistance. Total household income includes, but is not limited to:

(a) net business income modified to exclude losses, depletion, and depreciation; and

(b) income of all other owners of the property.

(4) Income includes, but is not limited to:

(a) wages, salaries, and tips;

(b) taxable interest;

(c) ordinary and qualified dividends;

(d) alimony received;

(e) capital gains;

(f) other gains;

(g) taxable refunds, credits, or offsets of state and local income taxes;

(h) business and/or farm income excluding losses, depreciation, and depletion;

(i) taxable amounts of IRA distributions, pensions, and annuities;

(j) rent, royalty, partnership, S corporation, and trust income before subtracting losses, depletion, or depreciation;

(k) unemployment compensation;

(l) taxable amounts of social security benefits; and

(m) other income reported or reportable on the tax return or returns required by Title 15, chapter 30 or 31 of the Montana Code Annotated.

(5) If the applicant is required to file an income tax return, a copy of the income tax return must be attached.

(6) If the applicant has applied for an extension of time to file the applicant's income tax return, the applicant must provide a completed individual estimated income tax worksheet (ESW) for the tax year immediately preceding the year of the application.

(7) If the applicant is not required to file an income tax return, they must complete the appropriate portion of the application and submit documentation, that supports the reported income, as defined in (3). Examples of the required documentation include, but are not limited to, social security statements, pension statements, or bank statements.

~~(3)~~(8) The department will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department will approve or deny the application. ~~The applicant will be advised in writing of the decision. An annual statement of eligibility is required unless a review of income tax records or other records related to the applicant's income demonstrates that the individual had no significant change in income level and successfully qualified during the preceding 12 months prior to January 1 of the current tax year. In that situation, the department may waive the annual statement of eligibility required.~~

(9) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding seven days to the date on the determination letter. An applicant aggrieved

by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section. In no case shall an appeal be accepted more than 37 days after the date of the department's determination letter.

~~(4)~~(10) Any reduction in taxable value will apply to the first $100,000 or less of the taxable market value of any mobile home or improvement on real property and appurtenant land not exceeding five acres.

~~(5) Income must be reported by the applicant as follows:~~

~~(a) For the 2010 and subsequent tax years, the applicant is required to list total household income, which is income attributable to all owner occupant(s) who are applying for the Property Tax Assistance Program.~~

~~(6) If the applicant is required to file an income tax return, a copy of the income tax return must be attached. If the applicant is not required to file an income tax return, they must complete the appropriate portion of the application and submit the appropriate documentation, as requested.~~

AUTH: 15-1-201, MCA
IMP: 15-6-134, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.401 to describe the application process for documenting the total household income and explaining when a taxpayer may not be required to file an income tax return or extension.

Section (9) advises the applicants of their appeal rights and timelines for appealing the department's decision.

42.19.406 EXTENDED PROPERTY TAX ASSISTANCE PROGRAM

(1) The department will determine which taxpayers are potentially eligible for the extended property tax assistance program and will mail applications to those taxpayers. The department determines the taxpayers who are potentially eligible during the first year of the reappraisal cycle ~~(tax year 2009 for the current cycle)~~ based upon the following requirements set forth in 15-6-193, MCA:

(a) A potentially eligible property is limited to a qualified residence which means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home, and as much surrounding land, not exceeding one acre, as is reasonably necessary for use of such a dwelling. Qualifying land is limited to the legally described parcel upon which the qualified residence is located. The dwelling must be actually occupied by itself or in combination with no more than one other class four residential dwelling in Montana for at least seven months each year;

(b) The qualified residence must be the same residence as was owned by the taxpayer on December 31, ~~2008~~ of the year prior to the first year of the reappraisal cycle for which the assistance is sought;

(c) The taxable value of the qualified residence must have experienced greater than a 24% increase due to reappraisal; and

(d) The property taxes on the qualified residence must have increased by $250 or more between ~~tax year 2008 and tax year 2009~~ the last year of the prior

cycle and the first year of the reappraisal cycle for which the assistance is sought, based upon the ~~tax year 2008~~ mill levy established for the last year of the prior cycle.

(2) remains the same.

(3) For a taxpayer seeking assistance for a property that has more than one owner, only the owner that actually occupies the residence can qualify for the assistance.

~~(3)~~(4) In order to receive the tax rate adjustment, the qualified residence property owner of record, the qualified residence property owner's agent, or a qualifying entity of a qualified residence must annually complete and forward an application to the Department of Revenue, P.O. Box 6169, Helena, Montana 59604-6169.

~~(a) In order for qualifying taxpayers to receive the tax rate adjustment for tax year 2009, the department will mail applications to taxpayers advising them that completed applications must be postmarked on or before the due date preprinted on the application form, and returned to the department if they wish to be considered for the tax rate adjustment. The preprinted due date will be 30 calendar days from the date of the application being mailed to the taxpayer by the department. This notification will also advise the applicants that applications postmarked after the preprinted due date will not be considered for the tax rate adjustment.~~

~~(b)~~ Beginning with tax year 2010 and all subsequent tax years, the completed application~~s~~ must be ~~postmarked~~ received by the department on or before April 15 in order for applicant~~s~~ to receive the tax rate adjustment for the year the tax rate adjustment is sought. Applications ~~postmarked~~ received after April 15 will not be considered for the tax rate adjustment provided for under this section.

~~(4)~~(5) The applicant is required to list total household income from all sources, including but not limited to:

(a) through (c) remain the same.

(5) through (8) remain the same but renumbered (6) through (9).

~~(9)~~(10) The completed application form must include:

(a) the applicant's social security number or federal identification number (FEIN); and

(b) copies of the applicant's federal individual, partnership, estates or trusts, or corporate income tax return, including all schedules, for the tax year immediately preceding the year of the application. For example: complete copies ~~(including all schedules)~~ of the appropriate 2009 tax year return must accompany a 2010 application for the extended property tax assistance program, which is due by April 15, 2010.

(11) If the applicant has applied for an extension of time to file the applicant's income tax return, the applicant must provide a completed individual estimated income tax worksheet (ESW) for the tax year immediately preceding the year of the application. This form is available at the department's web site or at the local revenue office.

(12) If the applicant is not required to file an income tax return, the applicant must provide documentation that identifies the applicant's income as defined in (5). Examples of the required documentation include, but are not limited to: social security statements, pension statements, or bank statements.

~~(10)~~(13) Failure to provide the required information in (4) through ~~(9)~~(12) will

result in the application being denied. All tax return information will be treated as confidential by the department.

(11) through (16) remain the same but renumbered (14) through (19).

AUTH: 15-1-201, MCA
IMP: 15-6-193, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.406 to assist taxpayers in understanding the eligibility process for applications for the extended property tax assistance program. The amendments address the due dates for applications, income documentation and extensions, and residence and dwelling requirements.

Subsection (1)(a) is necessary to advise taxpayers that the benefit applies only to the land upon which the residence sits rather than the contiguous parcels to the residence. This clarification is consistent with how property is valued and taxed.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS (1) The property owner of record or the property owner's agent must make application to the local department office, in order to obtain a property tax exemption. An application must be filed, on a form available from the local department office, on or before April 15 of the year for which the exemption is sought. Applications ~~postmarked~~ received after April 15 will not be considered for that tax year unless the agent of the department determines the following conditions are met:

(a) ~~the applicant successfully qualified during the preceding 12 months prior to the application date of the current tax year; and~~

~~(b)~~ the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness~~.~~ ; and

(b) ~~These~~ these impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application, but in no case later than July 1.

(2) Telephone extensions and written extensions will be granted through July 1 of the current year for the above-listed reasons. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

~~(2)~~(3) The following documents must accompany the application:

(a) letter from the Veterans' Administration which verifies that the applicant is currently rated 100% disabled or is paid at the 100% disabled rate. If the disability is permanent, the letter need be submitted only once; ~~and~~

(b) copies of the applicant's completed federal income tax return for the preceding calendar year~~.~~, including all schedules; ~~For example, complete copies (including all schedules) of the appropriate 2008 tax year return must accompany a 2009 application for the disabled American veteran application which is due by April 15, except that for tax year 2009 it was due 30 days after the taxpayer received their assessment notice. For the 2010 tax year, and subsequent tax years, the disabled American veteran application is due by April 15. An applicant that is not required to~~

~~file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.~~

(c) if applicable, an extension of time to file the applicant's income tax return, along with the completed individual estimated income tax worksheet (ESW) for the tax year immediately preceding the year of the application; and

(d) if the applicant is not required to file an income tax return, the applicant must provide documentation that identifies the applicant's income. Examples of the required documentation include, but are not limited to:

(i) social security statements;

(ii) pension statements; or

(iii) bank statements.

~~(3)~~(4) The department or its agent will review the application and the supporting documents and may perform a field evaluation. The department or its agent will approve or deny the application. ~~The applicant will be advised in writing of the decision.~~

(5) The department shall disapprove an application under the following circumstances in which the taxpayer fails to properly apply:

(a) the taxpayer is required to file an income tax return for the year in which the applicant seeks the exemption and does not provide a copy of the return;

(b) the taxpayer is not required to file an income tax return for the year in which the applicant seeks the exemption and does not provide the documentation required in (2);

(c) the taxpayer does not sign the application; or

(d) the department determines an application includes false information.

(6) A taxpayer who provides false information on an application may be charged with fraudulent misrepresentation under 45-6-317, MCA.

(7) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding seven days to the date on the determination letter. An applicant aggrieved by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section. In no case shall an appeal be accepted more than 37 days after the date of the department's determination letter.

~~(4)~~(8) The residence of the disabled veteran or the surviving spouse of a disabled veteran is defined as "that house or dwelling owned by the applicant on the date of application of the tax year for which exemption is sought, which is ~~used~~ occupied by the applicant for more than ~~six~~ seven months per year, and which may include a garage whether attached or detached". All other buildings, outbuildings, or improvements shall not be exempt.

~~(5)~~(9) ~~A lot for~~ For purposes of ~~the property tax exemption, will be defined as~~ this benefit, the land beneath and immediately adjacent to the residence ~~not to exceed five acres~~ shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the qualified residence is located. Land in excess of five acres will not be exempt.

(10) In those cases in which the qualified residence is a mobile home that is assessed separately from the land, the benefit provided by 15-6-211, MCA, will

apply to the land upon which the qualified residence is located only if the land and the mobile home are owned by the applicant.

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

~~(7)~~(12) The application referred to in (1) must be submitted on an annual basis pursuant to the requirements in (1) ~~unless a review of income tax records demonstrates that an individual who met the provisions of (1)(a) had no significant change in income level. In that situation the annual application required may be waived by the department or its agent~~. If the department or its agent does not receive an annual application from the property owner and the property owner is not eligible for the previously described waiver, the property tax exemption will be rescinded.

AUTH: 15-1-201, MCA
IMP: ~~15-6-191,~~ 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.501 to assist taxpayers in understanding the requirements when making an application for a property tax exemption.

The proposed amendments to (3) describe the documentation requirements in cases of taxpayer's filing income tax extensions or in cases of taxpayer's not required to file an income tax return.

New (5) outlines the department's reasons upon which it will deny an application.

New (6) refers to the statutory action that could be taken if information provided on an application is determined to be false.

New (7) advises the applicants of their appeal rights and timelines for appealing the department's decision.

New (8) is being amended to change the length of time that the applicant must have occupied the house or dwelling owned by the applicant from six to seven months to make the rule consistent with 15-6-134, MCA, which requires occupancy in the house or dwelling for seven months.

New (9) and (10) explain the exempt land associated with the qualified residence.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than November 26, 2010.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule

changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor, Senator Christine Kaufman, sponsor of SB 115, was contacted on October 14, 2010, by electronic mail and Representative Mike Jopek, sponsor of HB 658, was contacted on October 14, 2010, by electronic mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 42.21.140 and 42.21.158 relating to property taxes	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 17, 2010, at 2:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

NEW RULE I LIVESTOCK REPORTING REQUIREMENTS (1) A taxpayer who raises livestock in the state of Montana subject to the per capita fees under 15-24-921, MCA, and the requirement of a written statement under 15-24-903, MCA, must reply to the department's request for information.

(2) The department must receive the completed statement no later than February 15.

(3) If a taxpayer fails to return the statement during the timeframe set forth in (2), the department shall, after ten days' notice, assess a $25 penalty under 15-8-309, and 15-24-904, MCA.

AUTH: 15-1-201, MCA
IMP: 15-8-309, 15-24-903, 15-24-904, 15-24-921, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to assist the taxpayers who are required to file the livestock reporting information with the department. The language being proposed in this new rule is currently contained in ARM 42.21.158 and is confusing to many taxpayers because

the statutory reporting requirements for livestock are different from the personal property reporting requirements. The language proposed in this new rule is being deleted from ARM 42.21.158 as shown below.

The department will develop a separate reporting form for livestock reporting in tax year 2012. Currently, livestock reporting is included in the personal property reporting form.

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

42.21.140 OIL DRILLING RIGS (1) ~~Bids for new rigs will be solicited~~ The department will obtain pricing information from manufacturers of oil drilling rigs ~~to determine current replacement costs based on the depth rating listed below~~. The pricing information obtained will be used to determine current replacement cost based on the depth ratings shown below. ~~For each~~ Each depth rating ~~listed below for oil drilling rigs, there~~ will consist of ~~be~~ two replacement cost categories. One category will represent current replacement cost of a mechanical rig and the second category will represent current replacement cost of an electric rig. Each rig as it is assessed will be placed in a value category based on its depth.

DEPTH CATEGORIES

Class	Depth Capacity
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 8,000 ft.
4	7,501 ft. to 10,000 ft.
5	10,001 ft. to 12,500 ft.
6	12,501 ft. to 15,000 ft.
7	15,001 ft. to 20,000 ft.
8	20,001 ft. and over

MANUFACTURER'S DEPTH RATING	SERVICE RIG R.C.N	WORKOVER RIG R.C.N
0 - 3,000 ft.	$	$ 285,209
3,001 ft. - 5,000 ft.		432,135
5,001 ft. - 7,500 ft.	868,250	654,750
7,501 ft. - 10,000 ft.	1,167,210	998,750
10,001 ft. - 12,500 ft.	1,265,500	1,130,600
12,501 ft. - 15,000 ft.	1,720,400	1,538,500
15,001 ft. - 20,000 ft.	1,990,100	
20,001 ft. and over	2,036,047	

The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating." These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in (2).

(2) through (4) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.140 to delete incorrect terminology which infers that the department solicits bids, as in a procurement action, to acquire replacement costs. When in fact, all the department does is seek information regarding replacement costs from manufacturers.

The amendments are intended to add clarity which will assist the taxpayers in understanding the department's intended use of the pricing information obtained from manufacturers.

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) ~~Taxpayers~~ A taxpayer having property in the state of Montana on January 1 of each tax year, must complete the statement as provided in 15-8-301, MCA.

(2) If the statewide aggregate market value of a person or business entity's class eight property ~~on a statewide basis~~ is $20,000 or less as determined by the department, the person or business entity is exempt from class eight taxation. To ensure fair and accurate reporting of all taxable class eight property, the department may require all persons or business entities to report their class eight property periodically. It is the department's current plan to require ~~a~~ biennial reporting of all class eight property ~~for~~ beginning in tax year 2011 ~~and, if judged necessary, for additional future tax years at intervals to be determined~~.

(3) remains the same.

(4) ~~Except as provided in (2), taxpayers having taxable property in the state of Montana on January 1 of each year must complete the~~ The taxpayer's completed personal property statement as provided for in 15-8-301, MCA, must be postmarked no later than March 15. ~~With the exception of livestock owners, the taxpayer has 30 days from the date of receipt of any request for information to respond to the department's request. The department may grant an extension if the taxpayer requests such an extension during the 30 day period. No extension may be granted that allows the taxpayer to report after March 15.~~ Statements postmarked after March 15 will not be considered for that year unless the department determines the following conditions were met:

(a) the taxpayer was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness; and

(b) these impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of submitting the statement, but in no case no later than April 15.

(5) ~~A taxpayer who raises livestock subject to the per capita fees has 14 days from February 1 to respond to the department request for information. The department may grant an extension if the taxpayer requests such an extension before February 15.~~

~~(6)~~ If the taxpayer fails to respond to the department's request for information

during the timeframe~~s~~ set forth in ~~(2), (3), and~~ (4) the department shall assess ~~the property~~ a penalty under the provisions of 15-1-303, and 15-8-309, ~~and 15-24-904,~~ MCA, or any other applicable statute.

(7) through (9) remain the same but are renumbered (6) through (8).

~~(10)~~(9) This rule is effective for tax years beginning after December 31, ~~2009~~ 2010.

AUTH: 15-1-201, MCA
IMP: 15-1-303, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.158 to enhance its ability to keep its personal property records current.

The amendments in (4) and (5) simplify the reporting requirements by extending the set deadline for the return of the personal property statement and eliminating the extension request process previously required by the taxpayer. The proposed amendments also allow for unforeseen medical conditions that may inhibit a taxpayer from complying with the set deadline.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than November 26, 2010.

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

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is

noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.15.315, 42.15.401, and 42.15.403, relating to dependents credits and refunds	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 18, 2010, at 2:00 p. m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.15.315 ORIGINAL AND AMENDED RETURNS (1) through (9) remain the same

(10) When an original return for tax years beginning on or after January 1, 2010, is filed after the extended due date, and the department does not issue the requested refund within 45 days of receiving the return, interest as allowed under 15-30-2609, MCA, is payable from the date the return was filed. For example, an original return for tax year 2010 requesting a refund is filed November 12, 2011, and the department does not issue the refund until January 30, 2012. Refund interest is payable from the date the return was filed (November 12, 2011) until the date the refund was issued (January 30, 2012).

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

AUTH: 15-30-2620, MCA
IMP: 15-1-216, 15-30-2512, 15-30-2602, 15-30-2609, 15-30-2641, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.315 because the 2009 Legislature enacted SB 418 (Ch. 470, L. 2009), which affects the calculation of refund interest. The amendment explains that if an individual requesting a refund files their original return after the extended due date

and the department fails to issue that refund timely (generally within 45 days), interest on that refund is calculated from the date the return was received.

42.15.401 DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) remains the same

(2) "Dependent" has the same meaning as "dependent" for purposes of determining dependent exemptions for federal income tax purposes, except as follows:

(a) The list of individuals in 15-30-2115, MCA, for whom a Montana dependent exemption is allowed is broader than the list of eligible relatives for whom a federal dependent exemption is allowed. The list includes a cousin or other lineal descendant of the sister or brother of the mother or father of the taxpayer, if for the taxpayer's tax year the individual received institutional care because of physical or mental disability, and if, before receiving the institutional care, they lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family.

(b) The list of individuals in 15-30-~~2114~~ 2115, MCA, for whom a Montana dependent exemption is allowed is narrower than the eligible list of individuals for whom a federal dependent exemption is allowed and excludes a child placed for adoption, a foster child, and any other person who is not related to the taxpayer as provided in 15-30-~~2114~~ 2115, MCA, unless:

(i) their gross income did not exceed the limits provided in this rule; and

(ii) they lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family for the entire tax year.

(c) A federal dependent exemption may be claimed for a person under a multiple support agreement exception even if the taxpayer does not provide over half of their total support. Because Montana does not provide a multiple support agreement exception, a dependent exemption is not allowed for any person who does not receive over half of their total support from the taxpayer. See the definition of "support," however, for special rules for determining the support of a child of divorced or separated parents.

(3) and (4) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, 15-30-2115, 15-61-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.401 to correct an incorrect statute reference in (2)(b) and add that statute to the implementing citations for the rule.

42.15.403 EXEMPTIONS FOR DEPENDENTS (1) Except as provided in (2), a taxpayer is allowed a dependent exemption for each dependent who receives over half of his or her total support from the taxpayer.

(2) A dependent exemption is not allowed for an individual described in (1):

(a) who, during the calendar year, has gross income of ~~$800 or~~ more than the exemption amount allowed under 15-30-2114, MCA; unless the individual is the taxpayer's ~~child and either:~~

~~(i) has not attained the age of 19 at the close of the calendar year in which the tax year of the taxpayer begins; or~~

~~(ii) is, during each of five calendar months during the calendar year in which the tax year of the taxpayer begins, a fulltime student at an educational institution or is pursuing a fulltime course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of the state~~ "qualifying child" as defined in section 152 of the IRC;

(b) who makes a joint return with their spouse for the same tax year or for a tax year that begins in the calendar year in which the tax year of the taxpayer begins; or

(c) for whom an exemption for a dependent child with a disability is claimed as provided in (3).

(3) Except as provided in (6), in lieu of the dependent exemption described in (1), a taxpayer is allowed a dependent disabled child exemption as provided in this section and (4), (5), (6), ~~and~~ (7), and (8) equal in amount to twice the dependent exemption. The exemption is allowed for a child who receives over half of his or her support from the taxpayer if:

(a) the taxpayer's home is the dependent disabled child's principal place of abode;

(b) the dependent child has a permanent disability constituting 50% or more of the body as a whole; and

(c) a licensed physician has certified the qualifying disability.

(4) remains the same.

(5) The dependent disabled child exemption may be claimed for a qualifying disabled child of any age and may be claimed for a qualifying disabled child who is 18 or older and has gross income ~~of $800 or more~~ equal to or more than the exemption amount allowed under 15-30-2114, MCA.

(6) through (8) remain the same

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, 15-30-2152, 15-30-2641, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.403 because the 2009 Legislature enacted SB 418 (Ch. 470, L. 2009), which incorporated the definition of "qualifying child" located in section 152 of the Internal Revenue Code into 15-30-2114, MCA, to describe the children of a taxpayer who may be claimed as dependents even if they have more income than is allowed for other dependents.

The rule supports the requirements of 15-30-2114, MCA, so that statute is being added as an implementing citation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than November 29, 2010.

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

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor Senator Branae for SB 418 (2009), was contacted on October 13, 2010, by electronic mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.104, 42.11.105, 42.11.243, 42.11.402, 42.11.405, 42.11.406, 42.11.423 relating to liquor vendors	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 23, 2010, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.11.104 WHOLESALE PRICE (1) and (2) remain the same.

(3) The department may reduce the wholesale price of products which the department has designated as discontinued for closeout or are determined to be overstocked in order to eliminate them from inventory.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-106, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.104 to add this language in order to clearly identify when the wholesale price can be reduced on discontinued items.

The proposed term, discontinued, clearly identifies the classification of products that it is acceptable to reduce the wholesale price on. The wholesale price is the department's base case cost plus markup. This allows the department to reduce the markup (from 40% on distilled spirits and 51% on fortified wines) to a level that may create demand in order to eliminate it from the liquor warehouse inventory, helps the liquor vendors move idle product, allows liquor store agents to purchase the product at a better price and helps the department's division maintain

an efficient warehouse. For example, the warehouse currently has 30 cases of product XYZ. The vendor has discontinued the item because it is no longer being produced. Demand for this item has also ceased. The warehouse is left with these 30 cases that are taking up space for other new or existing products. Reducing the wholesale price on the product could stimulate the agency stores to purchase the remaining products.

42.11.105 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (13) remains the same.

~~(14) "Promotional product" means a new product that is promoted.~~

(15) remains the same but is renumbered (14).

~~(16)~~(15) "Regular product" means a product~~s with the highest sales volumes~~ in which inventories are continually maintained at the state liquor warehouse.

(17) remains the same but is renumbered (16).

~~(18)~~(17) "Sample" means a liquor product furnished by a liquor vendor to registered brokers and representatives for the purpose of promoting the product to licensed all-beverage retailers or agency liquor store agents.

(18) "Seasonal product" means a product that is only available by the manufacturer during certain times of the year.

(19) "Special order product" means a product~~s that have sold less than 24 cases annually~~ in which inventories are not constantly maintained at the state liquor warehouse.

(20) and (21) remain the same.

~~(22) "Warehouse supply product" means products that are not regular products but sell 24 or more cases annually.~~

AUTH: 16-1-103, 16-1-104, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.105 to increase industry's knowledge.

The term "promotional product" is being removed because it is obsolete. The department treats these types of products as a special order item.

Striking the term "promotional product" reduces confusion in the classification of products and will have no impact.

The definition of the term "sample" is being amended as sample products are intended to be distributed to all-beverage retailers or agency liquor store agents.

The definition of "seasonal product" is being added to designate items that are typically offered only at certain times of the year by the manufacturer. These include gift packs and other items not available year round.

The definition of the term "special order product" is revised to mirror the department's efficiencies achieved through the renovation of the warehouse facility and upgrades to the inventory management system.

The definition of "warehouse supply product" is removed to create consistency with ARM 42.11.405 - Product Availability and ARM 42.11.406 - Product

Listing.

42.11.243 SAMPLES (1) through (3) remain the same.

(4) Sealed ~~Sample~~ sample products may only be given to licensed all-beverage retailers or agency liquor store agents ~~who have not purchased the brand within the last 12 months~~.

(5) Samples may not be given to a licensed all-beverage retailer or an agency liquor store agent who has purchased the brand within the last 12 months.

(6) A registered representative may not give more than three liters of a distilled spirit or a fortified wine as samples to an all-beverage retailer or agency liquor store agent within the last 12 months.

~~(5)~~(7) On-premise ~~Consumption~~ consumption of samples must take place at ~~an~~ a licensed all-beverage establishment ~~with an on-premise license~~ or at ~~an~~ a special event conducted under a catering endorsement.

(8) In addition to the consumption allowed under (7), all-beverage retailers and agency liquor store agents are allowed to consume samples, given to them at their establishment by a registered representative, on private property not otherwise licensed by this code.

(9) Sample products must meet the following criteria:

(a) samples are limited to bottles containing no more than 750 milliliters; and

(b) limit of 72 bottles per brand label, per vendor, per calendar year plus 720 bottles of 50 milliliters or 200 milliliters; or

(c) if a vendor does not produce a product in a size of 750 milliliters or less, then the next largest size may be substituted for the 750 milliliter.

(10) For samples cases to be removed from bailed inventory, the vendor must submit a request on a form provided by the department. A vendor must submit the form at least seven days prior to the requested ship date.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.243 in order to increase the liquor industry's understanding of the limitations on samples. The majority of this language was previously part of ARM 42.11.406 (Product Listing). All criteria for samples will be located within this rule. By relocating this language to this rule, it reduces the potential for confusion by registered representatives and liquor vendors. This allows one easy point of reference to what is acceptable for samples and what is not.

Section (5) was previously part of section (4) and was separated in order to create easier reading and better understanding of the subject matter.

Section (6) is being proposed to mirror the Code of Federal Regulations (27 CFR 6.91 Samples).

Section (7) is being amended to reduce confusion as to where samples may be consumed at.

Section (8) is being proposed to allow all-beverage retailers and liquor store agents the ability to consume samples in an area other than at an on-premise establishment.

Section (9) was previously part of ARM 42.11.406. Subsection (9)(c) was added to allow a vendor to substitute a larger bottle size if they do not manufacture the bottle size limits in (9)(b). This allows the registered representative the opportunity to still sample the product to all-beverage retailers and liquor store agents.

Section (10) is being proposed to allow sufficient time for the department to process sample requests. The time requirement allows the division to work the request into our work schedule so that we meet all of our obligations and deadlines for shipping products out. This section also mentions that the sample request must come from the vendor of the product. As the owner of the product, the vendor should initiate any requests to remove product from bailed inventory for sample purposes.

42.11.402 INVENTORY POLICY (1) remains the same.

(2) ~~Notwithstanding any other criteria in this subchapter, products which are packaged, labeled, or advertised in a manner that by their nature appears to appeal to underage consumers or tends to blur the distinction between alcoholic and nonalcoholic products by emphasizing the features that are normally associated with nonalcoholic products and minimizing the product's alcoholic content will not be made available for sale. Including but not limited to:~~

~~(a) candies filled with liquor in liquid form;~~

~~(b) labels depicting Santa Claus, cartoon type characters, or other child like figures; or~~

~~(c) containers not approved by the department~~ All products must be approved by the department prior to being accepted into the state liquor warehouse. A vendor shall submit a picture copy of the product requested for approval.

(3) ~~All containers and packaging must by approved by the department prior to being accepted into the liquor warehouse.~~ Products will not be made available in the state of Montana through the state liquor warehouse if the container, flavor, label, or advertising emphasizes the features that are normally associated with nonalcoholic products and minimizes the products' alcohol content. These include, but are not limited to, products that:

(a) appear to appeal to underage consumers;

(b) blur the distinction between an alcoholic and nonalcoholic product;

(c) reference Santa Claus, cartoon type characters, or other child like figures;

(d) use flavors that are most commonly targeted toward children such as, for example, bubble gum or cotton candy;

(e) are candies filled with liquor in liquid form; or

(f) require specialized handling requirements such as frozen or refrigerated products.

(4) Products will not be made available in the state of Montana through the state liquor warehouse if the container, flavor, label, or advertising contains inappropriate or illegal content.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.402 to provide language that will further protect the public health and safety in the administration of liquor control laws. The amended language will ensure products, packaging, and marketing methods targeted toward underage individuals are not accepted into Montana. The rule is being rewritten for better understanding and to add "flavor" to the list of items to be reviewed, as new flavors and innovative products are continually being developed by vendors.

Subsection (3)(f) is being added because the warehouse is not equipped to handle refrigerated items.

42.11.405 PRODUCT AVAILABILITY (1) Liquor products will be made available for sale in the following classifications:

(a) ~~A "regular"~~ Regular products will be designated in the department's quarterly price list, and have sufficient supply maintained in the bailment warehouse in accordance with ARM 42.11.421. An agent shall give an all-beverage licensee an 8% discount on a full case lot of a regular product.

(b) ~~A "warehouse supply" product will be so designated in the department's quarterly price list, and will have supply maintained in the bailment warehouse to satisfy historical demand. An agent shall not give an all-beverage licensee an 8% discount on a full case lot of a warehouse supply product.~~

~~(c) A "special order"~~ Special order products that ~~has~~ have sold at least one case in the prior 12 months will be published in the department's quarterly price list. Supply will not be maintained in the warehouse and will only be available on an order-by-order basis, and depending on supplier requirements and availability of a product, orders may take six weeks or more to be filled. An agent shall not give an 8% discount on a full case lot of a special order product.

(i) A vendor with a current Montana permit who has at least one registered representative may ship special order products in on a promotional contract if approved by the department on a predetermined form. The promotional contract should:

(A) state that the product will be maintained in the bailment warehouse;

(B) list the test market locations proposed for the product and the expected initial order amount;

(C) describe the promotional strategy that the vendor and the vendor's registered representative will undertake during the six-month promotion period; and

(D) specify a return address for excess product at the end of the promotional period.

(ii) No additional supplier promotions will be allowed until excess product is removed from the warehouse. If arrangements have not been made to ship excess product back within 30 days of notification, product will be destroyed at the vendor's expense.

(c) Seasonal products are not published in the department's quarterly price list. Seasonal products are only available from the manufacturer during certain times of the year. The department will notify store agents when seasonal products become available. An agent shall not give an 8% discount on a full case lot of a seasonal product.

(d) ~~A "promotional" product may be available in the bailment warehouse if~~

~~shipped by a vendor in advance of the sales promotion. An agent shall not give an all-beverage licensee an 8% discount on a full case lot of a promotional product~~ Discontinued products are not published in the department's quarterly price list. Discontinued products are available until all inventories have been depleted. An agent is not required to give an 8% discount on a full case lot of discontinued product; however, the agent may sell the product below its last known posted price.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.405 to eliminate the warehouse supply category in order to create a consistent and uniform process for determining which products will or will not be maintained in the warehouse and to conform to the new warehouse layout as a result of the department's warehouse renovation project. Currently, products are available as one of three classifications: Regular list, warehouse supply, and special order. Both regular list and warehouse supply items are maintained in the warehouse. Special order items are brought in on a case-by-case basis.

The department is proposing to eliminate the warehouse supply portion of the rule and combine it with the regular list section. These proposed changes will improve the efficiencies of warehouse operations enabling the division to distribute products out to agency stores more effectively.

The added language pertaining to promotional contracts in (b)(i) was transferred from ARM 42.11.406 because it applies to this rule better and placed in this rule it will enhance industry's knowledge of the availability of all products.

42.11.406 PRODUCT LISTING (1) A product listing will be determined by the number of case sales in the past 12 months prior to the review. The listings will be reviewed in January and July of each year. The results of the January review are effective May 1~~st~~. The results of the July review are effective November 1~~st~~. The listings will be categorized as follows:

(a) ~~"Regular"~~ Regular products are ~~determined by the equivalent number of available locators in the state liquor warehouse if~~ the top 1,250 products in the state of Montana if:

(i) product sales are not a result of closeout, overstock, or erratic sales ~~and must show a six month sales pattern~~; ~~and~~

(ii) product is available year-round~~.~~; and

(iii) product has been in the state for at least six months prior to the review.

(b) ~~"Warehouse supply" products are:~~

~~(i) those products that do not meet the criteria of a regular list product; and~~

~~(ii) the product sales equal to or greater than the 24 case sales.~~

~~(c) "~~Special order~~"~~ products are products that do not meet the criteria for regular list ~~or warehouse supply items~~ products.

~~(2) A liquor product will be listed as a "promotional" product if the department receives and approves a written proposal that:~~

~~(a) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in~~

~~accordance with ARM 42.11.205 and 42.11.211;~~

~~(b) states that the product is new to the state of Montana and will be maintained in the bailment warehouse;~~

~~(c) provides the following information for each product by bottle size:~~

~~(i) a completed standard quotation and specification form which references the National Alcoholic Beverage Control Association control state code for the product;~~

~~(ii) a list of the test market locations proposed for the new product and the expected initial order amount;~~

~~(iii) a description of the promotional strategy that the vendor and the vendor's registered representative will undertake during the six-month promotion period; and~~

~~(iv) if promotional products fail to sell at the proposed level after a six month promotion period, the department will notify the vendor and make arrangements to remove the excess stock from the warehouse at the vendor's expense. No additional supplier promotions will be allowed until the stock is removed from the warehouse.~~

~~(3) Sample products, like all regular inventory products, must be shipped to the state liquor warehouse for distribution purposes. Sample products must meet the following criteria:~~

~~(a) samples are limited to bottles containing no more than 750 milliliters; and~~

~~(b) limit of 72 bottles per brand label, per vendor, per calendar year in addition to 720 bottles of 50 milliliters or 200 milliliters.~~

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.406 in order to improve the efficiency of the department's liquor operations and to better manage the space at the liquor warehouse. These proposed changes will allow the department to effectively distribute product to agency liquor stores as the division continues to experience growth in liquor sales.

In addition, the department is proposing to transfer the language pertaining to samples to ARM 42.11.243 and the language pertaining to promotional programs to ARM 42.11.405 as they are a better fit for the subject matter.

These proposed amendments are intended to enhance the vendors' and registered representatives' knowledge of the content by better readability.

42.11.423 BAILMENT DEPLETIONS (1) and (2) remain the same.

(3) Payment amount for a purchase will be a vendor's price per case FOB Helena, Montana, that was quoted to the department not less than 60 days prior to the department's price list publication date except special order, ~~and warehouse supply~~ seasonal, and discontinued products.

(4) and (5) remain the same.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.423 to enhance the liquor vendors' understanding of the payment that will be made for depletions from the liquor warehouse based on the classification of the product. These changes coincide with the changes in ARM 42.11.405.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than December 3, 2010.

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

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 18, 2010

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3502 pertaining to the investment policy statement for the Defined Contribution Retirement Plan and ARM 2.43.5102 pertaining to the investment policy statement for the 457 Deferred Compensation Plan	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 26, 2010, the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-444 pertaining to the proposed amendment of the above-stated rules at page 1831 of the 2010 Montana Administrative Register, Issue Number 16.

2. The PER Board has amended ARM 2.43.3502 and ARM 2.43.5102 as proposed.

3. Interested parties were given until September 23, 2010, to comment on the proposed amendment. No comments were received.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer
Department of Administration

Certified to the Secretary of State October 18, 2010.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.5104 pertaining to the adoption by reference of the Declaration of Trust – State of Montana Public Employees Pooled Trust	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 9, 2010, the Montana Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-445 pertaining to the proposed amendment of the above-stated rule at page 1920 of the 2010 Montana Administrative Register, Issue Number 17.

2. The PER Board has amended ARM 2.43.5104 as proposed.

3. Interested parties were given until October 8, 2010, to comment on the proposed amendment. No comments were received.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel and
Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer
Department of Administration

Certified to the Secretary of State October 18, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.17.103, 4.17.105, 4.17.106, and 4.17.107 pertaining to the organic program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 9, 2010 the Department of Agriculture published MAR Notice No. 4-14-192 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1923 of the 2010 Montana Administrative Register, Issue Number 17.

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

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State October 18, 2010.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.201.301 definitions, 24.201.410 fee schedule, 24.201.415 CPA/LPA designation, 24.201.502, 24.201.516 through 24.201.518, 24.201.528, 24.201.531, 24.201.532, 24.201.535, and 24.201.537 licensing examinations, 24.201.701, 24.201.704 through 24.201.710, 24.201.718, 24.201.720, 24.201.723, and 24.201.726 professional conduct rules, 24.201.1106 through 24.201.1108, and 24.201.1115 profession monitoring rules, 24.201.2101, 24.201.2105, 24.201.2106, 24.201.2108, 24.201.2113, 24.201.2114, 24.201.2120, 24.201.2121, 24.201.2124, 24.201.2136 through 24.201.2139, 24.201.2145, 24.201.2146, 24.201.2148, 24.201.2154, and 24.201.2161 renewal and continuing education, 24.201.2401 and 24.201.2410 complaint procedures, the adoption of NEW RULE I exercise of practice privilege in other jurisdictions, and the repeal of 24.201.1111 profession monitoring of holders of special practice permit, 24.201.2112 compliance with continuing education for nonresidents, 24.201.2122, 24.201.2123, 24.201.2130 through 24.201.2132, 24.201.2147, and 24.201.2155 renewal and continuing education	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 26, 2010, the Board of Public Accountants (board) published MAR notice no. 24-201-44 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1836 of the 2010 Montana Administrative Register, issue no. 16.

2. On September 20, 2010, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the September 27, 2010, deadline.

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

Comments 1 and 2 relate to ARM 24.201.410:

COMMENT 1: One commenter stated that it is difficult to believe that annual revenue will be increased approximately $184,240 due to the proposed fee increases and said, "Wow!"

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

COMMENT 2: A commenter supported the need to increase fees, but stated the increases seem excessive and suggested raising fees incrementally in the future.

RESPONSE 2: The board notes that they have not raised fees in many years, and that incrementally raising fees requires a rule change each time. Rule changes are fairly costly, since they require filing fees, notice costs, and publication costs. The board declines to make any changes based on this comment.

COMMENT 3: A commenter suggested amending the experience requirements in ARM 24.201.502 to bring Montana's requirements more into line with the Uniform Accountancy Act (UAA). The commenter noted that UAA experience includes accounting, attest, compilation, management advisory, financial advisory, tax, or consulting work, while this rule still requires accounting and auditing.

RESPONSE 3: The board considers accounting and auditing to include the types of experience the commenter lists and notes the definition of "public accounting" at 37-50-101(10), MCA. The board believes accounting experience includes academic employment and is amending the rule exactly as proposed.

COMMENT 4: One commenter supported the amendments to ARM 24.201.516 and making the 18-month period end on the last day of the last month, but noted that "taken and passed" might be confusing, since these are two different dates.

RESPONSE 4: The board agrees that the language may be confusing and is amending the rule accordingly.

Comments 5 and 6 relate to ARM 24.201.528:

COMMENT 5: A commenter noted a misspelling of principal in (2) of this rule.

RESPONSE 5: The board agrees and is amending the rule accordingly.

COMMENT 6: One commenter noted that Montana requires five years' experience in the previous ten years, while the Uniform Accountancy Act (UAA) requires only four years and imposes less burdensome additional qualifications. The UAA also permits individuals establishing their principal place of business in Montana to qualify for a Montana license, based on substantially equivalent qualifications.

RESPONSE 6: The board acknowledges this comment, but is amending the rule exactly as proposed.

Comments 7 and 8 relate to ARM 24.201.531:

COMMENT 7: One commenter noted a misspelling of Northern Mariana Island in (2)(c).

RESPONSE 7: The board agrees and is amending the rule to correct the spelling.

COMMENT 8: One commenter noted that Colorado passed the 150-hour education requirement to take effect in 2014. The commenter suggested amending (2) to state that the board deems all jurisdictions approved by NASBA as substantially equivalent, so the rule would not need to be amended again in 2014.

RESPONSE 8: The board acknowledges the comment, but declines to amend this rule based on this comment.

COMMENT 9: One commenter opined that ARM 24.201.1106(5) could impede mobility, since it requires that firms notify the board of the peer review status in their principal places of business. The commenter questioned whether the requirement applies only to 37-50-335(3), MCA, and if it would trump the proposed rule. The commenter suggested amending the rule to state that it applies only to the exemption in (2) and that (2) only applies to out of state firms.

RESPONSE 9: The board acknowledges the concerns and is not amending this rule at this time.

COMMENT 10: One commenter stated that the new peer review standards, effective after January 1, 2009 and referenced in ARM 24.201.1108, no longer require a letter of comment, but still require a letter of response.

RESPONSE 10: The board acknowledges the comment and may consider this in a future rulemaking project.

COMMENT 11: One commenter stated that ARM 24.201.2106 no longer references reporting on financial statements, but ARM 24.201.2138(2) still mentions this.

RESPONSE 11: The board acknowledges the comment and will consider this change in a future rulemaking project.

COMMENT 12: A commenter noted that ARM 24.201.2146 references a form prescribed by the board, and asked the board to consider requiring a board approved form so licensees could submit forms produced by software they use to track and report CPE hours, as they have done for many years.

RESPONSE 12: The board acknowledges the comment and will consider this change in a future rulemaking project.

COMMENT 13: One commenter said the requirement in ARM 24.201.2410(1)(g) to notify the board of the suspension, revocation, termination, or discipline of an individual's license in any jurisdiction is overbroad and should be limited to the person's principal place of business. The commenter noted that since a licensee could have a license revoked or terminated as a method of relinquishment (by failing to complete CPE when the individual no longer desires to complete the renewal requirements, for example) and stated that limiting the rule to the principal place of business would still protect the public.

RESPONSE 13: The board acknowledges the comment but is amending this rule exactly as proposed.

4. The board has amended ARM 24.201.301, 24.201.415, 24.201.502, 24.201.517, 24.201.518, 24.201.532, 24.201.535, 24.201.537, 24.201.701, 24.201.704 through 24.201.710, 24.201.718, 24.201.720, 24.201.723, 24.201.726, 24.201.1107, 24.201.1108, 24.201.1115, 24.201.2101, 24.201.2105, 24.201.2106, 24.201.2114, 24.201.2120, 24.201.2121, 24.201.2124, 24.201.2136 through 24.201.2139, 24.201.2145, 24.201.2146, 24.201.2148, 24.201.2154, 24.201.2401, and 24.201.2410 exactly as proposed.

5. The board has amended ARM 24.201.410, 24.201.516, 24.201.528, 24.201.531, 24.201.2108, 24.201.2113, and 24.201.2161 with the following changes, stricken matter interlined, new matter underlined:

24.201.410 FEE SCHEDULE (1) through (3) remain as proposed.

AUTH: 37-1-134, 37-50-203, 37-50-204, ~~37-50-323,~~ MCA
IMP: 37-1-134, 37-1-141, 37-50-204, 37-50-314, ~~37-50-323,~~ MCA

24.201.516 GRANTING OF EXAMINATION CREDIT (1) remains as proposed.

(a) An applicant for a certificate as a certified public accountant needs to pass all four test sections within a rolling 18-month period, which begins on the date the first test section was ~~taken and~~ passed~~,~~ and ends on the last day of the last month of that 18-month period. An applicant may take any section of the examination up to four times during a one-year period but cannot retake any failed test section in any one three-month testing period. In the event all four test sections

are not passed in the rolling 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.

(b) An applicant for a license as a licensed public accountant needs to pass any three test sections within a rolling 18-month period, which begins on the date the first test section was ~~taken and~~ passed~~,~~ and ends on the last day of the last month of that 18-month period. An applicant may take any section of the examination up to four times during a one-year period, but cannot retake any failed test section in any one three-month testing period. In the event three test sections are not passed in the rolling 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.

(2) remains as proposed.

24.201.528 LICENSURE OF OUT-OF-STATE APPLICANTS SEEKING A MONTANA CERTIFICATE, LICENSE, OR PERMIT (1) remains as proposed.

(2) An individual whose ~~principle~~ principal place of business is out of state and who qualifies for the practice privilege is exempt from permitting or licensing requirements pursuant to 37-50-325, MCA.

(3) through (4) remain as proposed.

24.201.531 PRACTICE PRIVILEGE (1) through (2)(b) remain as proposed.

(c) Commonwealth of the Northern ~~Marianna~~ Mariana Island; and

(d) through (v) remain as proposed.

AUTH: 37-50-203, ~~37-50-323,~~ MCA
IMP: 37-1-306, 37-50-203, ~~37-50-317,~~ ~~37-50-323,~~ 37-50-325, MCA

24.201.2108 WHO MUST COMPLY - GENERAL (1) and (2) remain as proposed.

AUTH: 37-50-201, 37-50-203, ~~37-50-323,~~ MCA
IMP: 37-50-203, 37-50-314, ~~37-50-323,~~ 37-50-325, MCA

24.201.2113 NONRESIDENT HOLDERS OF A PERMIT TO PRACTICE - COMPLIANCE (1) and (2) remain as proposed.

~~History~~ AUTH: 37-50-201, 37-50-203, ~~37-50-323,~~ MCA
IMP: 37-50-203, 37-50-314, ~~37-50-323,~~ 37-50-325, MCA

24.201.2161 REINSTATEMENT (1) remains as proposed.

AUTH: 37-50-201, 37-50-203, MCA
IMP: 37-50-203, 37-50-314, ~~37-50-322,~~ MCA

6. The board did not amend ARM 24.201.1106 as proposed.

7. The board has adopted NEW RULE I (24.201.2402) exactly as proposed.

8. The board has repealed ARM 24.201.1111, 24.201.2112, 24.201.2122, 24.201.2123, 24.201.2130 through 24.201.2132, 24.201.2147, and 24.201.2155 exactly as proposed.

BOARD OF PUBLIC ACCOUNTANTS
RICK REISIG, CPA, CHAIRPERSON

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

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

Certified to the Secretary of State October 18, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.25.1817); II (42.25.1818); III (42.25.1819); IV (42.25.1820); and V (42.25.1816) and amendment of ARM 42.25.1801 relating to oil and gas taxes	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 26, 2010, the department published MAR Notice No. 42-2-844 regarding the proposed adoption and amendment of the above-stated rules at page 1872 of the 2010 Montana Administrative Register, issue no. 16.

2. A public hearing was held on September 20, 2010 to consider the proposed adoption and amendment. Mr. David Galt, Executive Director, Montana Petroleum Association (MPA), and Mr. Patrick Montalbin, Northern Montana Oil and Gas Association (NMOGA), appeared at the hearing. Oral testimony and written comments subsequently received, are summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. Galt testified and provided the following general comments as follows. Due to their concern about inconsistencies with the allowable deductions at the time of audits, the MPA had approached the department a couple of years ago with a request to jointly develop legislation that would provide gas valuation clarity. The department responded that they could do this completely by rule, but Mr. Galt says the MPA did not get the clarity they were seeking through the proposed rule language.

Mr. Galt made the additional general comments that they had submitted examples to the department in seeking clarity and to perhaps establish some parity with other gas-developing states and the federal government, but that he doesn't think these rules provide the clarity needed.

Mr. Galt also added that the MPA is very thankful for the department's efforts, that the rule development has come a long way, and this is very good work that represents the discussions between the industry and the department.

Mr. Galt further commented that they have concerns about the definition of "delivery price adjustments" (DPA), a question about New Rule V related to determining qualifying production and about New Rule I related to defining non-arm's-length situations.

Mr. Galt stated that he would share the hearing comments on proposed New Rule V with the MPA. He further stated that the committee may offer proposed language changes for New Rule V.

He also reiterated that the definition on DPA is a big deal to the industry.

Further, he says the rule continues to foster ambiguity and discretion that will not address the problems that were mutually identified by the industry.

RESPONSE NO. 1: The department appreciates Mr. Galt's comments regarding progress made through the development of these rules. The department does not concur, however, with the comments that suggest that the rules do not provide sufficient clarity at this time. The department notes that if future experience in administering these rules and the applicable tax laws provides evidence that further clarity or specificity is needed, the department is prepared to engage in additional rulemaking for that purpose. The department believes that these rules provide direction to the operators. Specifically, the rules provide direction on what qualifies as an allowable reduction of value in situations where a downstream price must be used. In addition, the examples in the rules provide additional clarity on the types of expenses that may or may not be allowable reductions in total gross value.

The association's comment that the department's rules do not reflect other state's rules is true, in that these rules do not individually list each specific type of expense that is an allowable reduction in total gross value. The department determined that a general category of the types of expenses would better explain what would be allowable reductions in total gross value than would an itemized list. In addition, an itemized list would not be ideal as the list would be voluminous, require constant updates, and would not include all expenses that may be allowable. The itemized list would also be subject to interpretation issues, because not all materials and systems are described using the same terms by all operators.

Please see Comment and Response No. 6 concerning Mr. Galt's statements addressing New Rule V.

COMMENT NO. 2: Mr. Galt further indicated that the MPA finds New Rule I hard to interpret and understand as drafted, and he recommends revising (1) and (2) of that rule.

RESPONSE NO. 2: The department appreciates receiving the association's proposals for further amendments to New Rule I. The department has decided not to adopt the suggested revisions to (1) because the MPA's suggested language, in both instances, does not include the term "arm's-length contract." The purpose of the rule is to arrive at an arm's-length price and the department will not consider a non-arm's-length contract as the basis for total gross value.

The department is amending (2) to incorporate some of the suggested changes from the association. Specifically the department agrees to look for comparable prices in the field before using comparable prices in other fields. However, the department does not agree with the language that confines the review of prices in other fields to be a weighted average. While the department may well use a weighted average price to determine comparable pricing, it must reserve the right to use any appropriate method.

COMMENT NO. 3: Mr. Galt also recommends language revisions for New Rule II as follows:

- Section (1), change the last sentence to include that DPA costs must be documented and itemized;
- Subsection (2)(a) be expanded to include direct, indirect, and contract labor

associated with central facilities and/or applicable lease equipment;

- Subsection (2)(b) be expanded to include fuel, power, and utilities, chemicals, safety, and costs of environmental permitting and monitoring, federal or state environmental compliance fees, and overhead directly attributable to the central facility or applicable lease equipment;
- Subsection (2)(e) be changed to allow a company to use the price they paid for the equipment and/or facilities and increase the number of years to depreciate the asset to 20 or 25 years; and
- Subsection (2)(f) the allowance to take both the depreciation and return on the undepreciated balance be clarified.

He further notes, relative to (3)(d), that overhead is a common expense for facilities allowed by the Council of Petroleum Accountants Societies, Inc. (COPAS) and others, and requests that (b) and (d) be removed.

RESPONSE NO. 3: The department cannot amend the rule to drop the language "increase the value of the gas," in (1) because the purpose of allowing for reductions in total gross value of a downstream price is to compensate for a cost incurred that increases the value of the gas further downstream.

Relative to (2)(a), the department is not amending the rule to include indirect labor or applicable lease equipment as a possible reduction in the total gross value, however, if found to be a direct cost, contract labor will be an allowable reduction of the total gross value.

The department believes the current language in (2)(b) is adequate, and will not amend the rule to allow lease equipment as a reduction in total gross value.

The department believes the ten-year straight-line depreciation schedule to be appropriate as shown in (2)(e) so it will not amend the rule to allow the purchase price of a fully depreciated facility to be a reduction in the total gross value.

The department does agree with the need to clarify (2)(f) and has revised that language.

The department does not allow overhead as a reduction in total gross value and therefore will not amend (3) to remove (b) and (d).

COMMENT NO. 4: Mr. Galt suggests that things like return on investment and depreciation aren't really considered "paid" and that New Rule III is unnecessary and should be deleted.

RESPONSE NO. 4: The department appreciates Mr. Galt's comments but believes that both return on investment and depreciation describe costs that are incurred through the original initial purchase of equipment or a central facility so both of these subsections are necessary in this rule.

COMMENT NO. 5: Mr. Galt recommends that the last sentence in New Rule lV be revised to say "To satisfy the adequate records requirement, the records must be supported by receipts, vouchers, or other documentary evidence."

RESPONSE NO. 5: The department agrees and has amended the rule as shown below to address this concern.

COMMENT NO. 6: Mr. Galt further states that New Rule V has nothing to do with the other rules in this collection and should be deleted. Mr. Montalbin also commented on New Rule V, and requested clarification for this rule because it doesn't make sense to them. He stated that they don't understand the last part of it, because it takes the preceding month off, which therefore takes off one extra month, yet then says the qualifying production time period continues for 12 or 18 contiguous months depending on the wells.

RESPONSE NO. 6: The department believes this rule is necessary but is amending the language to address the concern that the new well incentives are for 12 or 18 months not 11 or 17 months by adding specific dates when the well has a reduced tax rate.

COMMENT NO. 7: Mr. Galt included the following comments about the definitions section:

- Section (1), the last sentence needs to be removed;
- Section (2), the last sentence in the definition should be changed by inserting "and/or transport" between gather and natural, and by removing "at a point remote" between gas and from; and
- Section (4), the language relating to when delivery price adjustments occur is too vague. He proposes the definition language be replaced with ". . . includes all expenses directly incurred and attributable for the operation and maintenance of central facilities and/or lease equipment."

RESPONSE NO. 7: The department believes the last sentence in (1) to be crucial in the distinction between arm's-length and non-arm's-length contracts, so the department has decided to retain this section in the rule.

The department appreciates Mr. Galt's suggestion of adding transport into the definition of central facilities in (2) and is amending the rule to do so.

The department also agrees to drop the following sentence "delivery price adjustments only occur when the department deems it necessary to establish the correct natural gas gross value." in the definition of (4). However, the department does not agree to include lease operating expenses in the definition, because the department has determined that these costs should not be allowable reductions in total gross value.

COMMENT NO. 8: Mr. Montalbin spoke about the economics of the natural gas industry in our state, saying it is the worst it has been in years and today's price makes most of the stripper wells in Montana not economically viable. He further explained that the issue is so serious that their company has had to cut payroll. He thanked the department for bringing this to a head and says it is time to put this issue behind us and try to create good paying jobs in the state.

Mr. Montalbin further commented that NMOGA will always agree with the input MPA provides to the department, and commends the department for coming up with a DPA cost, stating they think it is extremely important for business in the state because it clearly defines what can be deducted. He further stated that

NMOGA believes the second sentence in New Rule ll(1), should be described as BTU (British thermal unit), compression, dehydration, and pipeline loss adjustments. He explained that in their business, all of these factors take MCFs (thousand cubic feet) and convert them into dekatherms and, therefore, an operator should be allowed to deduct these through the pricing at the wellhead.

RESPONSE NO. 8: The department appreciates Mr. Montalbin's comments. The department believes the above comments are addressed in the current rules as the department uses the volume derived from the purchase statements, which would address differences in BTU, compression, dehydration, and line loss.

COMMENT NO. 9: Mr. Montalbin testified that another very important part for the small independents of northern Montana is to include in the description the cost of a rental compressor, as there are many operators their size who cannot afford to purchase this high-priced equipment. Because this forces the operator to rent the equipment it is, therefore, a direct cost to deliver natural gas to market. He later added for clarification that there is a cost to operate the compressor and operators will provide written documentation to show BTU compression and dehydration usage, and pipeline loss.

RESPONSE NO. 9: The department agrees and will consider any compression rental costs as reduction in the total gross value in every instance where the compression rental costs are found to not be related to extraction or lease operating costs.

COMMENT NO. 10: Mr. Montalbin commented that, relative to the definitions, NMOGA supports the MPA's position on the description of (1) in ARM 42.25.1801, that the contracts or agreements language should be removed from the definition. He further commented that he believes this is what the industry and department agreed on.

He also stated they do not agree with the definition of DPA, in ARM 42.25.1801, because they don't understand how the proposed language will work. He stated that if we all work together and have very clear adjustments, all this should work. There will be so many cents for BTUs, for compression, for dehydration, and that will have to be for everyone the department has allowed to have pumper cost, etc.

Mr. Montalbin recommends all of the delivery price adjustments language be stricken.

Mr. Montalbin concluded this portion of his comments by saying that the NMOGA feels this is very important for the state of Montana, not just for existing production but to the development of the natural gas industry in the state. NMOGA would like to carry a legislative bill that all parties agree on, in this next legislative session that would alleviate lawsuits in the state and provide good paying jobs.

RESPONSE NO. 10: The department agrees with Mr. Montalbin that if the industry and the department work together value adjustments will be clear and easy to comprehend. The department also believes that the definitions of arm's-length

contract and delivery point adjustments are needed because the definitions will assist in providing clarity to both the industry and the employees of the department.

The department further believes that through continued communications and efforts by the department a better understanding of the rules is possible. The department agrees that if it is determined that there is still confusion or concern pertaining to this complex issue, the subject can be revisited to provide further clarification.

Lastly, the department does not believe that the delivery price language should be stricken because delivery price adjustments (DPA) benefit the industry and provide a marketable total gross value for the gas at the well.

3. As a result of the comments received the department adopts New Rule I (42.25.1817); New Rule II (42.25.1818); New Rule IV (42.25.1820); New Rule V (42.25.1816) and amends ARM 42.25.1801 with the following changes:

NEW RULE I (42.25.1817) GROSS VALUE OF NATURAL GAS (1) remains the same.

(2) If natural gas is sold in the absence of a contract the total gross value of the natural gas may be determined by reviewing comparable arm's-length contracts. The department will identify comparable arm's-length contracts utilizing factors including but not limited to; similar time, proximity to the location, similar duration, similar gas quality, and similar quantity of gas sold. Upon conducting a comparable arm's-length study, the department will attempt to identify comparable arm's-length's contracts within the same field of the leases in question prior to using comparable arm's-length contracts from other fields.

(3) If natural gas is sold through a non-arm's-length contract at the well or wells and sold with an arm's-length contract further downstream of the well or wells, the total gross value of the natural gas may be determined at the delivery point with delivery price adjustments.

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

NEW RULE II (42.25.1818) DELIVERY PRICE ADJUSTMENT (DPA) COSTS (1) remains the same.

(2) Allowable delivery price adjustment costs include but are not limited to:

(a) Costs of direct labor associated with the central facilities. Direct labor is not meant to include personnel in corporate or headquarter offices who are not directly involved in the actual on-site central facility operations;

(b) Costs of materials, supplies, maintenance, repairs, and utilities directly associated with the central facility;

(c) Property taxes paid on the central facility;

(d) Liability and casualty insurance directly paid on the central facilities;

(e) Depreciation of the central facility is allowed as a reduction in gross value or a delivery price adjustment. The department will allow the depreciation of the initial capital investment of the central facilities, determined on a straight-line basis for a period of ten consecutive years beginning the year in which the facility first

began to operate. The department will also allow additional capital investments made to the central facilities after the initial capital investment determined on a straight-line basis for a period of ten consecutive years beginning the year in which the ~~facility first began to operate~~ additional capital investment was acquired;

(f) A return on investment percentage will be allowed to the operator of the central facility provided a balance of the initial capital investment is available to be depreciated as calculated in accordance with (2)(e). The annual rate of return will consist of the undepreciated balance of the capital investment multiplied by Moody's Baa corporate bond rate. For example assume the following: both Company Y and Company X operate gas wells in Montana, both companies do not have arm's-length wellhead contracts, but rather delivered gas contracts well downstream of the wells, Company Y made an initial capital investment of a central facility asset (a gas processing plant) for $1,000,000 and the initial investment has not been fully depreciated ($~~1,000,000~~ 800,000), Company Y sold the asset to Company X for $200,000 (Moody's Baa corporate rate is 3%), and Company X will be allowed a return on investment reduction of their gas value of 3% of the acquisition cost or 3% * $200,000 or $6,000.

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

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

NEW RULE IV (42.25.1820) NECESSITY OF PROOF (1) Any delivery price adjustment or reduction in value will be disallowed if the operator does not keep adequate records or other proof to show the amount and purpose for the expense. To satisfy the adequate records requirement, there must be records maintained ~~that were prepared at or near the time of use,~~ and ~~the records must be~~ supported by receipts, vouchers, or other documentary evidence.

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

NEW RULE V (42.25.1816) DETERMINING QUALIFYING PRODUCTION

(1) Qualifying production time period begins immediately after the last day of the month preceding the month when production first started. The qualifying production time period continues for 12 or 18 contiguous months, 12 for vertical production or 18 for horizontally completed wells.

(a) Example – A vertical oil or natural gas well first produces May 2010. The well will have a reduced tax rate as illustrated in 15-36-304, MCA for the months May 1, 2010 to April 30, 2011.

(2) remains the same.

AUTH: 15-36-322, MCA
IMP: 15-36-304, MCA

42.25.1801 DEFINITIONS In addition to the definitions found in 15-36-303, MCA, the following definitions apply to terms used in this chapter:

(1) remains the same.

(2) "Central facilities" are installations which are used to cool, heat, separate, dehydrate, compress, sweeten, or gather/transport natural gas at a point remote from the well or wells.

(3) through (13) remain the same.

AUTH: 15-36-322, MCA
IMP: 15-1-101, 15-36-301, 15-36-302, 15-36-303, 15-36-304, 15-36-305, 15-36-309, 15-36-310, 15-36-311, 15-36-312, 15-36-313, 15-36-314, 15-36-315, 15-36-319, 15-36-321, 15-36-326, 82-1-111, MCA

4. Therefore, the department adopts New Rule I (42.25.1817); New Rule II (42.25.1818); New Rule IV (42.25.1820); and New Rule V (42.25.1816) and amends ARM 42.25.1801 with the amendments listed above and adopts New Rule III (42.25.1819) as proposed.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 18, 2010

VOLUME 53 OPINION NO. 5

CITIES AND TOWNS - A city may create a "tax-supported public library" after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;
COUNTIES - A city may create a "tax-supported public library" after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;
LIBRARIES - A city may create a "tax-supported public library" after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;
LOCAL GOVERNMENT - The powers of local governments are to be liberally construed;
STATUTORY CONSTRUCTION - In interpreting a statute, I look first to its plain language. Language that is clear and unambiguous requires no further interpretation;
TAXATION AND REVENUE - A city may create a "tax-supported public library" after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;
MONTANA CODE ANNOTATED - Sections 22-1-303, -313, 33-1-301(3);
MONTANA CONSTITUTION OF 1972 - Article XI, sections 4(2), 6;
OPINIONS OF THE ATTORNEY GENERAL - 47 Op. Att'y Gen. No. 6 (1997).

HELD:

1. Taxable property within an incorporated city may become exempt from a county library levy under Mont. Code Ann. § 22-1-313 only when (1) the city has "an existing tax-supported public library," as the term "public library" is defined in Mont. Code Ann. § 33-1-301(3), actually in existence and (2) the city governing body notifies the county of its desire not to be part of the county library system.

2. Where the city and county have entered an interlocal agreement in which the city provides a building and other services for a branch of the county library but has not created an independent city library, withdrawal from the interlocal agreement, by itself, does not allow the city to act under Mont. Code Ann. § 22-1-313 to exempt city property from the county library tax levy.

3. A city may create a "tax-supported public library" after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy.

October 18, 2010

Ms. Mary VanBuskirk
Whitefish City Attorney
P.O. Box 158
Whitefish, MT 59937-0158

Dear Ms. VanBuskirk:

Your predecessor requested my opinion as to the following rephrased questions:

1. If the City of Whitefish withdraws from the Interlocal Agreement with the Flathead County Library, and thereby takes back the library building located in Whitefish, will real property within the City be exempt from the County's mill levy for library services pursuant to Mont. Code Ann. § 22-1-313?

2. May the City of Whitefish create "an existing tax-supported public library" after withdrawing from the Interlocal Agreement, and thereby satisfy the requirements of Mont. Code Ann. § 22-1-313?

There is currently a branch of the Flathead County Library ("County Library") in the City of Whitefish ("Whitefish"). The property owners of Whitefish, like all property owners within the county, are assessed property taxes via a county mill levy for support of the library system. The Whitefish branch is housed in a building that is owned by Whitefish, and Whitefish allows the County Library to use the building as a branch of the county library system pursuant to an Interlocal Agreement ("Agreement"). Whitefish is now considering a request from the community seeking to end the Agreement and run Whitefish's own independent city library. As part of the proposal, Whitefish would seek to exempt the property in the city from the County's library mill levy pursuant to Mont. Code Ann. § 22-1-313, which provides:

> After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

In interpreting a statute, I look first to its plain language. Language that is clear and unambiguous requires no further interpretation. Gannett Satellite Info. Network v. State, 2009 MT 5, ¶ 20, 348 Mont. 333, 201 P.3d 132.

The language of Mont. Code Ann. § 22-1-313 is clear and unambiguous. If, after the establishment of a county library, a city desires to exempt the property in the city from the county library mill levy, it must: (1) have "an existing tax-supported public library;" and (2) notify the county that the city does not desire to be a part of the county library system.

The only "existing tax-supported public library" in Whitefish at this time is a branch of the county library. If the city terminates the Agreement, that library will cease to function, but no "existing tax-supported" city library will thereby spring into existence. In other words, the city must have an independent library that it has created pursuant to statute before it can seek to exempt the property within city limits from the county tax levy. The building housing the Whitefish branch is owned by the city. However, it is considered by all parties to currently be a branch of the county library, and therefore cannot be considered "an existing tax-supported public library" of the city.

This holding does not conflict with former Attorney General Mazurek's opinion in 47 Op. Att'y Gen. No. 6 (1997). The question presented in that opinion was whether a city and a county could both levy taxes on property within the city to operate a joint city-county library. While answering that question, Attorney General Mazurek noted that "Montana Code Annotated § 22-1-313 expressly allows a city to become exempt from the county levy upon notification that the city no longer wishes to maintain the county library." Id. However, he later more fully explained that "the city has the option to run its own library under § 22-1-313 and be exempt from any county levy." Id. (emphasis added). Before being entitled to the exemption, then, the city must "run its own library."

Once Whitefish has withdrawn from the Agreement and taken back the building, it can create a public library pursuant to Mont. Code Ann. § 22-1-303, provide funding to the library through the city's tax revenues, and operate a public library out of the existing building. Once the city library is up and running on city tax funds, the city would have "an existing tax-supported public library." Upon notification to the county, property within the city limits would be exempt from the county library mill levy pursuant to Mont. Code Ann. § 22-1-313.

The Flathead County Attorney has suggested that Mont. Code Ann. § 22-1-313 only allows a city to exempt its property from the county library tax levy if the city has a tax-supported library in existence when the county library is formed. I disagree. The powers of local governments are to be liberally construed. Mont. Const. art. XI, §§ 4(2), 6. Montana Code Annotated § 22-1-313 does not clearly require that the city library predate the county library and, given the directive of the Montana Constitution, I decline to insert such a requirement in the statute.

THEREFORE, IT IS MY OPINION:

1. Taxable property within an incorporated city may become exempt from a county library levy under Mont. Code Ann. § 22-1-313 only when (1) the city has "an existing tax-supported public library," as the term "public library" is defined in Mont. Code Ann. § 33-1-301(3), actually in existence and (2) the city governing body notifies the county of its desire not to be part of the county library system.

2. Where the city and county have entered an interlocal agreement in which the city provides a building and other services for a branch of the county library but has not created an independent city library, withdrawal from the interlocal agreement, by itself, does not allow the city to act under Mont. Code Ann. § 22-1-313 to exempt city property from the county library tax levy.

3. A city may create a "tax-supported public library" after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy.

Sincerely,

/s/ Steve Bullock
STEVE BULLOCK
Attorney General

sb/jss/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2010. This table includes those rules adopted during the period July 1, 2010, through September 30, 2010, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2010, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 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.

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the 2011 Montana Administrative Register - p. 1878, 2410

ADMINISTRATION, Department of, Title 2

I Examination Procedures, p. 1585, 1884
2.21.215 and other rules - Annual Leave Policy, p. 804, 1356, 1603
2.21.305 and other rules - Disaster and Emergency Leave Policy, p. 808, 1358, 1605
2.21.501 and other rules - Jury Duty - Witness Leave Policy, p. 1362, 1792
2.21.1701 and other rules - Overtime - Nonexempt Compensatory Time, p. 1365, 1793
2.21.1801 and other rules - Exempt Compensatory Time Policy, p. 811, 1360, 1606
2.21.3702 and other rules - Recruitment - Selection, p. 1368, 1633, 2208
2.21.3801 and other rules - Probation, p. 1382, 1794
2.21.5005 and other rules - Reduction in Work Force, p. 253, 908
2.21.6606 and other rules - Employee Records Management, p. 256, 1070
2.21.6702 and other rules - Incentive Award Program, p. 590, 1072
2.59.1701 and other rules - Definitions - Mortgage Loan Originator Licensing - Continuing Education Provider Requirements, p. 945, 1480

(Public Employees' Retirement Board)

2.43.1306 Actuarial Rates - Assumptions, p. 1433, 1881

2.43.3501 and other rule - Adoption by Reference of the State of Montana Public Employees Pooled Trust - Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document - State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 941, 1229, 1725

2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 937, 1227, 1724

2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1831

2.43.5104 Adoption by Reference of the Declaration of Trust- State of Montana Public Employees Pooled Trust, p. 1920

(Teachers' Retirement System)

2.44.304 and other rule - Qualifications of the Actuary Engaged by the Teachers' Retirement System - Annual Report of Employment Earnings by Disabled Retirees of the Teachers' Retirement System, p. 1763, 2344

(Burial Preservation Board)

2.65.102 and other rules - Repatriation of Human Skeletal Remains - Funerary Objects - Protection of Burial Sites - Scientific Analysis, p. 2276

AGRICULTURE, Department of, Title 4

I Eurasian Watermilfoil Management Area, p. 1129, 1493

4.5.210 Priority 3 Regulated Plants, p. 1588, 1985

4.10.201 and other rules - Pesticide Administration, p. 457, 909

4.12.102 and other rules - Apiculture, p. 2018

4.12.601 and other rules - Fertilizer Regulations, p. 1436, 1795

4.17.103 and other rules - Organic Program, p. 1923

STATE AUDITOR, Title 6

6.6.1906 and other rules - Administration of a New Risk Pool by Comprehensive Health Care Association and Plan, p. 1132, 1494

COMMERCE, Department of, Title 8

I Submission and Review of Applications for Funding Under the Treasure State Endowment Program, p. 4, 1073

I Administration of the 2010-2011 Federal Community Development Block Grant (CDBG) Program, p. 2416, 1285

17.38.106 Fees, p. 2421, 910
17.38.201A and other rules - Incorporation by Reference - Maximum Inorganic Chemical Contaminant Levels - Maximum Radiological Contaminant - Chemical and Radiological Quality Samples - Testing - Sampling Records - Reporting Requirements - Public Notification for Community and Noncommunity Supplies, p. 828
17.50.403 and other rule - Definitions - Annual Operating License Requirements, p. 833, 1799

TRANSPORTATION, Department of, Title 18

18.2.101 and other rules - Incorporation of Model Rules - Contested Case Procedures, p. 1387, 1731
18.8.202 and other rules - Transportation of Hazardous Materials - Definitions - Motor Carriers Operating Interstate - Maximum Allowable Weights - Maximum Allowable Weights on the Noninterstate - Federal Motor Carrier Safety Rules - Safety Inspection Program, p. 674, 1179
18.12.401 and other rules, Aeronautics Division, p. 1650, 1991

JUSTICE, Department of, Title 23

23.3.148 Release of Driving Records, p. 1237, 2213
23.12.204 Juvenile Records, p. 972, 1401

(Gambling Control Division)
23.16.116 and other rule - Transfer of Interest Among Licensees - Loan Evaluation, p. 1393, 1732

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Carbon Monoxide Detector Standard, p. 978, 2385
I-VI Incumbent Worker Training Grants Program, p. 479, 913
I-XIII Approved Construction Techniques for Fire Mitigation, p. 980, 1966
24.11.203 and other rules - Independent Contractor Exemption Certificates - Employment Status Determinations by the Department, p. 1139, 1608
24.16.201 and other rules - Employment of Persons in an Executive, Administrative, or Professional Capacity, p. 594, 1180
24.16.7506 and other rules - Collective Bargaining Proceedings Heard by the Board of Labor Appeals, p. 1652
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 1840, 399, 912
24.29.1401 and other rules - Implementing Utilization and Treatment Guidelines - Medical Services Rules for Workers' Compensation Matters, p. 2025

24.301.131 and other rules - Incorporation by Reference of International Building Code - Building Code Modifications - Incorporation by Reference of International Existing Building Code - Incorporation by Reference of International Mechanical Code - Incorporation by Reference of International Fuel Gas Code - Plumbing Requirements - Electrical Requirements - Inspection Fees - Refunds - Credits - Definitions, p. 1244, 1733

(Board of Architects and Landscape Architects)

24.101.413 and other rule - Renewal Dates - Requirements - Fee Schedule, p. 200, 1078

24.114.403 and other rule - Business Entity Practice - Branch Offices, p. 600, 1080

(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, 1402

24.121.301 and other rules - Definitions - Implements - Equipment - Continuing Education - Unprofessional Conduct, p. 837, 2378

24.121.401 Fees, p. 2337, 915

(Board of Chiropractors)

24.126.510 and other rules - Endorsement - Inactive Status and Conversion - Minimum Requirements for Impairment Evaluators - Prepaid Treatment Plans, p. 2284

(State Electrical Board)

24.141.301 and other rules - Definitions - Fee Schedule - Continuing Education, p. 203, 1081

(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, 1085

(Board of Massage Therapy)

I & II Definitions - Licensure Requirements, p. 602, 1185

24.155.301 and other rules - Definitions - Continuing Education - Unprofessional Conduct, p. 1239, 2382

(Board of Medical Examiners)

I Qualification Criteria for Evaluation and Treatment Providers, p. 1467

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, 1187

24.156.616 and other rules - Registry - Licenses - Testing Requirements - Registration, p. 1610, 73, 1506

(Board of Nursing)

24.159.301 and other rules - Definitions - Fees - Nursing Education Programs - LPN Practice Permit - LPN Licensure - LPN Foreign Requirements - RN Practice Permit - RN Licensure - RN Foreign Requirements - Delegation Practices - Nondisciplinary Track - Conduct of Nurses - Program Standards - Continuing Education - Clinical Practice Settings, p. 1930

(Board of Optometry)

24.168.401 and other rules - Fee Schedule - Licensure Requirements - Continuing Education - Licensure By Endorsement, p. 298, 1405

(Board of Outfitters)

24.101.403 and other rules - Renewal Dates and Requirements - Fees, p. 1590, 2384

24.171.401 and other rules - Safety Provisions -Unprofessional Conduct - Misconduct - Provisional Guide License - Emergency Guide License, p. 1472, 1889

(Board of Pharmacy)

24.174.401 and other rules - Fee Schedule - Change in Address - Change of Pharmacist-in-Charge - Class IV Facility - Identification of Pharmacist-in-Charge - Wholesale Drug Distributor - Telepharmacy Operations - Dangerous Drugs - Cancer Drug Repository - Clinical Pharmacist Practitioner, p. 2041

(Board of Plumbers)

24.180.401 and other rule - Fee Schedule - Continuing Education Provider Qualifications, p. 974, 1609

(Board of Private Security)

24.182.301 and other rules - Definitions - Fee Schedule - Firearms - Requalification - Application - Experience Requirements - Written Examination - Temporary Permit - Trainee - Firearms Licensure - Unprofessional Conduct, p. 606, 1194

(Board of Professional Engineers and Professional Land Surveyors)

I-IV Professional Land Surveyor Scope of Practice Activities, p. 2288

(Board of Psychologists)

24.189.301 and other rules - Definitions - Supervisory Experience - Continuing Education, p. 302, 1508

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Fee Schedule - CPA/LPA Designation - Licensing Examinations - Professional Conduct Rules - Profession Monitoring Rules - Renewal and Continuing Education - Complaint Procedures - Exercise of Practice Privilege in Other Jurisdictions - Profession Monitoring of Holders of Special Practice Permit - Compliance With Continuing Education for Nonresidents - Renewal and Continuing Education, p. 1836

LIVESTOCK, Department of, Title 32

32.8.101 and other rule - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 2095, 986

32.23.102 and other rule - Transactions Involving the Purchase and Resale of Milk Within the State - Quota Transfers, p. 1477, 1800

(Board of Horse Racing)

32.28.801 and other rule - Eligibility for Maidens Over Seven Years Old - Conditions Accompanying a Claim, p. 1594, 1992

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.11.111 and other rule - Export of Timber Harvested in the State - Maximum Size of Nonadvertised Timber Permits, p. 988, 1269, 1735

(Board of Water Well Contractors)

36.21.410 and other rules - Board of Water Well Contractors, p. 843, 1614

(Board of Land Commissioners)

36.25.137 and other rules - Surface Leasing - Cabinsite Leasing Rules, p. 25, 1293

36.25.205 Procedures for the Issuance of State Oil and Gas Leases, p. 858, 1617

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-VI Medicaid for Workers with Disabilities, p. 1271

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, 1306

I-X Permissive Licensing of Drop-in Child Care Facilities, p. 1165, 2390

37.5.117 and other rules - Swimming Pools, Spas, and Other Water Features, p. 604, 1104, 80, 1197

37.5.117 and other rules - Healthy Montana Kids Plan, p. 1768, 2217

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Office of, Title 44

44.3.2203 Elections, p. 513, 917
44.3.2403 and other rule - Elections, p. 510, 916
44.6.104 and other rule - Filing Fees Charged by the Business Services Division for Federal Tax Liens - Uniform Commercial Code Documents, p. 1789, 2232
44.6.111 Fees Charged by the Business Services Division for the Farm Bill Master List, p. 644, 921

(Commissioner of Political Practices)
44.12.204 Payment Threshold -- Inflation Adjustment for Lobbyists, p. 1983, 2411

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in September 2010 appear. Vacancies scheduled to appear from November 1, 2010, through January 31, 2011, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 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 SEPTEMBER, 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Aging Advisory Council (Public Health and Human Services)			
Ms. Betty Aye Broadus Qualifications (if required): public representative	Governor	reappointed	9/24/2010 7/18/2013
Ms. Connie Bremner Browning Qualifications (if required): public representative	Governor	reappointed	9/24/2010 7/18/2013
Ms. Cecelia (C.A.) Buckley Great Falls Qualifications (if required): public representative	Governor	Ludwig	9/24/2010 7/18/2013
Mr. Alex Ward Helena Qualifications (if required): public representative	Governor	reappointed	9/24/2010 7/18/2013
Alternative Health Care Board (Labor & Industry)			
Ms. Mary Anne Brown Great Falls Qualifications (if required): midwife	Governor	reappointed	9/22/2010 9/1/2014
Mr. Tom Mensing Red Lodge Qualifications (if required): public representative	Governor	reappointed	9/22/2010 9/1/2014

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Banking (Administration)			
Ms. Evelyn Casterline	Governor	reappointed	9/24/2010
Vida			7/1/2013
Qualifications (if required): public representative			
Mr. Kenneth M. Walsh	Governor	Huber	9/24/2010
Twin Bridges			7/1/2013
Qualifications (if required): national bank officer of a medium sized bank			
Board of Nursing Home Administrators (Labor and Industry)			
Ms. Kathryn Beaty	Governor	Sandman	9/28/2010
Hamilton			5/28/2015
Qualifications (if required): nursing home administrator			
Board of Private Security (Labor and Industry)			
Mr. Mark Chaput	Governor	reappointed	9/28/2010
Billings			8/1/2013
Qualifications (if required): representative of an electronic security company			
Board of Psychologists (Labor and Industry)			
Ms. Bonnie Hyatt Murphy	Governor	reappointed	9/22/2010
Livingston			9/1/2015
Qualifications (if required): public representative			
Board of Sanitarians (Labor and Industry)			
Mr. James Zabrocki	Governor	reappointed	9/29/2010
Miles City			7/1/2013
Qualifications (if required): sanitarian			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Land Information Advisory Council (Administration)			
Commissioner Joe Brenneman	Governor	Eissinger	9/9/2010
Kalispell			6/30/2011
Qualifications (if required): Local government agency representative			
BLM James D. Claflin	Governor	Birtles	9/9/2010
Billings			6/30/2011
Qualifications (if required): representative of the US Interior Department			
Low Income Energy Programs Policy Advisory Council (Public Health and Human Services)			
Mr. Phil Cooke	Director	not listed	9/2/2010
Helena			9/2/2012
Qualifications (if required): none specified			
Mr. Phil Cooke	Director	not listed	9/2/2010
Helena			9/2/2012
Qualifications (if required): none specified			
Ms. Lesa Evers	Director	not listed	9/2/2010
Helena			9/2/2012
Qualifications (if required): none specified			
Mr. Hank Hudson	Director	not listed	9/2/2010
Helena			9/2/2012
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Low Income Energy Programs Policy Advisory Council (Public Health and Human Services) cont.			
Ms. Elissa Mitchell	Director	not listed	9/2/2010
			9/2/2012
Qualifications (if required): none specified			
Mr. Michael Vogel	Director	not listed	9/2/2010
Bozeman			9/2/2012
Qualifications (if required): none specified			
MSU Northern Local Executive Board (University System)			
Mr. Darrell Briese	Governor	reappointed	9/22/2010
Havre			4/15/2013
Qualifications (if required): public representative			
Small Business Compliance Assistance Advisory Council (Environmental Quality)			
Mr. Charles Homer	Director	not listed	9/29/2010
Helena			9/29/2012
Qualifications (if required): representative of the Department of Environmental Quality			
Statewide Independent Living Council (Public Health and Human Services)			
Mr. Tim Harris	Governor	Bean	9/9/2010
Helena			12/1/2010
Qualifications (if required): agency representative			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)		
Ms. Linda Nielsen, Nashua	Governor	1/1/2011
Qualifications (if required): Board of Livestock representative		
Mr. Ron Moody, Lewistown	Governor	1/1/2011
Qualifications (if required): Fish, Wildlife and Parks Commission representative		
Board of Aeronautics (Transportation)		
Mr. Fred Lark, Lewistown	Governor	1/1/2011
Qualifications (if required): public representative		
Mr. A. Christopher Edwards, Billings	Governor	1/1/2011
Qualifications (if required): fixed base operator		
Mr. Robert Buckles, Bozeman	Governor	1/1/2011
Qualifications (if required): commercial airlines representative		
Board of Chiropractors (Labor and Industry)		
Dr. Scott Hansing, Helena	Governor	1/1/2011
Qualifications (if required): a practicing chiropractor		
Board of Crime Control (Justice)		
Ms. Lois Menzies, Helena	Governor	1/1/2011
Qualifications (if required): representative of the judiciary		
Rep. Angela Russell, Lodge Grass	Governor	1/1/2011
Qualifications (if required): tribal court representative		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice) cont.		
Ms. Randi Hood, Helena Qualifications (if required): criminal justice agency representative	Governor	1/1/2011
Director Mike Ferriter, Helena Qualifications (if required): state law enforcement representative	Governor	1/1/2011
Mr. Richard Kirn, Poplar Qualifications (if required): tribal government representative	Governor	1/1/2011
Mr. Godfrey Saunders, Bozeman Qualifications (if required): educator	Governor	1/1/2011
Ms. Sherry Matteucci, Billings Qualifications (if required): public representative	Governor	1/1/2011
Ms. Brenda C. Desmond, Missoula Qualifications (if required): representative of the judiciary	Governor	1/1/2011
Ms. Tracie Small, Crow Agency Qualifications (if required): tribal court representative	Governor	1/1/2011
Board of Environmental Review (Environmental Quality)		
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2011
Ms. Heidi Kaiser, Park City Qualifications (if required): public member	Governor	1/1/2011

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Environmental Review (Environmental Quality) cont.		
Mr. Larry Mires, Glasgow	Governor	1/1/2011
Qualifications (if required): public member		
Board of Horseracing (Livestock)		
Ms. Susan Egbert, Helena	Governor	1/20/2011
Qualifications (if required): resident of district 4		
Ms. Susan Egbert, Helena	Governor	1/20/2011
Qualifications (if required): resident of district 4		
Board of Housing (Commerce)		
Rep. Sheila Rice, Great Falls	Governor	1/1/2011
Qualifications (if required): public representative		
Rep. Jeanette S. McKee, Hamilton	Governor	1/1/2011
Qualifications (if required): public representative		
Ms. Susan Moyer, Kalispell	Governor	1/1/2011
Qualifications (if required): public representative		
Mr. Bob Gauthier, Ronan	Governor	1/1/2011
Qualifications (if required): public representative		
Board of Investments (Commerce)		
Mr. Karl Englund, Missoula	Governor	1/1/2011
Qualifications (if required): attorney		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Investments (Commerce) cont.		
Dr. Maureen J. Fleming, Missoula	Governor	1/1/2011
Qualifications (if required): representative of labor		
Mr. Terrill R. Moore, Billings	Governor	1/1/2011
Qualifications (if required): financial representative		
Mr. Jon Satre, Helena	Governor	1/1/2011
Qualifications (if required): business person		
Board of Labor Appeals (Labor and Industry)		
Mr. Jack Calhoun, Helena	Governor	1/1/2011
Qualifications (if required): public representative		
Board of Occupational Therapy Practice (Labor and Industry)		
Ms. Cindy Stergar, Butte	Governor	12/31/2010
Qualifications (if required): public representative		
Mr. Tim Tracy, Kalispell	Governor	12/31/2010
Qualifications (if required): Occupational Therapist		
Board of Oil and Gas Conservation (Governor)		
Mr. Jack King, Billings	Governor	1/1/2011
Qualifications (if required): representative of industry		
Mr. Ronald Efta, Wibaux	Governor	1/1/2011
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Oil and Gas Conservation (Governor) cont.		
Mr. Bret Smelser, Sidney	Governor	1/1/2011
Qualifications (if required): landowner without minerals		
Board of Pardons and Parole (Corrections)		
Mr. John Rex, Miles City	Governor	1/1/2011
Qualifications (if required): having education or experience in criminology		
Mr. Michael E. McKee, Helena	Governor	1/1/2011
Qualifications (if required): having education or experience in criminology		
Board of Personnel Appeals (Labor and Industry)		
Mr. Steve Johnson, Missoula	Governor	1/1/2011
Qualifications (if required): management representative with collective bargaining experience		
Mr. Patrick Dudley, Butte	Governor	1/1/2011
Qualifications (if required): management representative with collective bargaining experience (substitute)		
Mr. Michael Thiel, Kalispell	Governor	1/1/2011
Qualifications (if required): office of a labor union or an association recognized by the board		
Board of Public Assistance (Governor)		
Ms. Helen Barta Schmitt, Sidney	Governor	1/1/2011
Qualifications (if required): public representative		
Board of Respiratory Care Practitioners (Labor and Industry)		
Mr. Thomas Fallang, Butte	Governor	1/1/2011
Qualifications (if required): respiratory care practitioner		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Respiratory Care Practitioners (Labor and Industry) cont.		
Dr. Carl Hallenborg, Helena	Governor	1/1/2011
Qualifications (if required): doctor of medicine		
Board of Social Work Examiners and Professional Counselors (Labor and Industry)		
Ms. Ann Gilkey, Helena	Governor	1/1/2011
Qualifications (if required): attorney		
Mr. Peter Degel, Helena	Governor	1/1/2011
Qualifications (if required): licensed counselor		
Ms. Jill Thorngren, Bozeman	Governor	1/1/2011
Qualifications (if required): licensed counselor		
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)		
Ms. Sharon Dinstel, Colstrip	Governor	12/31/2010
Qualifications (if required): speech-language pathologist		
Mr. James L. Sias, Ronan	Governor	12/31/2010
Qualifications (if required): consumer representative		
Ms. Cheri Fjare, Big Timber	Governor	12/31/2010
Qualifications (if required): speech-language pathologist		
Capital Investment Board (Commerce)		
Mr. Gary Buchanan, Billings	Governor	1/1/2011
Qualifications (if required): having expertise and competence in investment and/or tax credit administration management		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Capital Investment Board (Commerce) cont.		
Mr. Robert W. Minto Jr., Missoula	Governor	1/1/2011
Qualifications (if required): having expertise and competence in investment and/or tax credit administration management		
Coal Board (Commerce)		
Rep. Ralph L. Lenhart, Glendive	Governor	1/1/2011
Qualifications (if required): having expertise in education		
Mr. Thomas Kalakay, Billings	Governor	1/1/2011
Qualifications (if required): expertise in education and a resident of District 2		
Ms. Juliet Hasler Foley, Missoula	Governor	1/1/2011
Qualifications (if required): expertise in education and a resident of District 1		
Ms. Marcia Brown, Butte	Governor	1/1/2011
Qualifications (if required): representative from business and a resident of District 1		
Commissioner of Political Practices (Secretary of State)		
Commissioner Dennis Unsworth, Helena	Governor	1/1/2011
Qualifications (if required): not listed		
Facility Finance Authority (Administration)		
Rep. Joe Quilici, Butte	Governor	1/1/2011
Qualifications (if required): public member		
Ms. Kim Greco, Helena	Governor	1/1/2011
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Facility Finance Authority (Administration) cont.		
Mr. Matthew B. Thiel, Missoula	Governor	1/1/2011
Qualifications (if required): attorney		
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)		
Mr. Dan Vermillion, Livingston	Governor	1/1/2011
Qualifications (if required): resident of District 2		
Mr. Willie Doll, Malta	Governor	1/1/2011
Qualifications (if required): resident of District 4		
Hard Rock Mining Impact Board (Commerce)		
Commissioner Marianne Roose, Eureka	Governor	1/1/2011
Qualifications (if required): public representative and a resident of district 1/impact area		
Mr. Shain Wolstein, Butte	Governor	1/1/2011
Qualifications (if required): elected school district trustee and a resident of district 1/impact area		
Human Rights Commission (Labor and Industry)		
Mr. Stephen Fentel, Billings	Governor	1/1/2011
Qualifications (if required): public representative		
Mr. Ryan C. Rusche, Wolf Point	Governor	1/1/2011
Qualifications (if required): public representative		
Judicial Nomination Commission (Justice)		
Ms. Shirley Ball, Nashua	Governor	1/1/2011
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Livestock Loss Reduction and Mitigation Board (Livestock)		
Ms. Elaine Allestad, Big Timber	Governor	1/1/2011
Qualifications (if required): livestock industry representative		
Mr. Larry Trexler, Hamilton	Governor	1/1/2011
Qualifications (if required): breeding association member		
Mr. Hilliard McDonald, Judith Gap	Governor	1/1/2011
Qualifications (if required): livestock marketing representative		
Lottery Commission (Administration)		
Mr. Robert Crippen, Butte	Governor	1/1/2011
Qualifications (if required): accountant		
Milk Control Board (Livestock)		
Dr. R. Clyde Greer, Bozeman	Governor	1/1/2011
Qualifications (if required): public representative		
Mr. Michael F. Kleese, Stevensville	Governor	1/1/2011
Qualifications (if required): attorney		
Mr. Jerrold A. Weissman, Great Falls	Governor	1/1/2011
Qualifications (if required): public representative and a Republican		
Montana Alfalfa Seed Committee (Agriculture)		
Mr. Tom Matchett, Billings	Governor	12/21/2010
Qualifications (if required): alfalfa seed grower		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Montana Alfalfa Seed Committee (Agriculture) cont.		
Mr. Tom Neibur, Malta	Governor	12/21/2010
Qualifications (if required): alfalfa seed grower with alfalfa leaf-cutting bees		
Montana Council on Developmental Disabilities (Commerce)		
Mr. Jason Billehus, Missoula	Governor	1/1/2011
Qualifications (if required): primary consumer representative		
Mr. Darwin Nelson, Helena	Governor	1/1/2011
Qualifications (if required): primary consumer representative		
Ms. Connie Wethern, Glasgow	Governor	1/1/2011
Qualifications (if required): secondary consumer representative		
Ms. Janet Carlson, Malta	Governor	1/1/2011
Qualifications (if required): primary consumer representative		
Ms. Kellie Karasko, Manhattan	Governor	1/1/2011
Qualifications (if required): secondary consumer representative		
Montana Grass Conservation Commission (Natural Resources and Conservation)		
Mr. Dan Teigen, Teigen	Governor	1/1/2011
Qualifications (if required): grazing district preference holder		
Montana Grass Conservation Commission (Natural Resources and Conservation) cont.		
Mr. Steve Barnard, Hinsdale	Governor	1/1/2011
Qualifications (if required): grazing district director		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Public Safety Officer Standards and Training Council (Justice)		
Ms. Winnie Ore, Helena	Governor	1/1/2011
Qualifications (if required): public member		
Sergeant Frances Combs-Weaks, Poplar	Governor	1/1/2011
Qualifications (if required): certified tribal law enforcement representative		
Commissioner Mike Anderson, Havre	Governor	1/1/2011
Qualifications (if required): Board of Crime Control representative		
Officer Levi Talkington, Lewistown	Governor	1/1/2011
Qualifications (if required): local law enforcement officer		
Chief James Marble, Stevensville	Governor	1/1/2011
Qualifications (if required): chief of police		
Ms. Georgette Hogan, Hardin	Governor	1/1/2011
Qualifications (if required): county attorney		
Rail Service Competition Council (Transportation)		
Mayor Larry J. Bonderud, Shelby	Governor	1/1/2011
Qualifications (if required): knowledgeable of the trucking industry		
Ms. Carla Allen, Denton	Governor	1/1/2011
Qualifications (if required): knowledgeable of class II railroads		
Mr. Russell Hobbs, Columbia Falls	Governor	1/1/2011
Qualifications (if required): knowledgeable of transportation for the wood products industry		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Resource Conservation Advisory Council (Natural Resources and Conservation)		
Ms. Marieanne Hanser, Billings Qualifications (if required): South Central Montana	Director	12/31/2010
Mr. Robert Fossum, Richland Qualifications (if required): Eastern Montana	Director	12/31/2010
Mr. Buzz Mattelin, Culbertson Qualifications (if required): Conservation Districts	Director	12/31/2010
Mr. Dave Schwarz, Terry Qualifications (if required): Conservation Districts	Director	12/31/2010
Ms. Lauraine Johnson, Plains Qualifications (if required): Western Montana	Director	12/31/2010
Mr. O. Ramsey Offerdal, Conrad Qualifications (if required): North Central Montana	Director	12/31/2010
Mr. Pete Dallaserra, Butte Qualifications (if required): general public	Director	12/31/2010
Small Business Health Insurance Pool Board (Auditor)		
Mr. Bob Marsenich, Polson Qualifications (if required): consumer representing small business	Governor	1/1/2011

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
State Tax Appeals Board (Administration)		
Ms. Samantha Sanchez, Helena	Governor	1/1/2011
Qualifications (if required): public representative		
Statewide Independent Living Council (Public Health and Human Services)		
Mr. Bob Maffit, Helena	Governor	12/1/2010
Qualifications (if required): Independent Living Center representative		
Ms. Nickie Fee, Great Falls	Governor	12/1/2010
Qualifications (if required): public representative		
Ms. Evelyn Oats, Box Elder	Governor	12/1/2010
Qualifications (if required): Section 121 representative		
Ms. Melodie Bowen, Great Falls	Governor	12/1/2010
Qualifications (if required): public representative		
Ms. Lisa Moorehead, Bigfork	Governor	12/1/2010
Qualifications (if required): public representative		
Mr. Dave Swanson, Billings	Governor	12/1/2010
Qualifications (if required): Independent Living Center representative		
Mr. Chris Cragwick, Missoula	Governor	12/1/2010
Qualifications (if required): public representative/disabilities community/youth member		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Statewide Independent Living Council (Public Health and Human Services) cont.		
Ms. Kathy Bean, Helena	Governor	12/1/2010
Qualifications (if required): agency representative		
Ms. Donell Neiss, Missoula	Governor	12/1/2010
Qualifications (if required): public representative/disabilities community		
Statewide Interoperability Executive Advisory Council (Administration)		
Director Mike Ferriter, Helena	Governor	11/13/2010
Qualifications (if required): Director of the Department of Corrections		
Director Janet Kelly, Helena	Governor	11/13/2010
Qualifications (if required): Director of the Department of Administration		
Director Mary Sexton, Helena	Governor	11/13/2010
Qualifications (if required): Director of the Department of Natural Resources and Conservation		
Mr. Chuck Winn, Bozeman	Governor	11/13/2010
Qualifications (if required): municipal government representative		
Mr. Leo C. Dutton, Helena	Governor	11/13/2010
Qualifications (if required): county law enforcement representative		
Director Jim Lynch, Helena	Governor	11/13/2010
Qualifications (if required): Director of the Department of Transportation		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Statewide Interoperability Executive Advisory Council (Administration) cont.		
Ms. Sheena Wilson, Helena	Governor	11/13/2010
Qualifications (if required): Governor's office representative		
Commissioner Kathy Bessette, Havre	Governor	11/13/2010
Qualifications (if required): county government representative		
Ms. Anna Whiting-Sorrell, Helena	Governor	11/13/2010
Qualifications (if required): Director of the Department of Public Health and Human Services		
Mr. Christian Mackay, Helena	Governor	11/13/2010
Qualifications (if required): Executive officer of the Board of Livestock		
Mr. Joe Maurier, Helena	Governor	11/13/2010
Qualifications (if required): Director of the Department of Fish Wildlife and Parks		
Atty. General Steve Bullock, Helena	Governor	11/13/2010
Qualifications (if required): attorney general		
Chief Alan Michaels, Glendive	Governor	11/13/2010
Qualifications (if required): municipal law enforcement representative		
Mr. Jeff Logan, Missoula	Governor	11/13/2010
Qualifications (if required): paid fire department representative		
Mr. Rick Poss, Lewistown	Governor	11/13/2010
Qualifications (if required): emergency medical community representative		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
State Interoperability Executive Advisory Council (Administration) cont.		
Ms. Heather Roos, Miles City	Governor	11/13/2010
Qualifications (if required): 9-1-1 community representative		
Mr. Ed Joiner, Lame Deer	Governor	11/13/2010
Qualifications (if required): tribal government representative		
Ms. Brenna Neinast, Havre	Governor	11/13/2010
Qualifications (if required): federal representative		
Ms. Jodi Camrud, Billings	Governor	11/13/2010
Qualifications (if required): federal representative		
Commissioner Ed Tinsley, Fort Harrison	Governor	11/13/2010
Qualifications (if required): Administrator Disaster and Emergency Services Division		
Transportation Commission (Transportation)		
Ms. Nancy Espy, Broadus	Governor	1/1/2011
Qualifications (if required): resident of District 4 and an Independent		
Mr. S. Kevin Howlett, Arlee	Governor	1/1/2011
Qualifications (if required): resident of District 1 and has specific knowledge of Indian culture		
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Ms. Ruby Clark, Poplar	Governor	1/1/2011
Qualifications (if required): family of survivor		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2010 THROUGH JANUARY 31, 2011

Board/current position holder	Appointed by	Term end
Traumatic Brain Injury Advisory Council (Public Health and Human Services) cont.		
Ms. Tana Ostrowski, Missoula	Governor	1/1/2011
Qualifications (if required): advocate for brain injured		