ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.3503 and 4.12.3504 relating to certified seed potatoes	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 13, 2011, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 6, 2011, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.12.3503 BLUE TAGS (1) through (1)(i) remain the same.

(j) freezing injury other than the condition of being frozen or affected by soft rot or wet breakdown shall be scored when removal of the affected area causes a loss of more than 10% of the total weight of the tuber. The tolerance is 3% or less for freezing injury.

(k) the tolerance ~~shall be not more than~~ is1% or less for potatoes which are affected by late blight tuber rot~~.~~, soft rot or wet breakdown.

AUTH: 80-3-110, MCA
IMP: 80-3-104, 80-3-105, MCA

REASON: Montana seed potato grade standards are established by standards set by USDA for table stock potatoes, except that the department and the industry have established state exemptions for certain tolerances for Montana Blue Tag and Red Tag seed potato grade inspections. Montana's seed potato industry is more than 40 years old and has always graded to the 3% tolerance for freezing injury in seed potatoes without complaints from customers. In 2008, the federal grade standard was changed from 3% to 1% for freezing injury in table stock potatoes. Without an exemption to the federal standards, Montana growers will have to grade to a more stringent standard that is not required for seed potatoes. Reestablishing the freezing injury tolerance back to 3% will allow Montana growers to continue providing a quality product to satisfied customers with a reasonable limit of defects. Adding the language in (k) clarifies that the tolerance remains at 1% for

the condition of soft rot and wet breakdown that are not a result of freezing injury of Blue Tag seed potatoes.

FINANCIAL IMPACT: No financial impact is anticipated from the rule making.

4.12.3504 RED TAGS (1) through (1)(e) remain the same.

(f) the following blue tag exceptions shall also apply to red tags: air cracks, sunburn (greening), stem-end discoloration, immaturity, sprouts, oversize, undersize, hollow heart, hollow heart with discoloration, light brown discoloration, brown center, freezing injury, and the tolerance for late blight tuber rot~~.~~, soft rot or wet breakdown.

AUTH: 80-3-110, MCA
IMP: 80-3-104, 80-3-105, MCA

REASON: This language is added to be consistent with the new language in 4.12.3503.

FINANCIAL IMPACT: No financial impact is anticipated from the rule making.

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, 302 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 January 20, 2011.

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, 302 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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, December 13, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.201 and 17.30.1341 pertaining to permit application, degradation authorization, and annual permit fees and general permits	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On January 12, 2011, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) through (1)(h) remain the same.

(2) For purposes of this rule, the definitions contained in ARM Title 17, chapter 30, subchapter 10 and subchapter 13 are incorporated by reference. The following definitions also apply in this rule:

(a) through (e) remain the same.

(f) "multi-county," for pesticide permit fee purposes, means the general permit authorizing pesticide application within multiple counties that are within the same Montana Department of Agriculture field office district;

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

~~(j)~~ (k) "outfall" means a disposal system through which effluent or waste leaves the facility or site; ~~and~~

(l) "pesticide" means:

(i) a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;

(ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(iii) any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), that has been determined by the United States Secretary of Health and Human Services not to be a new

animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of 21 U.S.C. 321(x) bearing or containing a new animal drug. The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321. For purposes of the preceding sentence, the term "critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, and the term "semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

~~(k)~~ (m) "renewal permit" means a permit for an existing facility that has an effective discharge permit~~.~~; and

(n) "single county," for pesticide permit fee purposes, means the general permit authorizing pesticide application within one county or within multiple counties that are not within the same Montana Department of Agriculture field office district.

(3) through (5) remain the same.

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

(a) and (b) remain the same.

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

(d) Application fees are nonrefundable except, as required by 75-5-516(1)(d), MCA, if the permit or authorization is not issued the department shall return a portion of the application fee based on avoided enforcement costs. The department shall return 25% of the application fee if the application is withdrawn or if the department waives Federal Clean Water Act section 401 certification within 30 days after submittal.

(e) through (h) remain the same.

Schedule I.A remains the same.

Schedule I.B Application Fee for Non-Storm Water General Permits

Category	Renewal Fee	New Permit Fee (includes initial annual fee)
Concentrated animal feeding operation	$ 600	$ 1,200
Construction dewatering	400	900
Fish farms	600	1,200
Produced water	900	1,200
Suction dredge		
resident of Montana	25	~~25~~ 50
nonresident of Montana	100	~~100~~ 200
Sand and gravel	900	1,200
Domestic sewage treatment lagoon	800	1,200
Disinfected water	800	1,200
Petroleum cleanup	800	1,200
Pesticides		
Single county	450	900
Multi-county	1,400	2,700
Ground water remediation or dewatering	800	1,400
Ground water potable water treatment facilities	800	1,400
Other general permit, not listed above	600	1,200

(i) through (n) remain the same.

Schedule I.C remains the same.

(o) remains the same.

Schedule I.D Application Fee for Other Activities

Category	Amount
Short-term water quality standard, turbidity "318 authorization"	$ 250
Short-term water quality standard, remedial activities and pesticide application "308 authorization"	~~400~~ 250
Federal Clean Water Act section 401 certification	See ARM 17.30.201(6)(o)
Review plans and specifications to determine if permit is necessary, pursuant to 75-5-402(2), MCA	2,000
Major modification	Renewal fee from Schedule I.A
Minor modification, includes transfer of ownership	500

Resubmitted application fee	500
Administrative processing fee	500

(7) remains the same.

Schedule II remains the same.

(8) and (8)(a) remain the same.

Schedule III.A remains the same.

Schedule III.B Annual Fee for Non-Storm Water General Permits

Category	Amount
Concentrated animal feeding operation	$600
Construction dewatering	450
Fish farms	450
Produced water	750
Portable suction dredges	
resident of Montana	25
nonresident of Montana	100
Sand and gravel production	750
Domestic sewage treatment lagoon	850
Disinfected water	750
Petroleum cleanup	750
Pesticides	
Single county	450
Multi-county	1,400
Ground water remediation or dewatering	800
Potable water treatment facilities	800
Other general permit, not listed above	800

(b) through (d) remain the same.

Schedule III.C remains the same.

(e) A facility that maintains compliance with permit requirements, including effluent limitations and reporting requirements, as determined by the previous year's discharge and compliance monitoring data, is entitled to a 25% reduction in its annual permit fee. A new permittee is not eligible for fee reduction in its first year of operation. A permittee that is under a formal enforcement order providing a compliance schedule for correction of permit violations is not eligible for a fee reduction until the violations are corrected. A permittee with a violation of any permit requirement during the previous year is not eligible for fee reduction.

(f) through (9)(b) remain the same.

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

may be paid on line at the e-bill payment service site.

(11) through (11)(b) remain the same.

AUTH: 75-5-516, MCA
IMP: 75-5-516, MCA

REASON: Pursuant to 75-5-516, MCA, the board must prescribe fees to be assessed by the department for water quality permit applications, annual permit renewals, review of petitions for degradation, and for other water quality authorizations required under the Montana Water Quality Act, Title 75, chapter 5, MCA. Subject to specific statutory fee caps, the Act requires the board to adopt permit fees that are sufficient to cover the board and department costs of administering the permits and other authorizations required under the Act.

In 2007, the United States Environmental Protection Agency (EPA) issued a rule exempting pesticide application from discharge permitting requirements under the federal Clean Water Act (CWA). The rule concluded that pesticides, applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), were exempt from CWA permitting. In January of 2009, the EPA rule was vacated by a federal court of appeals. The primary purpose of this proposed rulemaking is to provide an administrative framework to allow the department to develop a general permit for pesticide application and to publish the draft permit for public comment. This proposed rulemaking also sets the fees for pesticide permits and makes minor changes to other sections of the fee rule as described below.

The proposed new definitions in ARM 17.30.201(2)(f), (l), and (m) are necessary to implement the pesticide general permit authority. The definition of "pesticide" in proposed ARM 17.30.201(2)(l) is taken from the statutory definition in FIFRA. The definitions of "multi-county" and "single county" in ARM 17.30.201(2)(f) and (n) identify two types of general permit that the department intends to develop. The single county permit will authorize pesticide application in one county or in multiple counties that are not in the same field office district for the Montana Department of Agriculture (MDA). The multi-county permit will authorize pesticide application in multiple counties that are within the same MDA field office district.

The proposed amendment to ARM 17.30.201(6)(c) would add an administrative processing fee for substantial alterations or additions to a pesticide discharge management plan. This fee is necessary to recover the additional review costs associated with changes to pesticide management plans.

The proposed amendment to ARM 17.30.201(6)(d) is necessary to clarify that the allowance for a 25% refund of an application fee also applies when the department waives federal Clean Water Act section 401 certification as provided in ARM 17.30.105.

The proposed amendments to Schedule I.B set the application fees for the single county and multi-county pesticide general permits. The fees are necessary to recover the costs to the department of issuing and administering permits under the pesticide general permit program. The amendments to Schedule I.B also make a correction to the suction dredge new permit fees. Because the new permit fees shown in Schedule I.B include both the application fee and the initial annual fee from Schedule III.B, the fee shown for suction dredges in Schedule I.B should be

doubled. This is necessary to remain consistent with the statutory fee provisions for suction dredges set out in 75-5-516(12), MCA.

The proposed amendments to Schedule I.D would reduce the fee for short-term water quality standard 308 authorizations. This group currently includes pesticide 308 authorizations. Because the new general pesticide permit will address pesticide applications that have a potentially higher risk, the fees in the 308 category in Schedule I.D can be reduced.

The proposed amendments to Schedule III.B set the annual fees for the single county and multi-county pesticide general permits. The fees are necessary to recover the costs to the department of administering permits and authorizations under the pesticide general permit program.

The proposed amendment to ARM 17.30.201(8)(e) clarifies that a permittee whose violations are subject to a corrective action schedule in a formal enforcement order is not eligible for the fee reduction until the violations are corrected. This is necessary to comply with the requirement in 75-5-516(2), MCA, that the fee reduction is not available to permittees who are not in compliance with permit requirements.

The proposed amendment to ARM 17.30.201(10) clarifies that fees may be paid on line at the e-bill payment service site. This is necessary to afford permittees the convenience of using the e-bill system.

It is estimated that the pesticide permit would affect approximately 100 permittees. Total pesticide fee revenue generated in the first year would be approximately $175,000. Of this amount, applications are projected to generate approximately $87,500, and annual fees are projected to generate approximately $90,000. Revenue in the following four years would be less because the application fees are due only every five years. The total first year fee revenue of $175,000 includes a decrease in revenue from pesticide 308 authorizations (Schedule I.D) of approximately $3,600. This decrease will occur in subsequent years as well, because 308 fees are due every year. The $3,600 decrease in the 308 fees would affect an average of 24 permittees a year.

17.30.1341 GENERAL PERMITS (1) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28 as stated in ARM 17.30.1105:

(a) through (q) remain the same.

(r) swimming pool discharge; ~~and~~

(s) septic tank pumper disposal sites; and

(t) pesticide application.

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

(4) A person owning or proposing to operate a point source who wishes to operate under a MPDES general permit shall complete a standard MPDES application or notice of intent form available from the department for the particular general permit. Except for notices of intent ~~submitted for storm water discharges associated with construction activity as stated in ARM 17.30.1115~~, the department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the MPDES general permit, or shall

notify the applicant that the source does not qualify for authorization under a MPDES general permit, citing one or more of the following reasons as the basis for the denial:

(a) through (12)(e) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: The proposed amendment to ARM 17.30.1341 would add pesticide application to the list of general permits that the department is authorized to issue. This amendment is necessary to comply with the federal requirement to issue discharge permits for pesticide application. See reason for amendments to ARM 17.30.201. The proposed amendment would also clarify that authorizations are not needed when the notice of intent (NOI) form is used. The amendment is necessary to allow the department to initiate coverage under the pesticide general permit upon receipt of a properly completed NOI and fees.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 24, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden BY: */s/ Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, December 13, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.763 pertaining to revocation of permit	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On January 13, 2011, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.763 REVOCATION OF PERMIT (1) and (2) remain the same.

(3) When the department has attempted unsuccessfully by certified mail, return receipt requested, to deliver a notice of intent to revoke a permit to a permittee at the last address provided by the permittee to the department, the permittee is deemed to have received the notice on the date that the department publishes the last of three notices of revocation, once each week for three consecutive weeks, in a newspaper published in the county in which the permitted facility was located, if a newspaper is published in the county or if no newspaper is published in the county in a newspaper having a general circulation in the county.

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

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

REASON: The proposed revision to ARM 17.8.763 would provide a process for notice by publication of the department's intent to revoke a Montana Air Quality Permit issued under Title 17, chapter 8, subchapter 7 when an owner or operator cannot be found for service by certified mail. One of the common reasons for revocation is failure to pay annual operating fees, and there have been instances when the department has not been able to revoke a permit for failure to pay fees because the emission source was no longer operating and the owner or operator no longer was at the site and could not be found for mail delivery. Revoking the permit

benefits the owner or operator because annual operating fees do not then continue to accrue. The proposed amendment also is necessary to allow the department to avoid expending resources preparing and mailing annual operating fee notices for the emission source. Notice by publication is acceptable in other contexts such as the Montana Rules of Civil Procedure.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 20, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

Certified to the Secretary of State, December 13, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.604, 17.8.610, 17.8.612, 17.8.613, 17.8.614, and 17.8.615 pertaining to open burning	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On January 13, 2011, at 2:00 p.m., or upon the conclusion of the public hearing for MAR Notice No. 17-310, the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING (1) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, except as provided in ARM 17.8.604(2), 17.8.611, or 17.8.612(4)(a) or (4)(b)~~, or unless approval is granted by the department on a case-by-case basis~~;

(b) through (y) remain the same.

(2) A person may not conduct open burning of any wood waste that is moved from the premises where it was generated, except as provided in ARM 17.8.611 or 17.8.612(4)(a) or (4)(b), or unless the department determines:

(a) the material is wood or wood byproducts that have not been coated, painted, stained, treated, or contaminated by a foreign material; and

(b) alternative methods of disposal are unavailable or infeasible.

(3) A person conducting open burning of wood waste which is moved from the premises where it was generated shall comply with BACT.

(4) A person intending to conduct open burning of wood waste which is moved from the premises where it was generated shall contact the department by calling the number listed in ARM 17.8.601(1) prior to conducting open burning.

~~(2)~~ (5) Except as provided in ARM 17.8.606, ~~no~~ a person may not open burn any nonprohibited material without first obtaining an air quality open burning permit from the department.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

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

(2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments concerning the application may be submitted to the department ~~concerning the application~~ within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(3) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (9) remain the same.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. ~~and must include a~~An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section~~. The filing of a request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the conclusion of the hearing and issuance of a final decision by the board~~. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA,

for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) through (7)(b)(iii) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. ~~and must include a~~An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section~~. The filing of a request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the conclusion of the hearing and issuance of a final decision by the board~~. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) through (7) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. ~~and must include a~~An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section~~. The filing of a

request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the conclusion of the hearing and issuance of a final decision by the board~~. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.615 FIREFIGHTER TRAINING (1) through (5) remain the same.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. ~~and must include a~~An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section~~. The filing of a request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the conclusion of the hearing and issuance of a final decision by the board~~. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

REASON: Sometimes burning wood waste on the premises where it is generated can produce unacceptable amounts of smoke that cause or contribute to a violation of the National Ambient Air Quality Standards. This sort of impact can be avoided, for example, by removing tree debris following a severe wind storm in a city or moving piles of wood waste from the center of a town to a more remote location before burning. However, the current rule provides for case-by-case department decisions regarding the open burning of wood waste when it is moved from its place of origin. The proposed amendment to ARM 17.8.604(1)(a) would specify the circumstances under which moving wood waste from the location where it was generated and burning it may occur. The proposed amendment would require burners to comply with Best Available Control Technology when conducting such open burning.

The 2003 Legislature amended 75-2-211, MCA, to eliminate an automatic stay of the department's decision to issue a permit upon a permit appeal. Pursuant to that amendment, a permit decision is stayed only following a petition and a finding that the person requesting the stay is entitled to the relief demanded in the request for hearing or that continuation of the permit would cause the petitioner great or irreparable injury. Further, the petitioner is liable for costs and damages to the permit applicant if the board ultimately finds the permit was properly issued. The proposed amendments to ARM 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7) reflect the Legislature's revision of the process for appealing air quality permits pursuant to 75-2-211, MCA.

The proposed amendment to ARM 17.8.610(2) corrects a grammatical error.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 20, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general

procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

Certified to the Secretary of State, December 13, 2010.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.80.201, 17.80.202, and 17.80.203 and the adoption of New Rules I through IV pertaining to certification of certain energy production or development facilities or equipment for property tax classification or abatement, monitoring of compliance with certification criteria, and revocation of certification	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (TAX CERTIFICATION - POLLUTION CONTROL EQUIPMENT AND ENERGY FACILITIES)

TO: All Concerned Persons

1. On January 19, 2011, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.80.201 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Carbon dioxide" means a substance that is comprised of no less than 90% carbon dioxide by volume. All calculations of carbon dioxide purity must be made at the location of transfer from the carbon dioxide pipeline to the carbon sequestration point.

(2) "Catastrophic circumstances," within the meaning of 15-6-158(2)(e), MCA, means a great and sudden, extraordinary, unexpected, and unforeseeable disaster or failure of equipment that is beyond the control of the owner and operator of a closed-loop enhanced oil recovery operation, that could not have been prevented, and that substantially interferes with the owner and operator's ability to retain injected carbon dioxide.

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

(4) "Location," within the meaning of 15-6-158(2)(d), MCA, means the injection well field, the pipeline terminus, the pipeline header, or the equipment related to a closed-loop enhanced oil recovery operation.

(5) "Retains," within the meaning of 15-6-158(2)(e), MCA, means that the carbon dioxide is controlled by the operator underground, within the closed-loop system or in some other manner.

(6) "Unforeseen circumstances," within the meaning of 15-6-158(2)(e), MCA, means circumstances beyond the control of the owner and operator of a closed-loop enhanced oil recovery operation that could not reasonably have been foreseen and that substantially interfere with the owner and operator's ability to retain injected carbon dioxide.

AUTH: 15-24-3116, MCA
IMP: 15-24-3112, MCA

17.80.202 CERTIFICATION OF ELIGIBILITY FOR TAX ABATEMENT OR CLASSIFICATION AS CLASS FOURTEEN OR FIFTEEN PROPERTY (1) A taxpayer who wishes to obtain a certificate of eligibility for abatement of property tax liability under ~~15-24-3116~~ 15-24-3111, MCA, for classification of property as class fourteen property under 15-6-157 ~~and 15-24-3116~~, MCA, or for classification of property as class fifteen property under 15-6-158 ~~and 15-24-3116~~, MCA, shall submit to the department a completed application for certification on a form available from the department.

(2) through (4) remain the same.

AUTH: 15-24-3116, MCA
IMP: 15-6-157, 15-6-158, 15-24-3112, MCA

17.80.203 APPLICATION REQUIREMENTS AND DECISION CRITERIA: ALTERNATING CURRENT TRANSMISSION LINES UNDER 15-6-157(1)(q), MCA

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

(3) In making its certification determination, the department shall use the application materials and also may use any other credible information available to the department.

(4) and (5) remain the same.

AUTH: 15-24-3116, MCA
IMP: 15-6-157, 15-24-3116, MCA

4. The proposed new rules provide as follows:

NEW RULE I APPLICATION REQUIREMENTS AND DECISION CRITERIA: CARBON DIOXIDE PIPELINES (1) A taxpayer who wishes to obtain a certificate of eligibility for classification of a carbon dioxide pipeline as class fifteen property under 15-6-158, MCA, or for abatement of property tax liability under 15-24-3111, MCA, shall file an application on a form provided by the department pursuant to ARM 17.80.202. The application must contain the following information:

(a) the name and address of the applicant;

(b) the name, address, telephone number, and e-mail address of a contact person for the applicant;

(c) a description of the pipeline for which certification is sought, including its associated equipment, structures, interconnections, and injection points;

(i) for pipelines still under construction at the end of a tax year, this would be a general description of the complete pipeline, with a more detailed description of that portion for which certification is sought;

(d) a map or drawing showing the location of the pipeline and its associated equipment, structures, and interconnections and all injection points;

(e) the date construction of the pipeline commenced;

(f) certification that the standard prevailing rate of wages for heavy construction were, or will be, paid during construction of the pipeline in Montana;

(g) a list of the carbon sequestration points meeting the requirements of 15-6-158, MCA, and this subchapter to which the carbon dioxide is, or will be, transported, including:

(i) the location, or proposed location, of each sequestration point; and

(ii) documentation of the amount of carbon dioxide that is expected to be transported to each sequestration point throughout each year;

(h) certification that each source of the carbon dioxide transported in the pipeline is, or will be, a plant or facility that produces or captures carbon dioxide, within the meaning of 15-6-158(2)(g), MCA, and is not, or will not be, a well from which the primary product is carbon dioxide;

(i) a list of all plants or facilities that produce or capture, or will produce or capture, the carbon dioxide transported, or to be transported, in the pipeline;

(j) certification that the pipeline transports, or will transport, carbon dioxide to one or more underground injection wells for which the Montana Board of Oil and Gas has issued, or will have issued, a final underground injection control (UIC) permit, including specification of the American Petroleum Institute number and UIC permit number for each well. If some or all permits have not been issued at the time of the application, the taxpayer shall update the certification annually, pursuant to [NEW RULE IV(2)], by providing the department with the information required under this subsection for permits issued after the date of the application; and

(k) documentation of the purity level of the carbon dioxide transported, or to be transported, in the pipeline. For pipelines that are not operational at the time of the application, the applicant shall submit this documentation within 60 days after commencing commercial operation.

(2) Upon request of the department, an applicant shall submit to the department documentation supporting any certification required under this rule.

(3) If any information required under this rule already has been submitted to another Montana state agency, in lieu of submitting the information to the department in the application, the applicant may specify the agency that has the information. If, after reasonable efforts, the department is unable to obtain the information from the other agency, the applicant shall submit the information to the department, upon its request.

(4) The equipment eligible for certification by the department under this rule includes the pipeline and its associated equipment, structures, and interconnections downstream from each meter used to measure the carbon dioxide received from each carbon dioxide source but does not include equipment downstream of the meter to the injection well field served by the pipeline.

(5) In making its certification determination, the department shall use the application materials and may also use any other credible information available to the department.

(6) The department shall revoke a certification issued under this rule, if the taxpayer no longer uses, or no longer will use, the pipeline to transport carbon dioxide to a carbon dioxide sequestration point, including a closed-loop enhanced oil recovery operation.

AUTH: 15-24-3116, MCA
IMP: 15-6-158, 15-24-3112, MCA

NEW RULE II APPLICATION REQUIREMENTS AND DECISION CRITERIA: CLOSED-LOOP ENHANCED OIL RECOVERY OPERATION EQUIPMENT (1) A taxpayer who wishes to obtain a certificate of eligibility for classification of equipment used in a closed-loop enhanced oil recovery operation as class fifteen property under 15-6-158, MCA, or for abatement of property tax liability under 15-24-3111, MCA, shall file an application on a form provided by the department pursuant to ARM 17.80.201. The application must contain the following information:

(a) the name and address of the applicant;

(b) the name, address, telephone number, and e-mail address of a contact person for the applicant;

(c) a description of the equipment for which certification is sought;

(i) for a project still under construction at the end of a tax year, this would be a general description of the complete equipment, with a more detailed description of that portion for which certification is sought;

(d) a map or drawing showing the location of the equipment;

(e) the date construction of the project commenced;

(f) certification that the standard prevailing rate of wages for heavy construction were, or will be, paid during the construction phase;

(g) the location of each well in which carbon dioxide is injected, or is to be injected, as part of the closed-loop enhanced oil recovery operation;

(h) a map or drawing showing the location of each well and injection point at the time of the application;

(i) certification that each source of the carbon dioxide to be injected in the operation is, or will be, a plant or facility that produces or captures carbon dioxide, within the meaning of 15-6-158(2)(g), MCA, and is not, or will not be, a well from which the primary product is carbon dioxide;

(j) a list of all plants or facilities that produce or capture, or will produce or capture, the carbon dioxide for the operation;

(k) certification that a final UIC permit has been issued, or will be issued, by the Montana Board of Oil and Gas for each well in which carbon dioxide is injected, or is to be injected, as part of the closed-loop enhanced oil recovery operation, including specification of the American Petroleum Institute number and UIC permit number for each well. If some or all permits have not been issued at the time of the application, the taxpayer shall update the certification annually, pursuant to [NEW

RULE IV(2)], by providing the department with the information required under this subsection for permits issued after the date of the application;

(l) documentation of the purity level of the carbon dioxide received by the operation. For facilities that have not commenced operation of the closed-loop enhanced oil recovery equipment at the time of the application, the applicant shall submit this documentation within 60 days after commencing commercial operation; and

(m) documentation that the closed-loop enhanced oil recovery operation retains, or will retain, as much of the injected carbon dioxide as is practicable, but not less than 85% of the carbon dioxide injected each year. Demonstrations may include, but are not limited to, modeling data, monitoring data, or engineering calculations sufficient to make the demonstration;

(i) all demonstrations must be accompanied by a protocol describing how the data was obtained and describing all quality control and quality assurance procedures followed in gathering or producing the data.

(2) Upon request of the department, an applicant shall submit to the department documentation supporting any certification required under this rule.

(3) If any information required under this rule already has been submitted to another Montana state agency, in lieu of submitting the information to the department in the application, the applicant may specify the agency that has the information. If, after reasonable efforts, the department is unable to obtain the information from the other agency, the applicant shall submit the information to the department, upon its request.

(4) The equipment eligible for certification by the department under this rule includes the equipment used to inject and/or maintain carbon dioxide in a closed-loop enhanced oil recovery operation that is downstream of the pipeline meter used to measure the amount of carbon dioxide delivered to the closed-loop enhanced oil recovery operation. Pipelines eligible for certification under [NEW RULE I] are not considered enhanced oil recovery operation equipment.

(5) In making its certification determination, the department shall use the application materials and may also use any other credible information available to the department.

(6) The department shall revoke a certification issued under this rule if:

(a) at any time after commencement of construction, the equipment no longer will be used to inject carbon dioxide for enhanced oil recovery;

(b) after construction, installation, and testing has been completed and the enhanced oil recovery process has commenced, equipment certified under this rule no longer is used for enhanced oil recovery; or

(c) the taxpayer no longer holds a valid underground injection control permit for each well served by the operation.

AUTH: 15-24-3116, MCA
IMP: 15-6-158, 15-24-3112, MCA

NEW RULE III CLOSED-LOOP ENHANCED OIL RECOVERY OPERATION EQUIPMENT COMPLIANCE DEMONSTRATION (1) If a taxpayer, who receives certification by the department of equipment used in a closed-loop enhanced oil

recovery operation, does not substantially comply with the requirements specified in each underground injection control permit, issued by the Montana Board of Oil and Gas for the operation, or specified in the applicable rules adopted by the Montana Board of Oil and Gas, the department may revoke the certification.

(2) If monitoring of a closed-loop enhanced oil recovery operation demonstrates that the equipment fails to maintain substantial compliance with eligibility requirements for tax classification or abatement, the department may revoke the certificate of eligibility, or a portion of the certificate of eligibility.

AUTH: 15-24-3116, MCA
IMP: 15-24-3112, MCA

NEW RULE IV REVOCATION OF CERTIFICATE (1) Pursuant to 15-6-157(5)(a), MCA, the department shall review certification of a transmission line ten years after the line is operational and, if the property no longer meets the requirements of 15-6-157, MCA, the department shall revoke the certification. Within the 30-day period preceding January 1 of the tenth year after the line is operational, the owner of a transmission line who has received certification of eligibility for tax classification or abatement from the department under this subchapter shall submit to the department a certified statement as to whether there have been any substantial changes that could affect eligibility for the classification or abatement. If there have been any substantial changes that could affect eligibility, the taxpayer shall fully describe those changes.

(2) A taxpayer, other than the owner of a transmission line, who has received certification of eligibility for tax classification or abatement from the department under this subchapter shall submit to the department, by January 31 of each subsequent calendar year, a certified statement as to whether there have been in the last tax year, or will be in the present tax year, any substantial changes to the facility or equipment, or to operation of the facility or equipment. If there have been, or will be, any substantial changes, the taxpayer shall fully describe those changes. Substantial changes include, but are not limited to:

(a) decreases in the purity of carbon dioxide transported or injected during the last tax year, or expected to be transported or injected during the next tax year;

(b) changes in the source(s) of carbon dioxide transported or injected;

(c) for closed-loop enhanced oil recovery operations, changes in numbers and locations of injection wells associated with the operation.

(3) If the department becomes aware of any changes that could affect the value of a facility or equipment certified under this subchapter, the department shall notify the Department of Revenue.

(4) If a taxpayer fails to submit a ten-year or annual statement required under this rule, or if the department believes that a facility or equipment certified under this subchapter otherwise has failed to maintain substantial compliance with certification eligibility requirements, the department shall notify the taxpayer in writing of the noncompliance. In determining whether a facility or equipment has failed to maintain substantial compliance with certification eligibility requirements, the department shall consider the circumstances, extent, and duration of the noncompliance.

(5) If a taxpayer fails to correct substantial noncompliance within 60 days after receipt of a notice of noncompliance, the department shall notify the taxpayer in writing of the department's intent to revoke the certificate or a portion of the certificate. The department's decision becomes final when 30 days have elapsed after the taxpayer's receipt of the notice unless the taxpayer requests a hearing before the department.

(6) When the department revokes a certificate, or a portion of a certificate, under this rule, the taxpayer may request a hearing before the department. A hearing request must be in writing and must be filed with the department, addressed to the department director, within 30 days after receipt of the department's revocation notice. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the department.

(7) Pursuant to 15-24-3112(5), MCA, a hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(8) Pursuant to 15-24-3112(2), MCA, within 30 days after revocation of a certificate, the department shall report the revocation to the Department of Revenue.

AUTH: 15-24-3116, MCA
IMP: 15-6-157, 15-6-158, 15-24-3112, MCA

REASON: In May 2007, the Montana Legislature enacted House Bill 3, the "Jobs and Energy Development Act" (HB 3). Chapter 2, Laws of Montana, May Special Session, 2007. Among other provisions, the Act amended Title 15, chapter 6, part 1, MCA, by creating new property tax classifications for certain energy-related equipment and facilities. The Act also added Title 15, chapter 24, part 31, MCA, providing for tax abatement for property related to certain energy production or development facilities. The new provisions and amendments were intended to provide property tax incentives for new investment in: the conversion, manufacture, and transport of renewable energy; clean coal development; carbon dioxide sequestration equipment, including closed-loop enhanced oil recovery ("EOR") operation equipment; clean advanced coal research and development equipment; and renewable energy research and development equipment.

Sections 5, 7, and 11 of HB 3, codified at 15-24-3112, 15-6-158, and 15-6-157, MCA, respectively, require the department to determine whether certain facilities or equipment qualify for certain tax classifications or for tax abatement, and, if so, to issue a certificate of eligibility. Section 6 of HB 3, codified at 15-24-3116, MCA, requires the department to adopt rules necessary for certification of eligibility for tax abatement under 15-24-3112, MCA, or classification as Class fourteen or Class fifteen property under 15-6-157 and 15-6-158, MCA. HB 3 also requires that the rules address compliance with certification criteria and revocation of certificates. The new rules and amendments proposed in this rulemaking are necessary to meet this legislative mandate and address the desire of the Legislature to offer incentives for capturing and storing carbon dioxide that otherwise would be emitted to the atmosphere.

The department previously adopted new rules providing general application procedures for certification of eligibility for tax abatement or classification as Class

fourteen or Class fifteen property and providing specific application requirements and criteria for certification of alternating current transmission lines as Class fourteen property (ARM 17.80.201 through 17.80.203). 2008 Montana Administrative Register, Issue No. 10, p. 1027 (May 22, 2008). The present proposed new rules and amendments would add provisions for certification of carbon dioxide pipelines and equipment used in closed-loop EOR operations.

The department is proposing to amend ARM 17.80.201 to add definitions of certain terms used in the statutes being implemented that are not defined in the statutes. The department believes that it is necessary to define these terms. However, if the department determines through comments received during the rulemaking process that one or more of these definitions are not necessary, the department will delete any unnecessary definitions from the final amendments. Among other proposed definitions, the department is proposing a definition of "carbon dioxide." The department is proposing to define the term as meaning a gas or liquid that is comprised of no less than 90% carbon dioxide by volume. The department is proposing this level of purity because the department believes it reflects the level of purity attainable by carbon dioxide capture equipment and because it reflects the Legislature's desire to provide tax incentives only for operations that substantially decrease the amount of carbon dioxide released into the atmosphere. However, the department requests comment on that percentage and may adopt a percentage that is higher or lower than 90%.

The department is proposing to amend ARM 17.80.202(1) to correct references to the statutes being implemented by that rule. These amendments are not intended to have any substantive effect.

The department is proposing to amend ARM 17.8.203(3) to state that the department is not required to, but may, use information in addition to application materials in making its certification decision. This amendment is necessary to clarify that, in making its certification decisions, the department is not required to review unnecessary additional information or information outside an application that the department does not find to be credible. The department is proposing this same language for New Rules I and II.

New Rule I(1) and New Rule II(1) would provide application requirements and decision criteria for department certification of carbon dioxide pipelines and closed-loop EOR operation equipment, respectively. The application requirements and decision criteria are based on the requirements of ARM 17.80.203, which the department adopted in 2008 to implement certification of alternating transmission lines, with changes necessary to provide information specific to determination that equipment meets the statutory criteria for certification of carbon dioxide pipelines and EOR operation equipment.

In both New Rule I(1) and New Rule II(1), the department is proposing to allow certification by the applicant of certain facts that are easily verified by the department, rather than requiring more detailed information or documentation. Where application information is easily verified by the department, requiring certification is more appropriate than requiring the applicant to submit extensive information and documentation that is not needed by the department. However, in order to ensure that the department is able to obtain all necessary information, New

Rule I(2) and New Rule II(2) would require the applicant to submit any information supporting a certification, upon request of the department.

In New Rule I(1)(a) through (d) and New Rule II(1)(a) through (d), the department is proposing to require submission of basic information concerning the application and the equipment and location of the equipment that is necessary for the department to identify the applicant, contact the applicant, determine how the equipment relates to carbon capture and sequestration equipment, and determine the location of the equipment for department inspection.

New Rule I(1)(e) and New Rule II(1)(e) would require specification of the date that construction commenced. This is necessary because 15-24-3111(4)(a)(i), MCA, limits eligibility for tax abatement to equipment for which construction commenced after June 1, 2007, and because 15-24-3111(4)(e), MCA, limits eligibility for tax abatement to the construction period and the first 15 years after the facility commences operation, not to exceed a total of 19 years.

New Rule I(1)(f) and New Rule II(1)(f) would require certification that the standard prevailing rate of wages were paid, or will be paid, for heavy construction. This is necessary because 15-6-158(3) and 15-24-3111(4)(a)(ii), MCA, require payment of the standard prevailing rate of wages during the construction phase in order for the equipment to be eligible for classification as Class 15 property or for abatement, respectively.

In New Rule I(1)(g), the department is proposing to require a list of the carbon sequestration points meeting the requirements of 15-6-158, MCA, and the proposed rules to which the carbon dioxide is, or will be, transported, along with the location of each sequestration point and the amount of carbon dioxide transported to each point each year. This is necessary to ensure that the pipeline meets the definition of "carbon dioxide pipeline" in 15-6-158(2)(a), MCA, which requires that the pipeline transport carbon dioxide for long-term storage in a geologic formation or for retention in a closed-loop EOR operation and to allow the department to verify that the volume transported is approximately equivalent to the volume injected.

In New Rule I(1)(h) and (i) and New Rule II(1)(i) and (j), the department is proposing to require certification that each source of the carbon dioxide transported or injected is, or will be, a plant or facility that produces or captures carbon dioxide, within the meaning of 15-6-158(2)(g), MCA, and a list of all such plants or facilities. This is necessary to ensure that the pipeline or closed-loop EOR operation meets the requirements of 15-6-158(2)(a), (b) and (e) and 15-24-3111(3)(l) and (m), MCA, which limit eligibility for classification as Class fifteen property and for tax abatement to pipelines that transport carbon dioxide from a plant or facility that produces or captures carbon dioxide and closed-loop EOR operations that receive carbon dioxide from a carbon dioxide pipeline.

Section 15-6-158(2)(a), MCA, states that: "'[c]arbon dioxide pipeline' means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation." Section 15-6-158(2)(g), MCA, states that: "'Plant or facility that produces or captures carbon dioxide' means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide." Section 15-6-158(2)(b), MCA, states that: "'Carbon sequestration'

means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited to . . . closed-loop enhanced oil recovery operations." Section 15-24-3102(1)(8), MCA, states that: "'Carbon sequestration' means the long-term storage of carbon dioxide from a plant or facility that produces or captures carbon dioxide, as defined in 15-6-158, in geologic formations, including but not limited to . . . closed-loop enhanced oil recovery operations." Section 15-24-3101, MCA, states in relevant part that: " . . . It is also the policy of the state of Montana that the classifications, rates, abatements, and exemptions . . . are to encourage investment in energy development that is consistent with maintaining a clean and healthful environment . . . ."

The department believes that, when read individually, the statutes cited above may be ambiguous concerning whether all of the carbon dioxide transported in a pipeline or injected in a closed-loop EOR operation must be from a plant or facility in order to be eligible for the tax incentives. However, reading the statutes together, the department believes that the most reasonable interpretation is that the Legislature intended the tax incentives to be provided only for pipelines and closed-loop EOR operations that transport or inject carbon dioxide from plants or facilities that otherwise would vent carbon dioxide to the atmosphere, and not from natural sources such as wells that are intended primarily to produce carbon dioxide for uses such as in carbon dioxide pipelines and closed-loop EOR operations. The department believes that this interpretation is supported by the policy statement in 15-24-3101, MCA, cited above, because providing tax incentives for intentionally removing carbon dioxide from a natural source that otherwise prevents the carbon dioxide from being emitted into the atmosphere contributes to greenhouse gas emissions and is not consistent with maintaining a clean and healthful environment.

In New Rule I(1)(j) and New Rule II(1)(k), the department is proposing to require certification that the Montana Board of Oil and Gas has issued a final underground injection control permit for each well to be injected with carbon dioxide that is served by the carbon dioxide pipeline or closed-loop EOR operation equipment. This is necessary to ensure that the carbon dioxide is being transported to a geologic formation for long-term storage or to a closed-loop EOR operation that will retain at least 85% of the carbon dioxide injected each year, as required in 15-6-158(2)(b) and (e) and 15-24-3111(3)(l) and (m), MCA. The rules would require specification of American Petroleum Institute well numbers and Board of Oil and Gas underground injection control (UIC) permit numbers for each well to be served. This is necessary to allow the department to communicate with Department of Natural Resources and Conservation and Board of Oil and Gas staff concerning the wells and to review relevant permit conditions, including monitoring provisions, to ensure that the pipeline or equipment meets the statutory criteria for certification.

New Rule I(1)(k) and New Rule II(1)(l) would require the applicant to document the purity level of the carbon dioxide transported in the pipeline or received by the closed-loop EOR operation. This is necessary to ensure that the substance transported in the pipeline or received by the EOR operation constitutes carbon dioxide, within the meaning of the statutes and rules.

To avoid unnecessary duplication by the applicant, New Rule I(3) and New Rule II(3) would allow an applicant that has submitted information required under the rules to another Montana state agency to inform the department of where the

information can be located, in lieu of submitting the information to the department. The rules would allow the department to require the applicant to submit the information if the department is unable to obtain it from the other agency after reasonable efforts.

New Rule I(4) would describe the equipment that the department believes reasonably is an integral part of a carbon dioxide pipeline and, therefore, is eligible for certification by the department. This would include the pipeline and its associated equipment, structures, and interconnections downstream from each meter used to measure the carbon dioxide received from each carbon dioxide source, but would not include equipment downstream of the meter to the injection well field served by the pipeline.

New Rule I(5) and New Rule II(5) would require the department, in making its certification decision, to use the information in the application materials, but also would allow the department to use any other credible information available to the department. This provision is necessary to allow the department to rely upon information it obtains from site inspections, other agencies, or other credible sources of information.

New Rule I(6) and New Rule II(6) would require the department to revoke a certification if the taxpayer no longer uses, or intends to use, a certified pipeline or EOR operation equipment for the purposes that make the pipeline or equipment eligible for certification.

New Rule II(1)(m) would require documentation that the closed-loop enhanced oil recovery operation retains, or will retain, as much of the injected carbon dioxide as is practicable, but not less than 85% of the carbon dioxide injected each year. Demonstrations may include, but are not limited to, modeling data, monitoring data, or engineering calculations sufficient to make the demonstration. This is necessary to ensure that the operation meets the requirements in 15-6-158(2)(e), MCA, incorporated by reference in 15-24-3111(3)(l), MCA, for certification of a closed-loop EOR operation.

New Rule III(1) would require the department to revoke certification of EOR operation equipment if the taxpayer does not comply with the requirements specified in the UIC permits issued by the Montana Board of Oil and Gas for the operation or in rules adopted by the Montana Board of Oil and Gas. New Rule III(2) would require the department to revoke a certification if monitoring of an EOR operation demonstrates that the equipment fails to maintain substantial compliance with eligibility requirements for certification. These provisions are necessary to ensure that certification is revoked if certified equipment no longer meets eligibility criteria.

New Rule IV(1) would state the requirement of 15-6-157(5)(a), MCA, that the department review certification of a transmission line ten years after the line is operational and, if the property no longer meets the requirements of 15-6-157, MCA, revoke the certification. Although this requirement already is stated in the statute, it is necessary to include it in the rule to convey the meaning of the subsequent requirement in the rule that the taxpayer submit a certification ten years after the line becomes operational to enable the department to review continued eligibility for certification.

New Rule IV(2) would provide for annual department review of continued eligibility for certification for equipment other than transmission lines. The statutes

do not specify a review period for equipment other than transmission lines, and the department is proposing an annual review period, rather than a longer period, to ensure that the department revokes its certification in a timely manner if equipment no longer meets certification eligibility requirements. Annual review also is consistent with annual review of property evaluations by the Department of Revenue. The rule would require reporting of substantial changes in equipment or operation and would list decreases in purity of carbon dioxide, changes in carbon dioxide sources, and, for closed-loop EOR operations, changes in numbers and locations of injection wells as examples of changes that would need to be reported. It is necessary for the department to be informed of substantial changes in order for the department to conduct inspections and determine whether any changes affect eligibility for certification.

New Rule IV(3), (5), (6), (7), and (8) would repeat statutory language concerning information related to valuation of property and revocation and hearing procedures. It is necessary to include these provisions in the rule for completeness.

New Rule IV(4) and (5) would provide procedures for notice of noncompliance and notice of the department's intent to revoke a certificate or portion of a certificate and procedures for a taxpayer to request a contested case hearing. The department is proposing to issue a notice of noncompliance and provide a 60-day period for correction of noncompliance prior to issuing a notice of intent to revoke a certificate. The noncompliance notice and corrective action period would provide the opportunity to achieve compliance and resolve any disputes without expending the resources necessary to proceed to a contested case hearing.

New Rule IV(4) would require the department to consider the circumstances, extent, and duration of any noncompliance in determining whether a taxpayer has failed to maintain substantial compliance with eligibility criteria and whether revocation of certification is appropriate. For example, this provision would allow the department to consider the availability of high purity carbon dioxide or the availability of carbon dioxide from plants or facilities that produce or capture carbon dioxide if the purity of carbon dioxide transported or injected falls below the required level or if an operation transports or injects some amount of carbon dioxide from a source other than a plant or facility that produces or captures carbon dioxide, such as a well that primarily produces carbon dioxide. Consideration of the circumstances in determining the appropriateness of revocation is necessary in order to implement the Legislature's desire to encourage investments in carbon capture, transportation, and sequestration and due to the unknown variables involved in carbon capture, transportation, and sequestration in Montana at this time.

In New Rule IV(5), the department is proposing a 30-day period for requesting a hearing because this period is consistent with most of the time periods for requesting a hearing under other statutes implemented by the department.

The intent is to harmonize the proposed rule amendments and new rules with anticipated future rules by the U.S. Environmental Protection Agency and the Montana Department of Natural Resources and Conservation. When such rules are promulgated, the department will review the amendments and new rules adopted in the present rulemaking proceeding for consistency with such rules, and the department will initiate further rulemaking if necessary for consistency.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than January 21, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. David Rusoff, attorney, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, December 13, 2010.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.102, 17.56.309, 17.56.402, 17.56.1001, and 17.56.1305 and the adoption of New Rule I pertaining to applicability, compliance inspections, petroleum UST systems, fee schedule, permit issuance, and anti-siphon requirements	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On January 12, 2011, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.56.102 APPLICABILITY (1) through (2)(b) remain the same.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, ~~and~~ 14, and 15 do not apply to any of the following types of PSTs and UST systems:

(a) through (g) remain the same.

(4) Subchapters 2, 3, 4, 5, 7, 8, 9, 10, 13, ~~and~~ 14, and 15 do not apply to any of the following types of UST systems:

(a) through (c) remain the same.

(5) Subchapters 2, 3, 4, ~~and~~ 8, and 15 do not apply to any of the following types of UST systems:

(a) through (6)(c) remain the same.

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

REASON: The department is proposing to add a reference to subchapter 15 to (3) through (5) because, in a rulemaking effective November 26, 2009, the department adopted a new subchapter 15 pertaining to operator training. It is

necessary to include subchapter 15 in the applicability rule since the operator training that is required in subchapter 15 would train the operators in rules that do not apply to them or their respective facilities.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS

(1) through (9) remain the same.

(10) The owner or operator shall submit to the department a follow-up inspection report either:

(a) within 30 days after completion of the corrective actions required under ~~(7)~~ (9), or at least 14 days before the expiration of the facility's operating permit, whichever occurs first; or

(b) within another time frame determined by the department.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-509, MCA

REASON: It is necessary to add a new (10)(b) because it would give the department flexibility on when to require the submittal of a follow-up inspection report. Some follow-up inspection reports include several issues that will need corrective action, and the corrective actions may not all be completed at the same time. The proposed revision will allow an owner or operator to submit only one follow-up inspection report for all of their corrective actions. Under the existing rule more than one follow-up inspection report would have been required for the same circumstance.

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) Except as provided in ~~(2)~~ (3), owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) through (5) remain the same.

AUTH: 75-11-302, 75-11-505, MCA
IMP: 75-11-302, 75-11-505, MCA

REASON: The department is proposing to update a citation in (1) because in a rulemaking effective November 26, 2009, a new section was added to ARM 17.56.402. The current rule amendment is necessary to correct a clerical error resulting from a change in the numbering during that prior rulemaking.

17.56.1001 TANK FEE SCHEDULE (1) remains the same.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees in accordance with (1) before the department will issue ~~a tank certificate under (3)~~ an operating permit under ARM 17.56.308:

(a) and (b) remain the same.

~~(3) The annual tank registration fees in (2) apply to annual tank registration fees that are due on or after January 1, 2004.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to change "a tank certificate" to "an operating permit" to correct a misnomer. The department does not issue tank certificates, but does issue permits and the rule was intended to refer to operating permits. The department proposes to delete "under (3)" because, due to changes made during a prior rulemaking proceeding, the reference to (3) is no longer valid. The department proposes to delete the applicability date in (3) because the date is past and no longer relevant.

17.56.1305 MAJOR INSTALLATION, MINOR INSTALLATION, AND CLOSURE PERMIT ISSUANCE, TERMS, CONDITIONS (1) through (3)(f) remain the same.

(4) The department may not issue a permit under this rule until all annual registration fees required by ARM 17.56.1001 are received.

(4) through (11) remain the same, but are renumbered (5) through (12).

AUTH: 75-11-204, 75-11-505, MCA
IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-505, MCA

REASON: The proposed new ARM 17.56.1305(4) will allow the department to withhold issuance of a permit under this rule until all tank registration fees have been paid. This is necessary to provide an incentive for owners and operators to be current on tank fees.

4. The proposed new rule provides as follows:

NEW RULE I ANTI-SIPHON REQUIREMENTS (1) The owner or operator of an UST system that is located at an elevation that produces a gravity head on an underground piping system shall ensure that the product pipe is equipped with one of the following devices:

(a) a department-approved anti-siphon valve;
(b) a department-approved normally closed solenoid valve; or
(c) any other department-approved device designed to prevent siphoning.

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

REASON: The department is proposing to adopt the New Rule I anti-siphon requirements in order to protect the environment from spills and to reduce the chance of catastrophic releases to the environment caused by tanks that are elevated above connected underground piping systems. An anti-siphon or a normally closed solenoid valve prevents siphoning of the contents of the tank into the environment if the connected piping system fails. Without an anti-siphon prevention device, an elevated tank could release the entire contents of the tank into the environment whenever a leak develops in any portion of the underground piping system.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than January 20, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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

Certified to the Secretary of State, December 13, 2010.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.120 concerning loans and other forms of financing	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 19, 2011, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Justice 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 January 14, 2011, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.120 LOANS AND OTHER FORMS OF FINANCING (1) through (8)(c) remain the same.

(d) the term of repayment does not exceed ~~180~~ 365 days.

(9) and (10) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-118, 23-5-176, MCA

RATIONALE AND JUSTIFICATION: This rule amendment is necessary and reasonable to enlarge, from 180 days to 365 days, the period of time a licensee may purchase video gambling machines (vgms) on a "cash equivalent" sales basis without being required to obtain prior department approval. Under the current rule, a licensee is exempt from the requirement to obtain prior department approval when it incurs a 180-day payable for the purchase of video gambling machines, on a same-as-cash basis, from a licensed manufacturer or distributor. The Gaming Advisory Council approved a proposal to enlarge the current time period to help licensees purchase vgms under a longer same-as-cash basis. The department concluded that this enlargement of time is consistent with current department policies and industry practices, and does not violate the agency's standard for commercial reasonableness of financial arrangements related to gambling licensees.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than January 20, 2011.

5. An electronic copy of this Notice of Proposed Amendment is available through the Department of Justice's web site at http://doj.mt.gov/resources/administrativerules.asp. 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 of Justice 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.

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice. A copy of the interested persons request form may be printed from the Department of Justice's web site at http://www.doj.mt.gov/resources/forms/interestedperson.pdf, and mailed to the rule reviewer.

7. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

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

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

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

Certified to the Secretary of State December 13, 2010.

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

In the matter of the amendment of ARM 24.207.401 fees, 24.207.502 application requirements, 24.207.504, 24.207.505, 24.207.506, 24.207.507 qualifying education requirements, 24.207.509 qualifying experience, 24.207.515 inactive license or certification, 24.207.516 inactive to active license, 24.207.517 trainee requirements, 24.207.518 mentor requirements, 24.207.2101 and 24.207.2102 continuing education	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 13, 2011, at 9:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on January 7, 2011, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2373, e-mail realestateappraiser@mt.gov.

3. General Statement of Reasonable Necessity: In 2009, the federal Appraisal Subcommittee (ASC) conducted an audit of the board. The ASC is the national body responsible for certifying that state appraiser licensing boards are in compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which allows licensed appraisers to appraise properties in relation to federally related transactions. Following the audit, the ASC mandated that the board amend the following rules to maintain compliance with the FIRREA and the federal regulations promulgated thereunder. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.207.401 FEES (1) through (1)(l) remain the same.

(m) reactivation fee 250

(m) remains the same, but is renumbered (n).

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: The board determined it is reasonably necessary to amend this rule and create a reactivation fee which, in accordance with 37-1-134, MCA, must reflect the costs incurred by the department in processing the renewal and providing additional board services. Currently, a licensee may place a license on inactive status, renew at a reduced fee, and later, reactivate without paying the difference in renewing inactive vs. active, while receiving increased services on active license status. The board estimates that the reactivation fee will affect one licensee a year, resulting in approximately $250 in additional annual revenue.

24.207.502 APPLICATION REQUIREMENTS (1) through (4) remain the same.

(5) ~~Application must also include work product that is applicable to the level of licensure sought~~ The board will select work product from the experience log. The work product requested will be commensurate with the level of licensure sought:

(a) licensure level - single ~~family~~ unit residential appraisals are required;

(b) certified residential - two to four ~~family~~ unit income-producing residential appraisals are required; and

(c) remains the same.

(6) The applicant shall correct any deficiencies and submit required material~~. Failure to submit the required material~~ within 60 days of ~~notification~~ notice with no additional application fee ~~of deficiencies shall be treated as a voluntary withdrawal of the application~~. Failure to submit materials will be treated as a voluntary withdrawal. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

(7) remains the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board is amending (5) to comply with Appraisal Subcommittee policy statement 10G, which specifically requires that state agencies select the work product from an applicant's experience log to be reviewed for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). Currently, the board allows the applicant to select the work product. The board is clarifying application requirements in (6) to to address confusion among applicants with incomplete applications who hesitate to provide additional information because they believe they must also submit a new application fee. This amendment will clarify that no new fee is required as long as the missing material is timely provided.

24.207.504 QUALIFYING EDUCATION REQUIREMENTS (1) through (5) remain the same.

(6) The board shall have the authority to deny or revoke its approval of a ~~previously-approved~~ previously approved course or course provider for cause.

(7) An applicant must attend ~~a minimum of 90~~ 100 percent of the scheduled class hours, complete all required exercises, and achieve a passing score on the course examination in order to receive credit for the course.

(8) remains the same.

(9) A classroom hour is defined as 50 minutes out of each 60-minute segment.

(10) through (13) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

24.207.505 QUALIFYING EDUCATION REQUIREMENTS FOR LICENSED REAL ESTATE APPRAISERS (1) Applicants for original licensure as a licensed real estate appraiser shall complete at least ~~90~~ 150 classroom hours of instruction in the listed core curriculum.~~,15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants must demonstrate that their education involves coverage of all topics listed below with particular emphasis on the appraisals of one- to four-unit residential properties:~~

~~(a) influences on real estate value;~~
~~(b) legal considerations in appraisal;~~
~~(c) types of value;~~
~~(d) economic principles;~~
~~(e) real estate markets and analysis;~~
~~(f) evaluation process;~~
~~(g) property description;~~
~~(h) highest and best use analysis;~~
~~(i) appraisal statistical concepts/methods;~~
~~(j) sales comparison approach;~~
~~(k) site value;~~
~~(l) cost approach;~~
~~(m) income approach:~~
~~(i) gross rent multiplier;~~
~~(ii) estimation of income and expenses;~~
~~(iii) operating expense ratios.~~
~~(n) evaluation of partial interests;~~
~~(o) appraisal standards and ethics; and~~

~~(p)~~ (2) ~~types~~ Types of misconduct for which disciplinary proceedings may be initiated against a licensed real estate appraiser, as set forth by statute.

~~(2)~~ (3) ~~Effective January 1, 2008, the~~ The required core curriculum for a licensed real estate appraiser is:

(a) through (h) remain the same.

~~(3)~~ (4) To upgrade from a trainee to a licensed real estate appraiser, an applicant may use education obtained for licensure as a trainee, as long as the education meets the required core curriculum as outlined in ARM 24.207.506.

~~(4)~~ (5) ~~Effective January 1, 2008, applicants~~ Applicants for original licensure as a licensed real estate appraiser shall complete at least 150 hours of ~~board approved~~ board-approved instruction in the required core curriculum ~~,15 hours of which must cover the USPAP as promulgated by The Appraisal Foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants shall demonstrate that their education involves coverage of all topics listed in (1) with particular emphasis on the appraisal of one to four-unit residential properties~~.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to incorporate the newly revised Appraisal Qualifications Board (AQB) requirements. The AQB is the federal entity that establishes the qualifications for certified appraisers. Per the ASC audit, Montana must amend the requirements in this rule to remain federally compliant.

24.207.506 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for certification as certified residential real estate appraisers shall provide evidence of completion of 120 hours of ~~board approved~~ board-approved instruction in the required core curriculum~~, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing~~.

(2) In addition to the topics listed in ARM 24.207.505, applicants for certification as a certified residential real estate appraiser shall demonstrate that their education involved coverage of the required core curriculum requirements ~~narrative report writing and direct capitalization within the income approach. The education for this class shall place particular emphasis on the appraisal of two- to four-unit residential properties~~.

(3) ~~Effective January 1, 2008, the~~ The required core curriculum for certified residential licensure is:

(a) through (k) remain the same.

(4) To upgrade from a trainee or a licensed real estate appraiser to a certified residential real estate appraiser, an applicant may use education obtained for licensure as a licensed real estate appraiser, as long as the education meets the required core curriculum.

(5) ~~Effective January 1, 2008, applicants~~ Applicants for original certification as certified residential real estate appraisers shall provide evidence of completion of:

(a) 200 hours of ~~board approved~~ board-approved instruction in the required core curriculum~~, 15 hours of which must cover the USPAP as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing~~; and

(b) through (e) remain the same.

AUTH: 37-1-131, 37-54-105, 37-54-303, MCA
IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to incorporate the newly revised Appraisal Qualifications Board (AQB) requirements. The AQB is the federal entity that establishes the qualifications for certified appraisers. Per the ASC audit, Montana must amend the requirements in this rule to remain federally compliant. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.207.507 QUALIFYING EDUCATION REQUIREMENTS FOR GENERAL CERTIFICATION (1) Applicants for certification as certified general real estate appraisers shall provide evidence of ~~180~~ 300 hours of ~~board-approved~~ board-approved instruction in the required core curriculum ~~, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing~~.

~~(2) In addition to the topics listed in ARM 24.207.505, applicants for general certification shall demonstrate that the education included:~~

~~(a) narrative report writing; and~~

~~(b) income approach, including the following:~~

~~(i) addressing estimation of income and expenses;~~

~~(ii) operating statement ratios;~~

~~(iii) direct capitalization;~~

~~(iv) cash flow estimates;~~

~~(v) measures of cash flow; and~~

~~(vi) discounted cash flow analysis.~~

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

~~(4)~~ (3) ~~Effective January 1, 2008, the~~ The core curriculum for certified general licensure is:

(a) through (k) remain the same.

~~(5)~~ (4) To upgrade from a trainee or licensed real estate appraiser to a certified general appraiser, an applicant may use prior education that also meets the specific criteria identified in ~~(4)~~ (3) and a minimum of 30 semester credit hours covering the requirements of ~~(7)~~ (6)(b).

~~(6)~~ (5) To upgrade from certified residential real estate appraiser to a certified general real estate appraiser, an applicant may use prior education for licensure that meets the specific criteria identified in ~~(4)~~ (3) and a minimum of 30 semester credit hours covering the requirements of ~~(7)~~ (6)(b).

~~(7)~~ (6) ~~Effective January 1, 2008, applicants~~ Applicants for certification as a certified general real estate appraiser shall provide evidence of:

(a) 300 hours of ~~board-approved~~ board-approved instruction in the core curriculum ~~, 15 of which must cover the USPAP as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing~~; and

(b) remains the same.

AUTH: 37-1-131, 37-54-105, 37-54-303, MCA
IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to incorporate the newly revised Appraisal Qualifications Board (AQB) requirements. The AQB is the federal entity that establishes the qualifications for certified appraisers. Per the ASC audit, Montana must amend the requirements in this rule to remain federally compliant.

The board is deleting an unnecessary past effective date from this rule and renumbering both rule sections and internal references following amendment of the rule. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.207.509 QUALIFYING EXPERIENCE (1) through (5)(c) remain the same.

(d) description of work performed; ~~and~~

(e) number of work hours~~.~~ ;

(f) scope of work completed by trainee; and

(g) scope of work completed by approved mentor.

(6) remains the same.

(7) Qualifying experience must be obtained within five years prior to application date, unless otherwise determined by the board.

(8) through (10) remain the same.

(11) The board may provide a variance from the hourly standards provided in (9) and (10). To be considered for such a variance, an applicant must submit a written request for a variance supported by documentation, which demonstrates the need for additional credit hours.

AUTH: 37-1-131, 37-54-105, 37-54-303, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

REASON: To address a citation in the Appraisal Subcommittee audit, the board is amending this rule to require that trainee experience logs clearly identify the work in each appraisal performed by the trainee and the work performed by the mentor. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.207.515 INACTIVE LICENSE/CERTIFICATION (1) through (3) remain the same.

(4) Inactive licensees must not appraise real property or sign appraisal reports while their license is on inactive status.

AUTH: 37-1-131, 37-1-319, 37-54-105, ~~37-54-310,~~ MCA
IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-310, MCA

REASON: The board determined it is reasonably necessary to amend this rule and clarify that appraisers on inactive status may not appraise real property within Montana. The public reasonably expects that a licensee on inactive status would

not be able to engage in the same activities as an active licensee, and an inactive licensee is not subject to the same level of supervision by the board as an active licensee. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.207.516 INACTIVE TO ACTIVE LICENSE (1) remains the same.

(a) file an updated application form with the board office and pay the required reactivation fee in accordance with ARM 24.207.401.

AUTH: 37-1-131, 37-1-319, 37-54-105, ~~37-54-310,~~ MCA
IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-310, MCA

REASON: The board is amending this rule to clarify that licensees are required to pay a reactivation fee when changing from inactive to active status. This amendment coincides with the reactivation fee as proposed in ARM 24.207.401. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.207.517 TRAINEE REQUIREMENTS (1) through (3) remain the same.

(4) A trainee license must be renewed by the date set by ARM 24.101.413, following the trainee's original year of licensure. A trainee license may be renewed a total of four times, but may be extended by the board for cause.

(5) through (10) remain the same.

(11) ~~Effective January 1, 2008, the~~ The core curriculum for trainee licensure is:

(a) through (d) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: The board is deleting the 2008 effective date from this rule as it is no longer necessary.

24.207.518 MENTOR REQUIREMENTS (1) through (1)(b) remain the same.

(i) a mentor shall make application on forms approved by the board and submit two appraisal reports prepared by the mentor in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) standards with all three approaches to value;

(ii) failure to prepare appraisal reports in compliance with USPAP can result in denial of mentor status~~.~~; and

(iii) mentor applications must be received in the board office 45 days prior to the next scheduled board meeting.

(c) and (d) remain the same.

(e) certify the mentor's agreement to provide ~~on-going~~ ongoing supervision of the licensed trainee;

(f) through (h) remain the same.

(i) prior to allowing the trainee to perform an assignment with limited supervision, the mentor shall evaluate the competency of the trainee after the first 50 properties. The mentor must determine that the trainee is competent to perform an assignment within the minimum criteria of USPAP, with limited supervision. Failure to provide adequate supervision is unprofessional conduct according to 37-1-316, MCA;

(i) and (j) remain the same, but are renumbered (j) and (k).

(2) and (3) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, MCA

REASON: The board is amending (1)(b)(i) to clarify that an applicant for mentor status must submit appraisal reports that demonstrate an understanding of all three approaches to value. A mentor is expected to impart to a trainee a thorough understanding of the three approaches to valuing real property, and therefore, the board determined it is reasonably necessary to require all mentor applicants to submit appraisal reports that reflect such an understanding.

The board is adding (1)(b)(iii) to require that mentor applicants submit application materials at least 45 days prior to the meeting at which it will be reviewed. This requirement will help ensure sufficient time for a complete review of the appraisals for compliance with USPAP, and allow the appraisals and review to be disseminated to board members prior to the meeting.

The board decided to add (1)(i) to ensure that mentors are providing an appropriate level of supervision to their trainees. This amendment will increase public protection by ensuring that all appraisal work performed by trainees is done in a professional manner that is consistent with USPAP.

24.207.2101 CONTINUING EDUCATION (1) through (3) remain the same.

(4) Application may be made for continuing education credit for participation other than as a student in appraisal education processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities, which are determined by the board to be equivalent to obtaining continuing education. These activities cannot be approved for more than 50 percent of continuing education requirements.

(5) Every other renewal year, licensees ~~shall provide evidence to the board of having completed~~ must complete at least 28 hours of instruction in courses or seminars approved by the board, at least seven hours of which must be the national Uniform Standards of Professional Appraisal Practice (USPAP) update course. No online or alternative USPAP courses will be accepted.

(6) and (7) remain the same.

(8) Education completion certificates must be retained and available for audit for a period of five years, according to the record keeping requirements of USPAP.

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-303, MCA
IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-303, 37-54-310, MCA

REASON: The board determined it is reasonably necessary to amend (4) to limit certain CE activities to 50 percent of required continuing education (CE) per Appraisal Qualifications Board (AQB) requirements. The AQB is the federal entity that establishes the minimum requirements to license and regulate appraisers that conduct federally related transactions. Per the ASC audit, Montana must amend (4) to remain compliant.

The board is amending (5) to clarify that licensees must complete the USPAP update course as acceptable continuing education. Currently, there are two different USPAP courses: a 15-hour course intended as a foundation level of knowledge for new appraisers and a 7-hour update course. The 15-hour course is not intended as a CE course and is not acceptable. The board is also amending (5) to specify that the board will not accept alternative delivery of this course and licensees must attend the class.

The board is amending (8) to comply with ASC requirements. Montana received an audit citation for not requiring licensees to maintain CE certificates for five years.

24.207.2102 CONTINUING EDUCATION NONCOMPLIANCE (1) remains the same.

(2) Noncompliance of CE mandated by the AQB will be reported to the ASC National Registry Compliance Database.

AUTH: 37-1-136, 37-1-319, 37-54-105, ~~37-54-202, 37-54-210, 37-54-310,~~ MCA
IMP: 37-1-131, 37-1-136, MCA

REASON: The board determined it is reasonably necessary to add (2) to comply with the ASC requirement for states to notify the National Registry when a licensee fails to comply with mandated continuing education. Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority and to delete reference to a repealed statute.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2373, or by e-mail to realestateappraiser@mt.gov, and must be received no later than 5:00 p.m., January 21, 2011.

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

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2373; e-mailed to realestateappraiser@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA CHAIRPERSON

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

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

Certified to the Secretary of State December 13, 2010

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

In the matter of the amendment of ARM 37.104.101 and 37.104.212 pertaining to emergency medical services (EMS)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 12, 2011 at 10:30 a.m. the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 6, 2011, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

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

(1) through (19)(c) remain the same.

(20) "EMS incident" means an instance in which an ambulance service or nontransporting unit is requested to provide emergency medical services, including a mutual aid request, and for which:

(a) a patient was assessed;

(b) medical care was rendered;

(c) a patient was transported;

(d) a patient was pronounced dead at the scene;

(e) a patient was transferred to another licensed service;

(f) a patient was transferred from one medical facility to another; or

(g) the person or persons for whom EMS was dispatched refused treatment, transport, or both.

(20) through (24) remain the same but are renumbered (21) through (25).

(26) "Patient care report" means an accurate and complete record of the response by an ambulance service or nontransporting unit to each EMS incident.

(25) through (34) remain the same but are renumbered (27) through (36).

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

37.104.212 RECORDS AND REPORTS (1) Each emergency medical service must maintain a ~~trip report~~ patient care record for every ~~run in which patient care was offered or provided, which contains at least the following information:~~ EMS incident.

(a) ~~identification of the emergency medical services provider;~~ Written patient care record forms shall be submitted and approved by the department.

(b) ~~date of the call;~~ In incidents where more than one patient is encountered, one patient care record shall be completed for each patient.

(c) ~~patient's name and address;~~ In the event more than one emergency medical service arrives at the scene of an EMS incident, each service having actual contact with a patient is responsible for completing a patient care record on the patient.

~~(d) type of run;~~

~~(e) identification of all emergency medical services providers, riders, trainees, or service personnel officially responding to the call;~~

~~(f) the time:~~

~~(i) the dispatcher was notified;~~

~~(ii) the emergency medical service was notified;~~

~~(iii) the emergency medical service was enroute;~~

~~(iv) of arrival on the scene;~~

~~(v) the service departed the scene or turned over the patient to an ambulance service; and~~

~~(vi) of arrival at receiving hospital, if applicable;~~

~~(g) history of the patient's illness or injury, including the findings of the physical examination;~~

~~(h) treatment provided or offered by the emergency medical services personnel, including, when appropriate, a record of all medication administered, the dose, and the time administered;~~

~~(i) record of the patient's vital signs, including the time taken, if applicable;~~

~~(j) utilization of online medical control, if applicable; and~~

~~(k) destination of the patient, if applicable.~~

(2) Ambulance services and nontransporting units shall collect data as identified by the department in this rule.

(3) Electronic data submitted to the department shall be in the format prescribed by the National Emergency Medical Services Information System (NEMSIS).

(a) For emergency medical services directly using the reporting system provided by the department, the data is considered submitted to the department as soon as it has been entered or updated in the department-provided system.

(b) For emergency medical services using third party software, the data is considered submitted to the department as soon as it has been uploaded or updated into the department-provided system.

(4) The following NEMSIS demographic data elements for ambulance service or nontransporting unit licensing must be reported and updated no less than annually:

D01_01 EMS Agency Number
D01_02 EMS Agency Name
D01_03 EMS Agency State
D01_04 EMS Agency County
D01_07 Level of Service
D01_08 Organizational Type
D01_09 Organization Status
D01_10 Statistical Year
D01_12 Total Service Size Area
D01_13 Total Service Area Population
D01_14 911 Call Volume per Year
D01_15 EMS Dispatch Volume per Year
D01_16 EMS Transport Volume per Year
D01_17 EMS Patient Contact Volume per Year
D01_19 EMS Agency Time Zone
D01_21 National Provider Identifier
D02_01 Agency Contact Last Name
D02_02 Agency Contact Middle Name/Initial
D02_03 Agency Contact First Name
D02_04 Agency Contact Address
D02_05 Agency Contact City
D02_06 Agency Contact State
D02_07 Agency Contact Zip Code
D02_08 Agency Contact Telephone Number
D02_09 Agency Contact Fax Number
D02_10 Agency Contact Email Address
D03_01 Agency Medical Director Last Name
D03_02 Agency Medical Director Middle Name/Initial
D03_03 Agency Medical Director First Name
D03_04 Agency Medical Director Address
D03_05 Agency Medical Director City
D03_06 Agency Medical Director State
D03_07 Agency Medical Director Zip Code
D03_08 Agency Medical Director Telephone Number
D03_09 Agency Medical Director Fax Number
D03_11 Agency Medical Director Email Address
D04_02 EMS Unit Call Sign
D05_01 Station Name
D05_02 Station Number
D05_04 Station GPS
D05_05 Station Address
D05_06 Station City
D05_07 Station State
D05_08 Station Zip

D05_09 Station Telephone Number
D06_01 Unit/Vehicle Number
D06_03 Vehicle Type
D06_04 State Certification/Licensure Levels
D06_07 Vehicle Model Year
D06_08 Year Miles/Hours Accrued
D06_09 Annual Vehicle Hours
D06_10 Annual Vehicle Miles
D07_01 Personnel's Agency ID Number
D07_02 State/Licensure ID Number
D07_05 Personnel's Level of Certification/Licensure for Agency
D08_01 EMS Personnel's Last Name
D08_02 EMS Personnel's Middle Name/Initial
D08_03 EMS Personnel's First Name
D08_04 EMS Personnel's Mailing Address
D08_05 EMS Personnel's City of Residence
D08_06 EMS Personnel's State
D08_07 EMS Personnel's Zip Code
D08_09 EMS Personnel's Home Telephone
D08_10 EMS Personnel's Email Address
D08_15 State EMS Certification Licensure Level
D08_17 State EMS Current Certification Date

(5) The following NEMSIS EMS data elements must be reported by ambulance services for each incident:

E01_01 Patient Care Report Number
E02_01 EMS Agency Number
E02_04 Type of Service Requested
E02_05 Primary Role of the Unit
E02_06 Type of Dispatch Delay
E02_07 Type of Response Delay
E02_08 Type of Scene Delay
E02_09 Type of Transport Delay
E02_10 Type of Turn-Around Delay
E02_12 EMS Unit Call Sign (Radio Number)
E02_20 Response Mode to Scene
E03_01 Complaint Reported by Dispatch
E03_02 EMD Performed
E05_02 PSAP Call Date/Time
E05_04 Unit Notified by Dispatch Date/Time
E05_05 Unit En Route Date/Time
E05_06 Unit Arrived on Scene Date/Time
E05_07 Arrived at Patient Date/Time
E05_09 Unit Left Scene Date/Time
E05_10 Patient Arrived at Destination Date/Time
E05_11 Unit Back in Service Date/Time
E05_13 Unit Back at Home Location Date/Time
E06_08 Patient's Home Zip Code

E06_11 Gender
E06_12 Race
E06_13 Ethnicity
E06_14 Age
E06_15 Age Units
E07_01 Primary Method of Payment
E07_34 CMS Service Level
E07_35 Condition Code Number
E08_05 Number of Patients at Scene
E08_06 Mass Casualty Incident
E08_07 Incident Location Type
E08_15 Incident ZIP Code
E09_01 Prior Aid
E09_02 Prior Aid Performed by
E09_03 Outcome of the Prior Aid
E09_04 Possible Injury
E09_11 Chief Complaint Anatomic Location
E09_12 Chief Complaint Organ System
E09_13 Primary Symptom
E09_14 Other Associated Symptoms
E09_15 Provider's Primary Impression
E09_16 Provider's Secondary Impression
E10_01 Cause of Injury
E11_01 Cardiac Arrest
E11_02 Cardiac Arrest Etiology
E11_03 Resuscitation Attempted
E12_01 Barriers to Patient Care
E12_19 Alcohol/Drug Use Indicators
E18_03 Medication Given
E18_08 Medication Complication
E19_03 Procedure
E19_05 Number of Procedure Attempts
E19_06 Procedure Successful
E19_07 Procedure Complication
E20_07 Destination Zip Code
E20_10 Incident/Patient Disposition
E20_14 Transport Mode from Scene
E20_16 Reason for Choosing Destination
E20_17 Type of Destination
E22_01 Emergency Department Disposition
E22_02 Hospital Disposition

(6) Emergency medical services shall provide patient care report data to the department at least quarterly based on a calendar year or on a schedule submitted to and approved by the department.

(a) These quarterly data must be submitted to the department within 60 days of the end of the quarter (i.e., data for EMS responses occurring in January through

March must be submitted by June 1; for responses in April through June by September 1; for responses in July through September by December 1; for responses in October through December by March 1).

(b) The data may be submitted more frequently than quarterly.

(c) An emergency medical service with no EMS incidents during the quarter must report such to the department.

(7) Ambulance services are not required to submit other NEMSIS data elements, but may do so. Nontransporting units are not required to submit NEMSIS data, but may do so.

(8) Other software may be used to submit required data, but agencies must seek prior approval from the department.

(9) If the department determines that there are errors in the data, it may ask the service for corrections. The service shall correct the data and resubmit it to the department within 30 days of notice from the department. If data are returned to the emergency medical service for corrections, the service is not in compliance with this rule until corrected data is returned, accepted, and approved by the department.

(10) The department adopts and incorporates by reference the National Emergency Medical Services Information System (NEMSIS) Uniform Pre-Hospital Emergency Medical Services Dataset, Version 2.2.1, (2006) published by the National Highway Traffic Safety Administration (NHTSA). A copy may be obtained at http://nemsis.org/softwareDevelopers/downloads/datasetDictionaries.html or from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(2)~~ (11) ~~Trip~~ Patient care reports may be reviewed by the department.

~~(3)~~ (12) Copies of ~~trip~~ patient care reports must be maintained by the service for a minimum of seven years.

~~(4) Each emergency medical service must provide the department with a quarterly report, on a form provided by the department, that specifies the number and types of runs occurring during the quarter, the type of emergency, and the average response times.~~

~~(5)~~ (13) Immediately or as soon as possible upon arrival at a receiving facility, but no later than ~~48~~ 24 hours after the end of the patient transport, an ambulance service must provide a copy of the ~~trip~~ patient care report to the hospital that receives the patient.

(a) If a completed patient care report cannot be left at the facility at the end of the patient transfer to the licensed hospital, an abbreviated patient encounter form containing information essential to continued patient care shall be provided until a patient care record can be left.

(b) If an immediate response to another patient is required of an ambulance delivering a patient to a licensed hospital, a complete oral report on the patient being delivered will be given to the receiving facility until a patient encounter form or patient care record can be provided.

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

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.104.101 and 37.104.212 pertaining to emergency medical services (EMS). These proposed rule changes are updates to the records and reports requirements for licensed EMS services. Current rules require EMS services to collect patient care records on their calls and to provide quarterly reports to the department. These proposed rule amendments require ambulance services to report minimum, electronic data to a web-based department database. Additionally, these rules update data collection to meet National EMS Information System (NEMSIS) data standards.

ARM 37.104.101

The department is proposing a new definition to ARM 37.104.101, "EMS incident". EMS services currently interpret broadly when they need to complete a patient care record. This definition is reasonably necessary in order to assure that all services consistently collect patient care records.

The department is also proposing new definition, "patient care report". This definition is reasonably necessary to clarify that a patient record will be completed on each EMS incident. It is also necessary as there currently is some confusion whether or not nontransporting units are required to complete a patient record or not.

ARM 37.104.212

The department is proposing the amendment of ARM 37.104.212(1) to update current industry terminology for the report and EMS incident. It is reasonably necessary to delete ARM 37.104.212(1)(a) through (1)(k) as they are too generic to be useful for data collection purposes, they are not compliant with the NEMSIS data standard, and they are better defined in proposed rules below which require collection of NEMSIS demographic and patient EMS sets. The new language for ARM 37.104.212(1)(a) is reasonably necessary to allow the department to assure that EMS services use written patient care records that meet current minimum data collection standards and medical record rules. The proposed new language in ARM 37.104.212(1)(b) and (c) clarify the procedure for documentation where there are multiple patient incidents or incidents in which multiple services respond. This is currently unclear.

The proposed amendment to ARM 37.104.212(2) is reasonably necessary to require that all EMS services will collect data as defined in the remaining proposed rules.

NEMSIS is the national standard for EMS data collection. ARM 37.104.212(3) is reasonably necessary to assure that all services collect data using the NEMSIS standard. Data collected using multiple definitions and standards, would be useless for statewide data analysis. ARM 37.104.212(3)(a) is reasonably necessary in order to clarify that EMS services may collect data in the department-based software to be compliant with data collection requirements. ARM 37.104.212(3)(b) is reasonably necessary to clarify that EMS services using other third party software must upload

their data into the department-based software to be compliant with data collection requirements.

ARM 37.104.212(4) specifies which NEMSIS demographic data set fields must be collected. These fields are primarily related to the EMS service licensing module of the department-based software and are necessary for administration and regulation of these service licenses.

Additionally, ARM 37.104.212(4) is being proposed to ensure that licensing records are more up-to-date. In the previous, paper-based licensing process, most service license information was only updated once every two years upon relicensure. As such, much of the information the department maintained about licensed EMS services was very outdated and inaccurate. With the new electronic system, information can be easily updated by the EMS on a regular basis and in any case, no less than annually.

Proposed amendment ARM 37.104.212(5) is a list of the minimum, national data elements described in the NEMSIS data dictionary. This rule requires ambulance services to report these minimum data elements on all incidents. No patient identifiers and only minimal service identifiers are included in the minimum data set. Services will only be able to access their own data for reports. Summary reports from other services and the EMS system will be produced by the department. Currently, 27 states are submitting national data to the National EMS Database. It is the intent of the department to be one of 20 additional states capable of submitting state data in 2011. As in the state data system, the service data in the national database is nonidentifiable, except to the service. Like the department system, the national database allows the service to view detailed reports about their own service and only summary reports of other services reporting into the system.
ARM 37.104.212(6), (a), (b), and (c) are necessary in order to establish a minimum schedule for data to be submitted into the department's data system. This rule also requires services that have no runs during the quarter to report such to the department so that compliance with these rules can be monitored.

The department's data system accommodates entry of many more data elements than the minimum elements described above. ARM 37.104.212(7) clarifies that services may optionally enter additional data and, as such, have access to more complete demographic and statistical reports in the system.

ARM 37.104.212(8) is reasonably necessary to assure that EMS services that choose to purchase or develop their own data systems will use software that is NEMSIS compliant and capable of uploading data into the department's data software. Without this requirement, services may invest considerable time and funds obtaining a system that is not compatible and would not allow them to meet the data collection requirements of these rules.

ARM 37.104.212(9) is reasonably necessary to provide the department with the ability to enforce complete and accurate data collection. While the department will

make every effort to provide technical assistance and training towards this goal, if a service refuses to comply with appropriate intervention, this rule could be applied as an additional regulatory tool.

ARM 37.104.212(10) is reasonably necessary to adopt the NEMSIS national data standard. This standard specifies data definitions, electronic format, and other standards which ensures that all services collect data the same way.

ARM 37.104.212(2) and (3) have been renumbered to ARM 37.104.212(11) and (12), and are being updated to the more current terminology of the industry.

The current rule language in ARM 37.104.212(4) is being deleted. This language has been replaced and clarified by several other sections of these proposed rules.

ARM 37.104.212(5) is being renumbered to ARM 37.104.212(13). The department is proposing amendment to ARM 37.104.212(13) as it is necessary to resolve cases in which EMS leaves a patient at a hospital but does not also relay essential information about the patient that is necessary for continuity of care. First, the requirement for submission of a patient care report to the hospital has been changed from 48 hours to 24 hours. There have been numerous comments from field providers and hospitals that 24 hours is more than adequate for submission of this very important information.

ARM 37.104.212(13)(a) is necessary as information that EMS has collected about a patient is essential to the ongoing care of the patient after they leave. In cases in which EMS cannot leave a patient care record at the hospital at the conclusion of the call, this rule requires services to leave an "encounter form". This form provides essential information about the patient to the hospital and helps assure continuity of care in the absence of a complete patient care record.

ARM 37.104.212(13)(b) requires a service that may need to leave immediately due to backup of multiple calls still needs to provide at least a verbal report of this essential patient information before they leave the hospital.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 20, 2011.

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

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

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

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

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

/s/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State December 13, 2010.

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

In the matter of the amendment of ARM 37.80.101, 37.80.102, 37.80.201, 37.80.202, 37.80.205, 37.80.301, 37.80.305, 37.80.306, 37.80.316, and 37.80.501 pertaining to child care assistance	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 13, 2011 at 10:30 a.m. the Department of Public Health and Human Services will hold a public hearing in the auditorium of the 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 January 7, 2011 to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) This chapter pertains to payment for child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990", as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act" of 1996. These rules also pertain to subsequent refunding of this program. In addition, this chapter's requirements for certification of legally ~~unregistered~~ certified providers under ARM 37.80.306 apply to all child care programs administered by the department where the department allows participation of legally ~~unregistered~~ certified providers.

(2) through (3) remain the same.

(a) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 90th calendar day following the first missed payment. The period of ineligibility will begin on the 90th calendar day following the first missed payment and will end when the parent

has become fully current in making all payments required under the repayment agreement or order.

(b) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 60th calendar day following the second missed payment. The period of ineligibility will begin on the 60th calendar day following the second missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(c) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 30th calendar day following of the third missed payment. The period of ineligibility will begin on the 30th calendar day following the third missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(d) and (4) remain the same.

(5) Households that are not receiving temporary assistance for needy families (TANF) may receive child care assistance for 30 calendar days while eligibility is being verified. Households may benefit from 30 calendar days of presumptive eligibility ~~only once during any 12 month period~~ which is an option at any time an application is submitted and a case is not already open. To apply for presumptive eligibility, a household must:

(a) through (8) remain the same.

(9) Payment of funds under this chapter also depends on continued ~~federal~~ funding. Termination of any and all benefits may occur based on the loss or depletion of ~~federal~~ funding.

(10) and (11) remain the same.

(12) An application for child care assistance will be denied if the applicant fails to submit all required documentation within 30 calendar days of the date on which the application is received by the resource and referral agency. Applicants must be offered one ~~15-day~~ 15-calendar-day extension to submit required documentation in the possession of a third party.

(13) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual in effect on ~~November 1, 2010~~ February 1, 2011. The Montana Child Care Manual, dated ~~November 1, 2010~~ February 1, 2011, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (9) remain the same.

(10) "Federal poverty guidelines (FPG)" means the poverty guidelines published annually by the U.S. Department of Health and Human Services based on information compiled by the U.S. Bureau of the Census. The department adopts and incorporates by reference the federal poverty guidelines published at 69 FR 7336 on February 13, 2004 and updates are issued on an annual basis. The guidelines define the income levels for families that the federal government considers to be living in poverty. A copy of the guidelines is available from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202952, Helena, MT 59620-2925.

(11) through (13) remain the same.

(14) "Individual with a disability" means a person with a physical, mental, or emotional defect, illness, or impairment diagnosed by a licensed physician, psychiatrist, or psychologist which is sufficiently serious as to eliminate or substantially reduce the individual's ability to obtain and retain employment for a period expected to last at least 30 calendar days.

(15) "In loco parentis" means a person who lives with the child and has assumed the care and control of the child.

~~(15)~~ (16) "Legally ~~unregistered~~ certified provider" means a person providing child care under this chapter, or under any child care program administered by the department allowing for legally ~~unregistered~~ certified providers, who is not required to be registered or licensed as a child care facility and is not a preschool or drop-in facility, including providers whose child care services are provided in the home of the parents.

(a) A legally ~~unregistered~~ certified provider certified under this chapter, or under any child care program administered by the department allowing for participation of legally ~~unregistered~~ certified providers, may care for up to two children or all the children from the same household, and may provide child care in the home of the parents.

(16) and (17) remain the same but are renumbered (17) and (18).

~~(18) "Person acting in loco parentis" means a person who lives with the child and has assumed the care and control of the child.~~

(19) "Provider" means both legally ~~unregistered~~ certified and legally certified - in-home providers, and licensees and registrants of other child care facilities.

(20) through (22) remain the same.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (1)(a)(ii) remain the same.

(A) the parent must be working a minimum of 60 hours each month; ~~or~~

(B) the parent must be working a minimum of 40 hours each month if attending school or training full-time~~.~~; or

(C) the parent must be working a minimum of 60 hours each month if attending school or training part-time.

(b) through (4) remain the same.

(5) The parents may apply for ~~certification/recertification~~ authorization/reauthorization under this chapter at ~~the nearest~~ a child care resource and referral agency.

(6) remains the same.

(a) A household receiving assistance funded by the TANF program is guaranteed needed child care when participating in family investment agreement activities which require child care, subject to the following:

(i) Assistance for care provided by a provider certified by the department will begin the date that the TANF participant parent is referred to a child care resource and referral agency to obtain child care assistance, so long as the participant contacts the resource and referral agency within ten calendar days after the date the referral is made.

(ii) If the parent does not contact the child care resource and referral agency within ten calendar days after being referred for TANF child care assistance, eligibility for child care assistance will begin on the date a child care certification plan is obtained from the child care resource and referral agency.

(b) through (8) remain the same.

(9) A household experiencing unemployment due to good cause as defined in ARM 37.78.508 may have child care benefits extended and the usual child care schedule continued for 30 calendar days following the job loss, if the following conditions are met:

(a) remains the same.

(b) the household requests the extension within ten calendar days after the parent's last day of employment; and

(c) remains the same.

(10) Child care assistance is only available under this chapter for child care provided by:

(a) a legally ~~unregistered~~ certified provider who is certified under this chapter; or

(b) and (11) remain the same.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) Financial eligibility for child care assistance is based on the household's monthly income as defined in ARM 37.80.102. Households whose income exceeds 150% of the Federal Poverty Guideline (FPG) for a household of their size are not eligible for child care assistance.

(2) through (9) remain the same.

(10) No child care assistance payments can be issued until ~~a certification plan~~ an authorization and corresponding certification plan which authorizes payment for child care services has been ~~issued~~ created by the child care resource and referral agency.

(11) The child care ~~certification plan~~ authorization and corresponding certification plan sets limits for child care benefits. ~~Certification plans~~ Authorization and corresponding certification plans may change. The most recent ~~certification plan is~~ authorization and corresponding certification plans are the effective plan. No further notice is provided when benefits expire at the end date of a ~~certification plan~~ authorization and corresponding certification plan.

(12) Benefits will only be paid for actual care provided during the ~~certification period~~ authorization and corresponding certification period, except as provided in ARM 37.80.205 and 37.80.206.

(13) A household that receives any amount of child care assistance to which the household was not entitled shall repay all child care assistance to which the household was not entitled, regardless of whether the applicant, the recipient, ~~or~~ the department, or contractors acting on behalf of the department caused the overpayment.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS (1) The hourly rate is paid for services provided less than six hours during a calendar day.

(2) The daily rate is paid for six to ten hours of service during a calendar day.

(3) Child care ~~certification plans~~ authorization and corresponding certification plans may authorize payment for extended care of more than ten hours during a calendar day. When care is provided for ten to 16 hours per day, the daily rate applies to the first ten hours of service. The hourly rate applies up to six hours of additional service. If the ~~certification plan~~ authorization and corresponding certification plan specifies service exceeding 16 hours of care during a calendar day, the state will pay twice the daily rate for each day in which care exceeds 16 hours.

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

(c) a household may use the child care subsidy program to pay for days when care is not actually provided when the child's slot is vacant for a period of not more than 30 calendar days and the child's slot will be lost to a child on the provider's waiting list if payment is not made.

(5) through (8) remain the same.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) remains the same.

(2) The provider is responsible for informing parents who are receiving child care assistance under this chapter that the provider has lost their license, registration, or ~~payment number~~ certification. The provider may not bill the household for payments denied by the department due to the provider's failure to comply with licensing, certification, or registration requirements.

(3) Child care facilities must be certified or recognized by the department or its designated agent as eligible to receive payment under this chapter. All applicable forms must be completed and submitted for approval. Registered and licensed facilities are ~~certified~~ approved by the Child Care Licensing Bureau of the department's Quality Assurance Division. Legally ~~unregistered~~ certified providers are certified by the Early Childhood Services Bureau. Facilities licensed or registered by other entities must be recognized by the Child Care Licensing Bureau of the department's Quality Assurance Division.

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

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.305 LEGALLY ~~UNREGISTERED~~ CERTIFIED PROVIDERS: INTRODUCTION (1) Except where otherwise specified, legally certified ~~unregistered~~ providers are not subject to department licensing or registration requirements applicable to "child care facilities" as the term is defined by statutes and rules. Nevertheless, legally ~~unregistered~~ certified providers must be properly certified under this chapter to receive payment for child care services.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.306 LEGALLY ~~UNREGISTERED~~ CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) Application to provide child care under this chapter as a legally ~~unregistered~~ certified provider may be made at the nearest child care resource and referral agency.

(2) An application for certification or recertification will be denied under any of the following circumstances:

(a) the applicant fails to submit all required documentation within 30 days of the date on which the application is received by the resource and referral agency ~~except the applicant may receive one 15 day extension to submit required documentation in the possession of a third party provided the applicant submits a request for extension prior to the expiration of the 30 day period~~;

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

(4) In addition to completing all required application forms for certification under this chapter, applicants for certification to provide child care as legally ~~unregistered~~ certified providers must truthfully attest in writing that he or she:

(a) through (5)(e) remain the same.

(6) Legally ~~unregistered~~ certified providers must also meet the following requirements to be ~~registered~~ certified under this chapter:

(a) remains the same.

(b) within 60 calendar days of approval, attend a training or orientation session provided or approved by the department which includes health and safety issues;

(c) remains the same.

(d) care for no more than two children at a time, unless the children are from the same family. If the children are from separate families, then a legally ~~unregistered~~ certified provider may care for no more than two children; and

(e) remains the same.

(7) Legally ~~unregistered~~ certified providers are not eligible to be reimbursed for child care services provided while home schooling.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) Except as provided in (2) and (3), the provider will receive payment for child care services when the care is provided outside the child's home or when the care is provided by a great-grandparent, grandparent, step-grandparent or step-great-grandparent, aunt, or uncle who resides in the parent or child's home. If the parent and the provider both agree payment should be made to the parent, payment may be made to the parent.

(2) remains the same.

(3) Payment will be made to the provider when the provider participates in ~~the~~ a tiered reimbursement program, as referenced in ARM 37.80.205(6)~~(a)~~. ~~The tiered~~ Tiered reimbursement programs are ~~is~~ intended to benefit the higher quality child care provider.

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

(5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 calendar days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) The claim must be for actual care provided by the provider designated on the child care ~~certification plan~~ authorization and corresponding certification plan as defined in ARM 37.80.102(1) and subject to the limitations described in 37.80.201(9). The provider may not bill for care subcontracted to another individual or facility.

(b) and (c) remain the same.

(d) If the ~~certification plan is~~ authorization and corresponding certification plans are not completed until after the calendar month in which the child care is provided, the claim will be considered to be filed timely if a completed billing form with all information and documentation necessary to process the claim is received by the department or the entity designated by the department for this purpose within 60 days after the billing document is sent to the provider.

(e) and (6) remain the same.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-711, 52-2-713, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) through (1)(g) remain the same.

(h) the child no longer receives care at the child care facility specified in the ~~certification plan~~ authorization and corresponding certification plan and there is no indication that the child will be receiving care at that facility in the near future.

(i) remains the same.

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), (g), or (i), notice of termination must be sent to both the parent and the provider at least ~~ten~~ 15 calendar days prior to the effective date of termination. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h).

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

(4) The department is obligated to the parent and/or the provider only to the extent specified in the ~~certification plan~~ authorization and corresponding certification plan and the rules governing child care assistance. No agreement or arrangement between the parent and provider purporting to modify or terminate any provision of the certification plan is binding on the department.

AUTH: 52-2-704, MCA
IMP: 52-2-704, MCA

4. REASONABLE NECESSITY: The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.80.101, 37.80.102, 37.80.201, 37.80.202, 37.80.205, 37.80.301, 37.80.305, 37.80.306, 37.80.316, and 37.80.501 pertaining to child care assistance.

ARM 37.80.101(13)(b)

ARM 37.80.101(13)(b) currently adopts and incorporates by reference the Montana Child Care Manual effective November 1, 2010. The department proposes to make some revisions to this manual that will take effect on February 1, 2011. The proposed amendment to ARM 37.80.101(13) is necessary to incorporate into the Administrative Rules of Montana the revisions to the 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 Child Care Manual could affect approximately 3500 recipient households, 2000 child care providers, and 11 Child Care Resource & Referral (CCR&R) agencies. 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.bestbeginnings.mt.gov. The department does not anticipate any adverse affect or any fiscal impact associated with the changes to the manual and to ARM 37.80.101(13)(b).

ARM 37.80.101, 37.80.102, 37.80.201, 37.87.205, 37.80.306, and 37.80.316

The department proposes to add the word "calendar" to clarify how days shall be counted.

ARM 37.80.101(9)

This rule is being updated to remove the term "federal" from the phrase "federal funding". Payment of funds for programs identified in this chapter depends on continued funding from all sources. The loss or depletion of any type of funding may cause a termination of any and all benefits currently identified in this chapter.

The department does not anticipate any adverse affect or any fiscal impact associated with this change.

ARM 37.80.102

This rule is being updated to clarify definitions in policy specifically listed in ARM 37.80.102. The department has found during administrative reviews that CCR&R eligibility staff and families require additional information and explanation to some terms defined in this rule. Definitions have been added for terms currently listed in the rule, but not specifically listed in policy defined in this section.

ARM 37.80.201(1)(a)(ii)(C)

This rule is being updated to clarify work activity requirements in policy for single parent families. Policy and rules currently do not stipulate the number of work hours required for a single parent who is attending school or training on a part time basis. The department has found that more single parent families are electing to attend school/training on a part-time basis while continuing to work to provide for their families. Eligibility specialists need this clarification as they assist single parent households needing child care assistance where the single parent in a single parent household must work while attending school or training part time.

ARM 37.80.201(5)

This rule is being updated to change the term "certification/recertification" with the more exact term "authorization/re-authorization" to remove the ambiguity reflected in current technology. This change provides continuity with other changes made in policy and rules related to the use of the term "certification plan".

ARM 37.80.201 and 37.80.301

This rule is being updated to change the term "legally unregistered provider" to "legally certified provider". The change in terminology more clearly reflects the classification of this type of provider and is equivalent to the term used in other states to identify this type of provider classification.

Language identifying registered and licensed facilities as those "approved" by the Child Care Licensing Bureau of the Quality Assurance Division rather than the term "certified" to make it clear that the provider classification identified as "legally certified" is separate from those registered and licensed facilities under the direct supervision of the Child Care Licensing Bureau of the Quality Assurance Division.

ARM 37.80.202(10), (11), (12), and (13)

This rule is being updated in the following subsections to change language related to the child care certification plan specifically listed in ARM 37.80.202. One additional language modification is found in (13) related to contractor actions on behalf of the department in relation to agency error.

ARM 37.80.202(10)

This rule is being updated to change the term "certification plan" with the more exact term "authorization and corresponding certification plan". The "certification plan" is a notice issued through the CCUBS database by the child care resource and referral agency after the family has been determined eligible for child care assistance. It authorizes a family to receive the assistance and providers to bill the state for child care services. The "certification plan notice" is issued by the department's database program and is not directly issued by the child care resource and referral agency. Policy currently uses the terms certified and certification to describe providers approved for payment purposes who are not registered or licensed by the Quality Assurance Division, Licensure Bureau. This change in language is expected to reduce the amount of confusion by families, eligibility specialists, and other users of the policy manual and rule.

ARM 37.80.202, 37.80.205, 37.80.305, and 37.80.306

These rules are being updated to replace the term "certification plan" with the more exact term "authorization and corresponding certification plan". The limits for child care benefits are established in the authorization for child care services and make up a portion of the certification plan notice. Although authorization and the corresponding certification plans may change, the most recent authorization and corresponding certification plan are the effective ones. When the "authorization and corresponding certification plan" expire no further notice is given to parents or providers. Only the use of the phrase "authorization and corresponding certification plan" has changed in this subsection. The change in language is expected to reduce the amount of confusion by families, eligibility specialists, and other users of the policy manual and rules.

ARM 37.80.306

This rule is being updated to clarify the terms in policy specifically listed in rule pertaining to the classification of the type of provider that is not identified by the

Child Care Licensing Bureau of the Quality Assurance Division as licensed or registered. The terminology is used in several sections of ARM. 37.80.306. In addition, legally certified providers are not granted 15-calendar-day extensions in practice or in policy. Therefore the language in ARM needs to be removed.

ARM 37.80.306(2)(a)

This rule is being updated to eliminate the wording allowing the granting of a 15-day extension to legally certified providers. Applications for legally certified providers have 30 calendar days to complete the application process. Certifications are issued once all background checks are finished. Any third party information is directly tied to the background check process which runs outside the 30-calendar-day time period and has no stipulated time limit because the checks can take more than 15 extra days. Use of the time limit could put undue hardship on these providers to become certified.

ARM 37.80.306(4), (6), and (7)

These rule sections are being updated to change the term "legally unregistered provider" to "legally certified provider". The change in terminology more clearly reflects the classification of this type of provider and is equivalent to the term used in other states to identify this type of provider classification.

ARM 37.80.316

This rule is being updated to clarify the specific terms in policy specifically listed in this rule citation.

ARM 37.80.316(1)

This rule section is being updated to expand the list of individuals eligible to provide in-home relative care to include step-grandparents or step-great-grandparents. The addition of these relatives enhances parental choice of potential providers and is a response by the department to families' need for more provider options.

ARM 37.80.316(3)

This section is being updated to correct language pertaining to payments made to providers participating in a tiered reimbursement program. The intent of the language remains the same.

ARM 37.80.316(5)(a)

This rule is being updated to change the term certification plan to authorization and corresponding certification plan to remove the ambiguity reflected in the term certification plan. Benefits paid for actual care provided are those delineated in the authorization and corresponding certification plan. The use of the phrase

"authorization and corresponding certification plan" is the only change in this subsection. The change in language is expected to reduce the amount of confusion by families, eligibility specialists, and other users of the policy manual and rule.

ARM 37.80.316(5)(d)

This rule is being updated to change the term certification plan to authorization and corresponding certification plan to remove the ambiguity reflected in the term certification plan. The use of the phrase "authorization and corresponding certification plan" is the only change in this subsection. The change in language is expected to reduce the amount of confusion by families, eligibility specialists, and other users of the policy manual and rule.

ARM 37.80.501

This rule is being updated in the following subsections to change language related to the child care certification plan specifically listed in ARM 37.80.501.

ARM 37.80.501(1)(h)

This rule is being updated to change the term certification plan to authorization and corresponding certification plan to remove the ambiguity reflected in the term certification plan. The child care facility at which a child receives care is specifically delineated in the authorization and corresponding certification plan. The use of the phrase "authorization and corresponding certification plan" is the only change in this subsection. The change in language is expected to reduce the amount of confusion by families, eligibility specialists, and other users of the policy manual and rule.

ARM 37.80.501(4)

This rule is being updated to change the term certification plan to authorization and corresponding certification plan to remove the ambiguity reflected in the term certification plan. The department's obligation to parent and/or provider is only to the extent as specifically delineated in the authorization and corresponding certification plan. The use of the phrase "authorization and corresponding certification plan" is the only change in this subsection. The change in language is expected to reduce the amount of confusion by families, eligibility specialists, and other users of the policy manual and rule.

Following is a brief overview of the Child Care Manual sections with changes related to the above ARM citations. The department does not anticipate any adverse affect or any fiscal impact associated with these changes.

In the following sections where reference is made to the term "legally unregistered provider" or "legally unregistered in home provider" or the use of the acronyms LUP/LUI, terms are now "legally certified provider", "legally certified in-home provider", and the use of acronyms LCP/LCI. The changes in terminology more

clearly reflect the classification of this type of provider: Sections 1-3, 1-4, 1-8, 1-11, 2-1, 2-2a, 2-6, 2-7, 3-1, 3-2, 3-3, 4-1, 4-2, 6-1, 6-2, 6-2a, 6-6, and 6-7.

In the following sections, all procedural directions regarding the Child Care Under the Big Sky [CCUBS] database have been removed and replaced with the phrases "See the ECSB Procedure and Resource Manual for processing" or "See the ECSB Procedure and Resource Manual". This allows for changes to procedures in the CCUBS manual as the database is upgraded and new enhancements improve tracking of family benefits and provider payments. Such enhancements which may impact procedure will not then require changes to policy and ARM wording. Sections 1-4, 1-6, 2-1, 2-2a, 2-3, 2-4, 2-5, 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, 6-9, 7-3b, 7-3c, 7-4a, 7-5a, and 7-5b.

In the following sections, all use of examples have been removed. These examples were originally included as part of the manual in an effort to augment policy language. Instead, the examples have proven to cause more confusion to manual users and created more frequent requests for explanation of the examples. Sections 1-8, 1-9, 1-10, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 3-1, 6-1, 6-3, 6-5, 6-6, 6-7, and 6-9.

In the following sections, all specific form numbers have been removed. Titles of specific forms remain as part of manual language; however, removing the form number allows for updating and revising forms without requiring changes to policy and ARM wording. Sections 1-9, 1-11, 2-1, 2-2, 2-2a, 2-3, 2-4, 2-4a, 2-7, 3-1, 3-2, 3-3, 6-2, 6-2a, 6-5, 6-6, 6-9, and 7-3c.

In the following sections, the term "days" was expanded with the descriptor "calendar" to better clarify time periods. Sections 1-4a, 1-10, 1-11, 2-1, 2-2a, 3-1, 3-3, 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, 7-3c, and 7-6.

In the following sections, the term "certification plan" was replaced with "authorization and corresponding certification plan" as the better descriptor. Sections 1-8, 1-10, 2-1, 2-2, 2-2a, 2-3, 2-5, 2-7, 3-1, 3-2, 3-3, 4-1, 6-3, 6-4, 6-5, 6-6, 6-7, and 6-8.

The content of the following sections have been removed from the policy manual and the sections have been reserved:

1. Section 6-10 Table of Eligibility Related Forms. The titles of these forms remain in policy, but the numbers are removed so that revisions can be made to the forms without requiring subsequent revisions to policy and ARM wording.
2. Section 6-13 Resources for CCR&R Eligibility Specialists. This section will be used to create the ESCB Procedure and Resource Manual for CCR&R specialists that can be updated as resource changes occur without requiring additional revisions to policy and ARM wording.
3. Section 7-4 Provider Grants. The provider grant program is no longer in effect as of September 30, 2010. The Quality funding used for this program will be used for the Best Beginnings STARS to Quality field test incentives.

Section 1-2 - Overview - Best Beginnings Child Care Scholarships - Human & Community Services Division Early Childhood Services Bureau Organizational Chart

This manual section is being revised to direct manual users to the Early Childhood Services Bureau web site to view the Organizational Chart. Updates to the chart because of staff changes are current on the web site. Exclusion from this policy section allows for updates to the chart without requiring corresponding changes to policy and ARM wording.

Section 1-1 - Overview – Best Beginnings Child Care Scholarships – Table of Contents

This manual provision is being updated to provide corrections to sections as outlined below:
1. Title of Section 1-4 corrected to match the policy section;
2. Effective date of Sliding Fee Scale updated for section 1-5;
3. Updated subsections in Section 2-2 because child support information moved to its own section;
4. Added Section 2-2a Child Support;
5. Removed Self-employment subsections from Section 2-4;
6. Added Section 2-4a Household Income – Self Employment;
7. Title of Section 2-5 changed to match new name; updated subsections in this section to reflect re-organization of the section;
8. Added Section 2-7 Recertification and its subsections;
9. Title of Section 6-2 updated to reflect name change for this provider type in the title;
10. Title of Section 6-2a updated to reflect name change for this provider type in the title;
11. Removed subsection listed for Section 6-7 – the information was never in this section;
12. Deleted all of Section 6-10 from policy manual and section now "reserved" [see rationale in section listing below];
13. Deleted all of Section 6-13 from the policy manual and section is now "reserved" [see rationale in section listing below];
14. Section 7-1 renamed and old subsections deleted and new subsections added;
15. Section 7-3B replaced with new information and renamed "Preschool Teacher Certification" [see rationale in section listing below];
16. Section 7-4 content deleted and section is now "reserved" [see rationale in section listing below];
17. Added Section 8-1 – "Index" to better assist manual users in finding information contained therein.

Section 1-2 - Overview – Best Beginnings Child Care Scholarships - Human & Community Services Division Early Childhood Services Bureau Organizational Chart

This manual provision is being updated to reflect the new web site location for the DPHHS Human and Community Services ECSB organizational chart. There is no current plan at this time to provide the chart in the hard copy version of the manual.

Section 1-3 - Overview – Best Beginnings Child Care Scholarships - Definitions

As is reflected in the change to ARM 37.80.102(6), ARM 37.80.102(15) and ARM 37.80.102(17) for definitions 1-3, this manual provision is being updated to provide additional amplification for those three definitions in policy that are specifically listed in ARM. The addition of these definitions will clarify the department's use of these terms with families, providers, and CCR&R eligibility staff.

1. "Legally unregistered provider" has been changed to "Legally Certified Provider" to more clearly reflect the classification of this type of provider. These providers are not required to be registered or licensed as a child care facility and are not a preschool or drop-in facility, and include providers whose child care services are provided in the home of the parents. Instead, they are currently certified for payment of child care services purposes only.
2. "Person acting in loco parentis" has been changed to "In loco parentis". The definition remains the same; however, it was re-named "In loco parentis" to facilitate use of the newly created index. It is believed that an individual seeking to find this definition would look first under "in loco parentis" rather than "Person acting in loco parentis".

In addition, while the words in this section have been changed in some definitions to enhance their meaning, definitions below have been added to Section 1-3 although they are not specifically listed in the rule. The addition of these definitions will clarify the department's use of these terms with families, providers, and CCR&R eligibility staff.

3. "Applicant" means an individual applying for the Best Beginnings Child Care Scholarship program.
4. "Authorization to Release Information" means the part of the child care application packet used to assist the applicant/participant in obtaining information necessary to determine eligibility. It explains the client's rights to confidentiality and gives the participant/applicant the option of authorizing the release of information or declining to authorize the release of information. Unless the release is temporary, it is generally good for one year.
5. "Authorization of Service" means the span of time, number of hours per week, and schedule that an eligible child is approved for care at a particular provider's facility. In addition, it indicates the monthly payment amount that the family is approved to receive for the indicated child at the indicated facility. The authorization of services is used to create the Certification Plan.
6. "Bi-weekly" means the time frame for converting income into a monthly figure when the pay date occurs every other week regardless of the actual date totalling 26 pay periods each year.
7. "Certified Provider" [see "Legally Certified Provider"] means a special designation for providers not required to be registered or licensed because they care for fewer

than three children [two child of separate families or all from the same family] and are certified only for payment purposes by the state of Montana.
8. "Collateral Contact" means knowledgeable individuals or sources who serve to support or confirm information provided by the applicant/parent.
9. "Corporation" means a business type that exists separately from the individual who owns interest in it. Must file a separate corporate tax return. Two types: C-Corporation and S-Corporation.
10. "Corporation: C-type" means a business where shareholders receive profits in the form of dividends. The dividends must be reported on the shareholder's individual tax return and are counted as unearned income to the client and use the individual wages and dividends instead of the self-employment figures to compute income.
11. "Corporation: S-type" means a small business corporation of 35 or fewer shareholders taxed only at the shareholder level, is similar to a partnership in that each partner separately reports his or her share of the income, deductions, loss, and credits on their personal tax forms, and must file a tax return on form 1120-S. Note: Farm S-corporations must file a form 1120-S and are not required to file a Schedule F. However, some farm corporations may file both forms.
12. "Earned Income" refers to income that is the monthly equivalent of all earnings received [before taxes and other deductions], no matter when it was earned.
13. "Hardship" means a state of misfortune or adversity which may be temporary.
14. "Limited Liability Company [LLC]" means a business structure allowed by state statute, owners have limited personal liability for debts and actions of the LLC, is owned by "LLC members", and is not recognized by the federal government as a classification for federal tax purposed. An LLC must file as a corporation, partnership, or sole proprietorship tax return.
15. "Mandatory Reporters of Child Abuse" means any person required by the state of Montana to report possible incidences of abuse or neglect to Child Protective Services.
16. "Monthly Pay Period" means the time frame for converting income into a monthly figure when the pay date occurs only once each month regardless of the actual pay date.
17. "Naturalization" means the formal granting of U.S. citizenship to a foreigner.
18. "Net Income" means the income amount after expenses have been deducted regardless of the amount of income.
19. "Noneligible parent" means the absent parent, who shares the cost of child care as stipulated in the Parenting Plan but, is not eligible for a Best Beginnings Child Care Scholarship. Authorization of Services hours of care is based on the noneligible parent's work schedule.
20. "Paid Legal Labor" means the amount an individual earns divided by the hours worked equals at least minimum wage as defined in Montana.
21. "Participant" means an individual already receiving assistance through the Best Beginnings Scholarship program.
22. "Partnership" means a business owned by two or more individuals, must file a return on federal Form 1065, but not taxed as a separate entity, each partner also receives a Schedule K-1 showing his/her share of income, gain, loss, deduction, or credits. Profits are counted as earned income. Partners may receive differing shares

depending on original partnership agreement and, if not working for the business, still receive Schedule K which counts as unearned income.
23. "Qualified Alien" means an individual lawfully admitted to the United States for permanent residence under various sections of the Immigration and Nationality Act (INA)
24. "Residential Parent" means the parent with whom the child resides.
25. "Semi-monthly" means the time frame for converting income into a monthly figure when the pay date occurs only twice each month regardless of the actual pay date.
26. "Significant Other" means domestic partner, a person, not necessarily a spouse, who is in a co-habitating relationship.
27. "Sole Proprietorship" means the business is owned and controlled by one individual, is not required to file a separate tax return, must include the profit or loss from all sole proprietorships on the client's federal 1040 tax forms, and must file a separate tax schedule for each business operated under this type: Farm must file a separate Schedule F; nonfarm must file a separate Schedule C.
28. "Taxable Gross Income" means the amount of income subject to income taxes; found by subtracting the appropriate deductions (IRA contributions, alimony payments, unreimbursed business expenses, some capital losses, etc.) from adjusted gross income. For self-employed parents, taxable gross income is calculated by subtracting verified business expenses from gross receipts as defined in Section 2-4a.
29. "Unearned Income" means an individual's income derived from sources other than employment, such as interest and dividends from investments, or income from rental property. It is the participant's responsibility to provide verification of this type of income.
30. "U.S. Citizen" means citizenship in the United States as a classification given to a legal member of the U.S. It entails specific rights, duties, privileges, and economic benefits including types of federal assistance. Citizenship is typically granted to those born on U.S. soil.
31. "U.S. National" means an individual who owes his sole allegiance to the United States, including all U.S. citizens and including some individuals who are not U.S. citizens. For tax purposes, "the U.S. National" refers to individuals who were born in American Samoa or the Commonwealth of the Northern Mariana Islands.
32. "Working Caretaker Relative" means a TANF-based program available for individuals caring for child[ren] of TANF-child only grant recipients through the Public Assistance Office. These caretakers are eligible to receive a Best Beginnings Scholarship to cover their work activities.

In addition, the following definition in this section has been deleted:

At-Home Relative Care means care that is provided by a person living with the child who is a relative of the child in one of the following ways:
(a) Aunt or Uncle;
(b) Grandparent; or
(c) Great-grandparent.
This definition has been incorporated into the definition for Legally Certified In-home Provider; the term "at-home relative care" is no longer being used.

Section 1-4 - Overview – Best Beginnings Child Care Scholarships – Child Care Scholarship Rates

This manual section is being revised to accurately reflect updates to scholarship rates reflected in the May, 2009 Market Rate Survey. The department has determined that it is necessary to conduct market rate surveys and update the provider reimbursement rates to ensure providers received payments based on competitive rates so they continue to provide care to families who qualify for subsidized child care assistance. Language has been added to reflect that updating rates depend on budget provisions and the frequency, the timeline for conducting the market rate, and the effective date for changes based on the survey. In addition, revisions also reflect a change to clarify the payment of the infant rate which will run until the infant turns two and the removal of CPS care relating to children with special needs to section 1-4a.

The department anticipates potential adverse affect to providers in this section as the May 2009 rates are the most recent. The department is not able due to budgetary cuts to offer more current rate structures at this time.

Section 1-4a - Overview – Best Beginnings Child Care Scholarships – Children with Special Needs

This manual section is being revised to include expanding the list of documents required as part of the contract with the Statewide Inclusion Coordinator and reducing the number of calendar days for submission of these documents from 45 to ten. Forty-five days is deemed an excessively long time period while ten is more than sufficient given the nature of the documents. Also, current language requires providers to submit receipts for expenses associated with the subsidy within 30 calendar days or be subject to an overpayment. The change would require providers to pay expenses and submit all receipts for reimbursement. This removes the potential of placing the provider in a penalty situation and instead puts the responsibility on the provider to seek reimbursement.

In addition, language pertaining to CPS Care for children with special needs has moved to this section from Section 1-4 because the content regarding special needs rate application process pertains to this section more than the scholarship rates section. The information specific to rates only remains in Section 1-4.

Section 1-5 - Overview – Best Beginnings Child Care Scholarships – Child Care Sliding Fee Scale

This manual section is being revised to update the effective date of the Child Care Sliding Fee Scale which is based on the 2009 Federal Poverty Guideline from July 1, 2007 to October 1, 2010. Although the poverty guidelines have not changed from the 2009 levels, the Child Care Sliding Fee Scales were updated to reflect the expiration of 29% reduction in copayments which had been subsidized by ARRA

funds which expired beginning October 1, 2010. In addition, language has been added to clarify that the state uses the federal poverty level to determine the minimum monthly copayment. No other revisions have been made to this section.

The fiscal impact is that family's copayment increased due to a loss of subsidized ARRA funds. Currently, funding is at $720,000/year or approximately $60,000/month. This level has remained the same since June, 2009. The department determined the use of ARRA funding to support temporary reduction in copayment obligations for families, full copayment obligations have been restored.

Section 1-6 - Overview – Best Beginnings Child Care Scholarships – Child Eligibility - Overview

This manual section is being revised to reflect clarifications to the U.S. Citizenship or Naturalization requirements related to child eligibility for child care assistance. A child receiving assistance must be a U.S. citizen, national, or qualified alien. Verification methods of such requirements have been added as well as language from the Child Citizen Act of 2000. The Child Citizen Act of 2000 provided criteria to be used in qualifying a child born outside the U.S. to citizen parents or those adopted from abroad. Additional revisions in this section are for Montana residency documentation. A copy of a valid MT Driver's License or ID card with a current address or utility bill or lease agreement in the name of the applicant may also be used to determine Montana residency. U.S. citizenship requirements are directed by the Administration of Children and Families, Office of Child Care, administering the Child Care and Development Fund Block Grant.

In addition, clarifying language has been added which changes the age at which a child's eligibility changes to "the day before the child's ___ birthday". This more accurately reflects how the CCUBS database figures eligibility.

Section 1-7 - Overview – Best Beginnings Child Care Scholarships – Parent Eligibility - Overview

This manual section is being revised to reflect clarification to eligibility requirements for parents requesting child care assistance. Language added to the qualifications for participation include the requirement of cooperation with CSED or a court-approved parenting plan, and need to minimum work requirements. Policy currently included in this section pertaining to child support and parenting plans have been moved to Section 2-2a Non-TANF Child Care Eligibility – Child Support, and readers are directed to that section for information. A statement has also been added to clarify in this overview section that scholarship funds are not available for parents to care for their own children and parents may not concurrently care for each other's children to obtain a child care scholarship.

In addition, Tribal Families Dual Eligibility language has been added to this section to prevent duplication of services. Child Care Development Funds (CCDF) are available to tribal entities as well as states. To support coordination of the two

programs and services, families must provide written documentation that they are not being served by their tribal CCDF program.

Clarification has been added to stipulations for disabled parents. If one parent in a two-parent household is disabled and unable to work, the other parent must meet the single parent work requirement. This removes any undue hardship on households with disabled parents. Other clarifications include replacing the term family or phrasing referring to families with the term or phrasing referring to child where applicable.

Section 1-8 - Overview – Best Beginnings Child Care Scholarships – Child Care Provider Eligibility

This manual section is being revised to reflect expansion of legally certified care category to facilitate parental choice of providers for care. The expansion includes the categories of step-grandparents or step-great-grandparents as relatives able to provide reimbursable child care. In addition, clarifying language has been added regarding which provider program types cannot be related to the child in their care. The language removes confusion as to which provider type can be related to the child in their care and what type of relationships are acceptable for receipt of scholarship payments.

Moreover, language has been added regarding provider use of electronic systems requiring providers to have a policy in place that will protect records from being altered without parental knowledge or consent. This language allows for protection from potential fraudulent practice of document altering by providers of those records pertaining to when children were in care. Additional language was added to protect the identity of families receiving scholarship assistance without drawing attention to their "status". Clarification has been made to language around documentation of provider rights and responsibilities which stipulates that CCR&R agencies must maintain a signed copy of that document for each provider serving a scholarship family. This provision ensures that providers understand the scholarship programs and their role in it. The department will assume the responsibility for mailing revised copies of that document if it is altered by policy revisions.

Furthermore, at the request of the Quality Assurance Division Licensing Bureau, language pertaining to political boundaries and child care facilities was changed. Memorandums of Understanding are currently under review/revision resulting in specific references to tribal entities being removed.

References to other pertinent sections of the manual have been added to this section. This will assist CCR&R eligibility specialists, families, and providers in locating application information within the manual.

Section 1-9 - Overview – Best Beginnings Child Care Scholarships – Confidentiality

This manual section is being revised to reflect the removal of language regarding provider grants which have been eliminated by the department. Funding used for these grants is now being used to fund the Best Beginnings Stars to Quality field test.

Section 1-10 - Overview – Best Beginnings Child Care Scholarships – Timely Notices and Termination

This manual section is being revised to reflect an increase in the number of calendar days for notice of changes that might have an adverse affect. Potentially, if the notice is mailed on a Friday, the ten days could include two weekends and could include a holiday. The ten days effectively becomes a 5-day notice. This does not meet the intent behind the notice, which is to enable families an additional opportunity to comply with program requirements prior to termination. Therefore, in order reduce possible undue hardship on families and support their attempts to remain eligible for child care assistance, the revision will increase the current 10-day notice to 15 calendar days. In addition, wording has been expanded to clarify the number of days that providers will receive payment as a result of the 15-calendar-day expansion of the timely notice. In order to keep the fiscal impact neutral in this case, providers will only received payment for days already authorized as part of this timely notice period.

In addition, language was added to the subsection, "Termination for Providers," to give an additional reason for termination, reduction, or denial of scholarships to include that a parent may choose to end child care with one provider and begin with another. This was previously omitted from the list, but is a frequent reason for terminating a child care scholarship with a particular provider.

Section 1-11 - Overview – Best Beginnings Child Care Scholarships – Fair Hearing Process

This manual section is being revised to clarify language regarding which Early Childhood Services Bureau staff will be conducting Administrative Reviews. Currently, a specific position is identified with the responsibility for Administrative Reviews. Revising the position to bureau staff in general allows for assignment based on availability of staff and allows for cross training, making more staff available to conduct reviews.

Section 2-1 - Non-TANF Child Care Eligibility – Application Process

This manual section is being revised to allow for changes in the process for families to apply for child care assistance. Revisions include the occasional word or phrase that is added to strengthen the current meaning. Major revisions are as follows:
1. Language is added to clarify who may apply for scholarship assistance and replaces language that didn't include the phrase "authorized representative".
2. An application packet has been created to better facilitate case reviews associated with the error reporting process enacted by the Bureau to meet federal

guidelines. One goal is to reduce the number of errors made by eligibility specialists in determining income eligibility. The packet removes pages from the original application and uses them to create stand-alone documents required as part of the packet. Specific wording has been added to clearly explain the requirement for each individual document in the packet.

The original application format contained information regarding provider selection, employment information, child support documentation, and school/training and release of information all in one form. This created a challenge for case file reviews associated with the error reporting process because information was also recorded on individual Work/School Training Verification forms, Child Care Service Plan indicating provider selection, and child support information. The challenge stemmed from which format case-file reviewers should accept as complete and therefore not issue errors for incomplete or missing information. Separating forms allows for more accurate case-file review.

Furthermore, language has been added to ensure that completed application documents will be reviewed with three days of submission as part of the timely processing policy. Families benefit when applications are reviewed in a timely fashion to ensure that all information has been submitted to facilitate faster determinations of eligibility, especially as it related to presumptive eligibility which allows parents to receive 30 calendar days of child care while applications are being processed.

Finally, the recertification policy has been moved to the newly created policy section 2-7 and manual users are directed to Section 2-2a for information on Child Support. In an effort to streamline policy information as it relates to the recertification process, all aspects in policy related to recertification have been gathered together into a newly created section. Users experience less frustration when guidance is provided to direct users to sections where prior information has been relocated.

Section 2-2 - Non-TANF Child Care Eligibility – Household Requirements

This manual section is being revised to include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. Household membership has been revised to better identify kinds of members as well as parameters around which optional members can be added or deleted. Household membership as influenced by common law marriage has been added. Elements in these areas of the section have been added to correspond to language found in TANF policy. Language has been added to strengthen verification of visitation schedules as they relate to shared custody arrangement between parents and household requirements for child care assistance.

Section 2-2a - Non-TANF Child Care Eligibility – Child Support

This manual section is being revised to include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. For

example, the word "substantiate" is replaced with the word "support" to describe evidence provided in relation to a good-cause claim. The term substantiate where used elsewhere in policy carries with it a negative connotation and seems less indicative of the implied intent in this section of policy. Also, the term "worker" had been replaced with "specialist" when referring the CCR&R staff who assist with determining eligibility for families seeking assistance with child care.

Section 2-3 - Non-TANF Child Care – Non-TANF Activity Requirements

This manual section is being revised to include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. In addition, language has been added to explain limitations to the Best Beginnings Scholarship. These limitations include the ineligibility to use child care assistance for respite care that isn't provided for under CPS care and the limits to reciprocal care. In addition, parents may not provide reciprocal care for the sole purpose of meeting work program requirements. Work schedules must clearly demonstrate that they complement each other's need for care. This wording was moved from Section 2-1 to this section because the content falls within activity requirements better than the application process section. Finally, language was added to clarify that in a two parent household, if one parent is disabled and unable to work, the remaining parent must meet the single parent work requirement. This actually reduces the activity hours from 120 hours in a month to 60 so to avoid undue hardship of these families.

Section 2-4 - Non-TANF Child Care – Household Income

This manual section is being revised to include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. For example, the term "monthly" was added to the phrase "gross income". In addition, language has been added to identify the use of unearned income as part of determining eligibility. Current information is vague as to when unearned income is counted. The types of unearned income are expanded for additional clarification of unearned income. Furthermore, all self-employment policy language has been moved to section 2-4a. Irregular and seasonal income language has been added to this section. These are income types that are encountered in determining income of eligibility of families and have been added to provide guidance to eligibility specialists.

In addition, language pertaining to self-employed families has been moved from this section to a newly created section: Section 2-4a. This change was made to explain clearly in a single section all issues, processes and procedures concerning self-employment income.

Section 2-4a - Non-TANF Child Care – Household Income - Self-employment

This manual provision is being created to explain clearly in a single section all issues, processes, and procedures concerning self-employment income. Information in this subsection was taken from Section 2-4 and Section 2-5.

Language additions include guidance on verification of self-employed status, earned and unearned income as they related directly to self-employed individuals, types of self-employment businesses, and the requirement of employment activity to the federal minimum wage.

Net income when divided by child care hours requested must equal the current federal minimum wage. Several states, including Minnesota, Indiana, Illinois, and Vermont have adopted this method of ensuring that self employed individuals requesting assistance with child care costs are making minimum wage. One major challenge for families that are self-employed is that their net income typically equates to an hourly wage far below minimum wage. Because activity hours are self reported, even though they may spend long hours working their business, their income does not equate to earning a living wage. Self-employment will fully satisfy the activity test if the person is working at least their required number of hours, and the taxable income of the business provides the equivalent of the National Minimum Wage rate for the minimum required hours. To be fair and equitable to all families seeking child care assistance, the formula used for determining that minimum wage is being met by self-employed individuals will assist eligibility specialists in consistent and eligibility determination. This policy decision was also a result of a recommendation from the Montana Early Childhood Advisory Council Program Policy Committee.

The department does anticipate adverse affect to some families who are determined to be self-employed but do not make a positive net income equal to minimum wage. Review of every self-employment case is necessary to understand how many families this change will affect. The policy will go into affect with their next recertification process. For ease of transition, an adjustment period will be utilized; no changes will be made in the middle of a current eligibility period. The department anticipates fiscal impact associated with this change as a result of requiring positive net income, but not negative impact.

Section 2-5 - Non-TANF Child Care – Prospective Income

This manual provision is being made to simplify income determination methods. Prior language was lengthy and at times confusing regarding prospecting income. A determination of what the family's earnings should be in future months in order to determine if a family is eligible to receive scholarship assistance is based on prior earnings. In the event that a family is determined eligible, the prospected income is also used to determine the family's copayment. Four different types of income-determining methods are represented in two tables: one use income payment method and a corresponding formula to arrive at a monthly income figure and a second to provide steps to calculate the average gross monthly income. Finally, this section also provides direction on how to calculate income for irregular and seasonal earnings.

Section 2-6 - Non-TANF Child Care – Income Table

Except for the occasional revision to include a word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent or its inclusion in the lists of specific words at the beginning of this document, there are no other changes to this section.

Section 2-7 - Non-TANF Child Care Eligibility – Recertification

This manual provision is being created to explain clearly in a single section all issues, processes, and procedures concerning the recertification process. Information in this subsection was taken from throughout the policy manual in an effort to explain clearly in a single section all issues, processes, and procedures concerning recertification. In addition, revisions to this manual section include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. Terms needing clarification include certification, eligibility, and application.

Section 3-1 - Child Care for TANF Participants – OPA, WoRC & CCR&R Coordination

This manual revision is being updated to remove definitions of terms that are already in Section 1-3 Definitions. Users are directed to Section 3-1 for information. There are no other changes to this section.

Section 3-2 - Child Care for TANF Participants – Tribal TANF

This manual revision is being updated to remove definitions of terms that are already in Section 1-3 Definitions. Users are directed to Section 3-1 for information. There are no other changes to this section.

Section 4-1 - Child Protective Services Child Care under the Best Beginnings Scholarship Program – CFSD & CCR&R Coordination

This manual revision is being updated to add language directing users to Section 1-4a for additional information for a child with special needs. There are no other changes to this section.

Section 4-2 - Tribal IV-E Child Protective Services Child Care – CFSD & CCR&R Coordination

This manual revision is being updated to add language directing users to Section 1-4a for additional information for a child with special needs. There are no other changes to this section.

Section 6-1 - Serving the Family – Child Care Referrals

This manual revision is being updated to reflect the centralization of referral services in the state for families needing child care services. In addition, revisions to this

manual section include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. Language pertaining to the CCR&R Network office, its functions, and contact information has been deleted. The Network office, staff, and functions no longer exist as a separate entity. The language regarding geographic areas for CCR&R referrals has also been deleted. Centralization of the referrals has rendered that language obsolete.

After conducting a functional cost analysis of CCR&R services in the state and as a result of budget reduction requirements, the department determined that centralization of certain services was more cost effective. Revisions to language reflect that reasoning.

The department anticipates adverse effects on local Child Care Resource & Referral Agencies as services have been moved to a centralized source for cost effectiveness, which causes local agencies to have reduced funding for service delivery. The department anticipates a positive fiscal impact associated with this change as a result of centralization.

Section 6-2 - Serving the Family – Legally Certified Providers

This manual revision is being updated to reflect the centralization of both legally certified providers [LCP] and legally certified in-home providers [LCI]. In-home relative care has been expanded to include step-grandparents and step-great-grandparents. This is in an effort to increase parental choice for provider of child care services. In addition, procedures regarding background checks for Montana criminal, child protective services, FBI, and Western Identification Network have been deleted from this section and added to the ESCB Procedure and Resource Manual for eligibility specialists. Summary language regarding these procedures has been added. In addition, revisions to this manual section include the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent.

In an effort to streamline the LCP/LCI application process, certifications will be granted for a one-year period. This will allow this type of provider to be categorized as inactive should the family they provide care for quit or become ineligible rather than terminating the provider. LCP/LCI providers still have to reapply annually to renew their certification as long as they continue to provide care for an eligible family.

LCP/LCI applicants must attend a provider orientation within 60 calendar days of application. Language has been added to this section outlining the specific content of this orientation as provided by CCR&R agencies. In addition, language is added to require CCR&R staff to offer the opportunity of attending orientation to LCPs/LCIs while they wait for background checks to be completed. This has been practiced by some CCR&R agencies but not others – revision now makes the requirement statewide.

Section 6-2a - Serving the Family – Legally Certified Providers Medication Administration

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. No other revisions have been made to this section.

Section 6-3 - Serving the Family – Issuing the Child Care Certification Plan

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. In conjunction with error reporting by federal guideline, language has been added regarding the use of travel time as part of child care assistance coverage for working families. This addition should reduce the number errors that relate to authorization of hours of care discovered during error reporting file review. Furthermore, notification of provider changes was expanded for clarification of the process. It requires parents to demonstrate that notification was made.

Section 6-4 - Serving the Family – Copayment Requirements

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. No other revisions have been made to this section.

Section 6-5 - Serving the Family – Change Reporting

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. No other revisions have been made to this section.

Section 6-6 - Serving the Family – Absent Day Policies – Maintaining the Continuity of Care

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. No other revisions have been made to this section.

Section 6-7 - Serving the Family – Invoice & Payment Processes

This manual revision is being updated to reflect the increase in the number of calendar days for notice to parents and providers of changes that might have an adverse affect. Potentially, if the notice is mailed on a Friday, the ten days could include two weekends and could include a holiday. The ten days effectively becomes a 5-day notice. This does not meet the intent behind the notice, which is to enable families an additional opportunity to comply with program requirements prior to termination. Therefore, in order reduce possible undue hardship on families and

support their attempts to remain eligible for child care assistance, the revision will increase the current 10-day notice to 15 calendar days.

In addition, wording has been expanded to clarify direct deposit information as it relates to batch payments and warrants. It also includes the removal of online invoice processing which has not yet been developed. Once completed, revisions to policy will be made. Also, changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent are included.

Section 6-8 - Serving the Family – Auditing and Investigations

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. Procedural language has been moved to the ESCB Procedure and Resource Manual. All language pertaining to the use of the Internet to submit invoices has been deleted. This process has not yet been developed for use by providers.

Section 6-9 - Corrections and Overpayments

This manual revision is being updated to reflect clarification of language pertaining to intentional program violations. Several steps are involved in the assessment of penalties related to willful actions that result in intentional program violations. When overpayments result, cases are closed and put in pending closure status to allow for data entry of payments. In addition, changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent are part of revisions in this section.

Section 7-1 - Best Beginnings Quality Child Care Initiatives – Best Beginnings Star to Quality Program

This manual revision is being updated to reflect the implementation of a field test study for the Best Beginnings STARS to Quality Program and replaces the previous Star Quality program. The new program is a voluntary 5-star quality rating improvement system using a research-based matrix to improve the quality of care in early childhood care and education settings in the state. Components of the system include workforce development, the Quality Rating Improvement System [QRIS], and the infrastructure to administer the program. Language includes the site selection criteria for programs receiving incentives as well as those nonincentive programs. All language pertaining to the old Star program has been deleted. Once the field test is completed, opportunities to expand the program statewide will be considered.

The department anticipates adverse affect to providers who were participating under the old Star Quality program and did not apply or were not randomly selected for the revised Best Beginnings STARS to Quality Program. It is estimated that 26

programs who are not participating in the field test will not receive $70,000 in SFY 2011 as a result of this transition.

Section 7-2 - Best Beginnings Quality Child Care Initiatives – Career Development

This manual revision is being updated to reflect changes to this policy as it related to the administration of early childhood career development by the Early Childhood Project at Montana State University in collaboration with state partners. In addition, the training directory and approval system language has been replaced by new processes implemented by the Early Childhood Project [ECP]. Online training records language has been updated to reflect new database developments at the ECP including the addition of a Professional Development Specialist Directory. Also, the occasional word or phrase is added to strengthen the current meaning or deleted as misleading as to intent.

Section 7-3a - Best Beginnings Quality Child Care Initiatives – Infant Toddler Certification

This manual revision is being updated to reflect changes to the occasional word or phrase that is added to strengthen the current meaning or deleted as misleading as to intent. No other revisions have been made to this section.

Section 7-3b - Best Beginnings Quality Child Care Initiatives – Preschool Certification

This section used to be titled Infant Toddler Mini Grant. The Infant Toddler Mini Grant Program is now addressed as part of the mini grant program in section 7-4A.

In place of the mini grant language, this section is now titled Preschool Certification. As part of the training development and the Best Beginnings STARS to Quality Field Test, a certified preschool course has been created to address knowledge, skills, and abilities needed for teachers working with preschool age children. The course is 60 hours and generally administered through the Child Care Resource & Referral agencies; however, in some instances, the state can contract with individuals for offering the preschool course. The policy design of the certified preschool course mirrors Infant Toddler Certification but for a different age group.

The department does not anticipate any adverse affect and fiscal impact is associated with this change in the amount of approximately $70,000 for purposes of offering Professional Development Incentive Awards tied to the preschool course.

Section 7-3c - Best Beginnings Quality Child Care Initiatives – Certified Infant Toddler Caregiver Stipend

This manual revision is being updated to reflect changes that clarify who may apply for these stipends. Specifically, language is added giving priority for stipend award to those participating in the Best Beginnings STARS to Quality field test. Priority has

been established because the state has chosen to field test this STARS to Quality Program with established quadrants for participation across the state and the Infant Toddler Caregiver Stipend supports continuity of care when serving infants and toddlers, criteria in the Best Beginnings STARS to Quality Program. In addition, changes to the occasional word or phrase are added to strengthen the current meaning or deleted as misleading as to intent.

Section 7-4a - Best Beginnings Quality Initiatives – Mini Grants

This manual revision is being updated to reflect changes to how this program is administered. These grants will be administered through the 11 Child Care Resource & Referral across the state. Administration may vary across the CCR&R agencies with respect to who may apply, how to apply, and application timelines. Submission language for the names of recipients to ECSB for payment of the awards has been added. In addition, changes to the occasional word or phrase are added to strengthen the current meaning or deleted as misleading as to intent.

Section 7-5a - Best Beginnings Quality Child Care Initiatives – Professional Development Incentive Awards

This manual revision is being updated to reflect language and program changes from Merit Pay to Professional Development Incentive Awards (PDIA). These PDIA awards will be administered by Montana's Professional Development contract - The Early Childhood Project at MSU-Bozeman. Contracts will be generated and payments will be made by ECSB. Eligibility, application process, priority, and proof of training language has all been deleted along with procedural information.

Section 7-5b - Best Beginnings Quality Child Care Initiatives – Higher Education Merit Pay

The language in this section is consolidated and addressed in Section 7-5a as a result of professional development incentive awards in relation to workforce supports for the Best Beginnings STARS to Quality Program. This section is now reserved.

Section 7-6 - Best Beginnings Quality Initiatives – Provider Training

This manual revision is being updated to reflect changes to clarify requirements for basic child care orientation. Orientation for licensed and registered providers in the state differs in content for that required by LCP/LCI providers which is outlined in section 6-2. In addition, changes to the occasional word or phrase are added to strengthen the current meaning or deleted as misleading as to intent.

Section 8-1 - Index

This manual section has been added to improve use by providers, eligibility specialists, and ECSB staff. The index isn't intended to be exhaustive. The

department does not anticipate any adverse affect or any fiscal impact associated with this change.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 21, 2011.

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

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

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

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

/s/ Lisa Swanson
Rule Reviewer

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

Certified to the Secretary of State December 13, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III pertaining to exemptions under 32-9-104, MCA, determining the amount of the surety bond required for new applicants, and the date by which the Montana test must be completed in order to be licensed as a mortgage loan originator in Montana and the repeal of ARM 2.59.1718, 2.59.1719, 2.59.1720, and 2.59.1729 pertaining to temporary licenses and transition fees	)	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On November 12, 2010, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-443 regarding the proposed adoption and repeal of the above-stated rules at page 2627 of the 2010 Montana Administrative Register, issue number 21.

2. No comments were received.

3. The department has adopted New Rule I (ARM 2.59.1734), New Rule II (ARM 2.59.1735), and New Rule III (ARM 2.59.1736) exactly as proposed.

4. The department has repealed ARM 2.59.1718, 2.59.1719, 2.59.1720, and 2.59.1729 exactly as proposed.

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

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

Certified to the Secretary of State December 13, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.16.701, and repeal of 4.16.702 and 4.16.801, relating to Agricultural Marketing Development Program	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 12, 2010 the Department of Agriculture published MAR Notice No. 4-14-199 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2633 of the 2010 Montana Administrative Register, Issue Number 21.

2. The department has amended and repealed 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, December 13, 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 (6.6.2406), II (6.6.2407), III (6.6.2408), IV (6.6.2410), and V (6.6.2411) pertaining to Group Coordination of Benefits	))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 28, 2010, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-189 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 2426 of the 2010 Montana Administrative Register, issue number 20.

2. On November 17, 2010, the State Auditor and Commissioner of Insurance held a public hearing to consider the proposed amendment and adoption of the above-stated rules.

3. The commissioner has amended ARM 6.6.2401, 6.6.2402, 6.6.2404, and 6.6.2405 exactly as proposed.

4. The commissioner has amended ARM 6.6.2403 as proposed, but with the following changes, stricken material interlined, new matter underlined.

6.6.2403 DEFINITIONS (1) through (11)(b)(iv) remain as proposed.

(v) the medical care components of long-term care contracts, such as skilled nursing care;

(vi) first party medical payment coverage in automobile insurance; and

(vi) remains as proposed, but is renumbered (vii).

(c) through (c)(vii) remain as proposed.

(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; or

(x) third party automobile liability coverage, and uninsured and underinsured motorist coverage.

(12) through (14) remain as proposed.

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

5. The commissioner has adopted New Rule I (ARM 6.6.2406), New Rule II (ARM 6.6.2407), New Rule III (ARM 6.6.2408), New Rule IV (ARM 6.6.2410), and New Rule V (ARM 6.6.2411) exactly as proposed.

6. Effective date: These rules apply to policies, certificates or membership contracts issued or renewed after January 1, 2011.

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

COMMENT NO. 1: Several commenters requested that the department adopt the original language from the NAIC model regarding the definition of "plan."

RESPONSE NO.1: There were two differences between the model language and the language proposed by the department. First, the subsection referring to "the medical care components of long-term care contracts, such as skilled nursing care" was left out of the first notice proposing adoption of new coordination of benefit rules. This was an inadvertent error that occurred during editing. That language has been restored to the definition of "plan" in the rule adoption notice.

In addition, the first notice of these rules did not adopt the following language: "The medical benefits coverage in automobile "no fault" and traditional automobile "fault" type contracts." This language is not applicable because Montana law does not recognize the concept of "fault" and "no fault" in automobile liability insurance in the same way that certain other states do. Furthermore, Montana has a subrogation law that requires that an injured party be "made whole." [Mont. Code Ann. Section 33-22-1602 and 33-30-1102.] The Montana Supreme Court recently further clarified this law in Blue Cross and Blue Shield of Montana, Inc. v. Montana State Auditor, 2009 MT 318, 352 Mont. 423, 218 P.3d 475 (2009). If a health insurer is allowed to force the automobile third party liability coverage to pay medical bills first, pursuant to the coordination of benefit rules, the "made whole" provisions of the above-referenced statute and Supreme Court case, could be subverted.

However, the department recognizes that these concerns do not apply in the same manner to coverage known as "first party automobile medical payments." Therefore, in its rule adoption notice, "first party automobile medical payment coverage" has been added to the definition of "plan." Third party automobile liability coverage and uninsured and underinsured motorist coverage are specifically excluded from the definition of "plan."

The department cannot adopt a rule that conflicts with Montana statute and case law.

COMMENT NO. 2: Another commenter requested that the insurers be given more time to comply with the new rules.

RESPONSE NO. 2: No other insurer made that request and most insurers expressed a concern that the rules be updated to reflect the most recent version of the NAIC model as quickly as possible. In addition, the applicability provisions of the new rules state that they do not apply until the "next anniversary date, renewal date, or plan year of the contract." Many health insurance contracts renew on January 1, so these rules would not apply until the next 12-month renewal date because the forms for January 1 renewals were required to be submitted for approval 60 days prior to that date. In addition, the adoption notice includes an effective date provision that specifies that the new rules apply to policies issued or renewed after January 1, 2011.

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

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

Certified to the Secretary of State December 13, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.9.102 pertaining to licensed distributors and special fuel users	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010 the Department of Transportation published MAR Notice No. 18-126 pertaining to the proposed amendment of the above-stated rule at page 2454 of the 2010 Montana Administrative Register, Issue Number 20. On December 9, 2010 the department published the notice of amendment at page 2814 of the 2010 Montana Administrative Register, Issue Number 23.

2. MAR Notice 18-126 deleted (3) in ARM 18.9.102, but neglected to remove the reference to (3) listed in (1). The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

18.9.102 DISTRIBUTOR'S BOND (1) Gasoline, special fuel, or aviation fuel distributors must furnish the Department of Transportation a corporate surety bond executed by the distributor as principal with a corporate surety authorized to transact business in this state or other collateral security or indemnity. The total amount of bond or collateral security or indemnity must be equivalent to twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax, in no case greater than $100,000~~, except as provided in (3) the department will establish the bond amount on a distributor with less than 12 months prior history~~.

(2) remains as adopted.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ D. John Blacker
D. John Blacker
Deputy Director
Department of Transportation

Certified to the Secretary of State December 13, 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 ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 28, 2010, the Department of Labor and Industry (department) published MAR Notice No. 24-21-251 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 2466 of the 2010 Montana Administrative Register, Issue Number 20.

2. On November 19, 2010, the department held a public hearing in Helena at which time members of the public were invited to make comments. Thirteen members of the public attended the public hearing. Oral testimony and written comments were received during the comment period.

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

Comment 1: A commenter noted that there was an apparent typographic error in NEW RULE II (4)(c), and that the word "contract" should be "contact."

Response 1: The department agrees with the comment and has made the correction as suggested.

Comment 2: Two commenters suggested that NEW RULE III be more specific regarding the composition, terms, and scope of the advisory committee.

Response 2: The department believes that it is constrained by the provisions of 2-15-122, MCA, regarding the creation of advisory bodies. The department notes that pursuant to 2-15-122, MCA, an advisory body established by an agency (as opposed to established in statute) is limited to a maximum two year's duration before it must be reestablished. Accordingly, the department believes that the advisory council terms will not last more than two years. Such a body must be established by an order of the agency head, in which the details of the body's duties and responsibilities are described. The department concludes that it is inappropriate, in light of 2-15-122, MCA, for greater detail to be provided in rule.

Comment 3: A commenter suggested that NEW RULE III provide for fewer than 25 advisory council members, in order to maximize efficiency in council business.

Response 3: The department expects that the Commissioner of Labor will likely appoint far fewer than 25 members to the advisory council, for reasons of efficiency and economy. However, the department concludes that there may come a time in the future where having more members serve on the advisory council will be appropriate in light of the size and diversity of the state, and that the Commissioner's ability to appoint willing volunteers should not be unduly constrained by the rule.

The department has recommended to the Commissioner of Labor that eight individuals be appointed to the advisory council: three people affiliated with employers (management); three people affiliated with workers; and two public members. One of the public members is intended to be a person involved with post-secondary education. The department believes that the Commissioner intends to follow those recommendations and appoint a fair and balanced advisory commission. See also Response 5.

Comment 4: A commenter suggested that the advisory council include members who were not affiliated with the building trades.

Response 4: The department has recommended to the Commissioner of Labor that two public members of the council be appointed. The department has suggested to the Commissioner that neither of the public members be affiliated with the building trades.

Comment 5: A commenter expressed concern that during the council member appointment process a disproportionate number of members may be affiliated with particular training programs, or under-represent non-building-trade occupations or independent training programs. The commenter urged that balance among council members not be sacrificed simply for the sake of reducing costs or perhaps improving meeting efficiency.

Response 5: As noted in Responses 3 and 4, the department believes that the Commissioner of Labor intends to appoint as balanced an advisory council as is feasible, given budgetary and other constraints. As an example, approximately 85% of the existing apprenticeship programs in Montana are related to the building trades. If two of the eight advisory council members are not affiliated with the building trades, non-building-trade affiliated members will be slightly overrepresented on the council. The department recognizes that the fewer council members there are the greater the likelihood that the membership will not be perfectly representative of various aspects of Montana's apprenticeship community, while at the same time recognizing that too large a group is not efficient. Through the appointment process, the Commissioner of Labor will be able to adjust the size and composition of the advisory council membership to address any substantial problems that may arise with the proposed eight member council.

Comment 6: A commenter objected to the language in NEW RULE III(4)(a) regarding the appointment of an equal number of representatives of employer and employee organizations, and suggested that the reference to "organizations" be deleted.

Response 6: The language proposed in NEW RULE III(4)(a) was specifically chosen to mirror the exact language used in 29 CFR 29.13(a)(2)(ii), to make it clear that the state rule was in conformity with federal rules. The department believes that deleting the word "organization" will unnecessarily increase the likelihood of the department failing to maintain federal recognition as the state registration agency. The department notes that if it loses federal recognition, Montana employers and apprentices wishing to be registered will have to apply to the U.S. Dept. of Labor, which will be applying the federal rules, including the objected-to language.

Comment 7: A commenter expressed concern that council members who are indirectly affiliated with apprenticeship programs will have an advantage in advising the member's affiliated programs, as compared to apprenticeship programs that do not have their advisors on the council.

Response 7: The department notes that because all of the advisory council meetings will be open to the public, with official minutes available, it is unlikely that any significant competitive advantage will accrue to select apprenticeship programs.

Comment 8: A commenter noted that proposed amendments to ARM 24.21.401(1) did not read correctly, and that they appeared to omit a verb.

Response 8: The department agrees that the verb "to" was inadvertently omitted from the first sentence, and has amended the rule accordingly.

4. The department has adopted the following rules as proposed:

NEW RULE I (24.21.102) DEFINITIONS

NEW RULE III (24.21.205) STATE APPRENTICESHIP ADVISORY COUNCIL TO BE ESTABLISHED

NEW RULE IV (24.21.302) FEDERAL REGULATIONS INCORPORATED BY REFERENCE

NEW RULE V (24.21.431) INTERIM CREDENTIALS

NEW RULE VI (24.21.405) PERFORMANCE EVALUATIONS – WITHDRAWAL OF REGISTRATION

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

NEW RULE II (24.21.202) STATE APPRENTICESHIP AND TRAINING PROGRAM

(1) through (4)(b) remain as proposed.

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

(d) remains as proposed.

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

6. The department has amended the following rules as proposed:

24.21.411 MINIMUM GUIDELINES FOR REGISTRATION OF PROGRAMS

24.21.421 EQUAL EMPLOYMENT OPPORTUNITY

7. The department has amended the following rule as proposed, but with the following changes from the original proposal, 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, before approval and registration will be granted to a program sponsor all provisions of the apprenticeship program 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) and (3) remain as proposed.

AUTH: 39-6-101, MCA
IMP: 39-6-101, 39-6-108, MCA

8. The department has repealed the following rules as proposed:

24.21.101 FUNCTIONS OF THE APPRENTICESHIP BUREAU

24.21.201 RULES OF THE BUREAU

24.21.301 RECORDS OF THE BUREAU

24.21.425 APPROVAL FOR APPRENTICESHIP PROGRAM WHEN EMPLOYER IS PARTICIPANT IN COLLECTIVE BARGAINING AGREEMENT

9. The rule changes described in this notice are effective December 24, 2010.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 13, 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 AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On October 28, 2010 the Department of Labor and Industry (department) published MAR Notice No. 24-29-250 pertaining to the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 2476 of the 2010 Montana Administrative Register, Issue Number 20.

2. On November 19, 2010, the department held a public hearing in Helena at which time members of the public had an opportunity to make oral and written comments and submitted documents. No one presented written or oral testimony at the hearing and no written comments were received by the department during the comment period.

3. The department has adopted the above-stated rules as proposed: NEW RULE I (24.29.2605), NEW RULE II (24.29.2602), NEW RULE III (24.29.2607), NEW RULE IV (24.29.2610), and NEW RULE V (24.29.2614).

4. The department is amending ARM 24.29.2701 as proposed.

5. The department has repealed ARM 24.29.2601 as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly
Commissioner
Department of Labor and Industry

Certified to the Secretary of State December 13, 2010

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

In the matter of the amendment of ARM 24.174.401 fee schedule, 24.174.403 change in address, 24.174.805 change of pharmacist-in-charge, 24.174.813 class IV facility, 24.174.1003 identification of pharmacist-in-charge, 24.174.1201 wholesale drug distributor, 24.174.1302 telepharmacy operations, 24.174.1412 dangerous drugs, and the adoption of NEW RULES I through X cancer drug repository, and NEW RULES XI through XIV clinical pharmacist practitioner	)))))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 23, 2010, the Board of Pharmacy (board) published MAR notice no. 24-174-60 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2041 of the 2010 Montana Administrative Register, issue no. 18.

2. On October 14, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the October 22, 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:

ARM 24.174.401: Fee Schedule

COMMENT 1: One commenter opined that while the application process could be extensive, setting the initial registration and renewal fees too high for clinical pharmacist practitioners would discourage applicants. The commenter suggested alternate fees.

RESPONSE 1: The board is required under 37-1-134, MCA, to set and maintain fees commensurate with actual costs. The board proposed the fee according to projected costs, but will amend the fees in a future rulemaking project if the estimates prove inaccurate.

COMMENT 2: A number of commenters opposed the board charging any fee for either initial or renewal licensure of family planning limited pharmacies.

RESPONSE 2: The board notes that the proposed amendment would only change the facility name, with no change to the $75 fee. Since the board did not propose to amend the fee in the original rulemaking notice, it is unable to alter the fee in the final notice. The board is amending the rule exactly as proposed.

ARM 24.174.813: Family Planning Limited Pharmacy Facility

COMMENT 3: Several commenters opposed the licensure and renewal fees, as well as requiring a pharmacist-in-charge principally because such clinics – whether government or private operations – survive on tight budgets that cannot accommodate the additional expense. The commenters suggested that a pharmacist-in-charge would offer little in additional public safety regarding prepackaged products, and the expense would threaten the programs themselves.

RESPONSE 3: This class of pharmacy historically required pharmacists, just as other forms of pharmacies. Pharmacists' roles through the 1990s included assuring proper labeling and prescription preparation, as well as appropriate patient counseling. Over time, regulation and oversight abated leaving only one such licensed facility in the state. Formerly, such clinics were limited to contraceptive products, but now the rule envisions expedited partner therapy for chlamydia and gonorrhea, as well as onsite drug storage.

The board does not intend to restrict health care access through these facilities, but to return to an appropriate level of regulation balancing public safety and accessibility. That balance necessitates a pharmacist's involvement in this class of pharmacy, just as in other classes of pharmacies. However, following comment consideration, the board is not amending this rule at this time.

COMMENT 4: A few commenters stated that the funding systems of these pharmacies conflict with a blanket rule that prohibits charging for the drugs.

RESPONSE 4: The proposed amendments would continue the current rule's provision that drugs be offered at no cost. Considering the commenters' statements that they must be allowed to charge for drugs in some instances, the board agreed to delete the offending paragraph. However, following consideration of all comments, the board is not amending this rule at this time.

COMMENT 5: Commenters generally favored expanding services to include expedited patient-delivered partner therapy for chlamydia, but one commenter opined that the standard of care prohibits such therapy for gonorrhea.

RESPONSE 5: The board notes that the Center for Disease Control (CDC) has established that gonorrhea may be treated by partner therapy. However, following further comment consideration, the board is not amending this rule at this time.

ARM 24.174.1412: Additions, Deletions, and Rescheduling of Dangerous Drugs

COMMENT 6: Two commenters applauded the board's effort to update the schedule of drugs, but suggested setting forth the complete schedule in both the administrative rules and the Montana Code Annotated (MCA), rather than simply adopting the federal schedule by reference. The commenters also advised that the administrative rules and the MCA would be more useable to law enforcement if both exactly mirrored the current federal schedule of drugs.

RESPONSE 6: The board considered the points of view of those in law enforcement who rely upon the Montana Criminal Code, Title 45, chapter 9, that cross-references the schedules of drugs found in the Controlled Substances Act at Title 50, chapter 32, part 2. Of course, only the Legislature can update a Montana statute. However, the Controlled Substances Act empowers the board to administer the chapter and amend the list of schedules by rulemaking at 50-32-103, MCA, and mandates timely updates following federal action to designate, reschedule, or delete a controlled substance at 50-32-203, MCA. Finding it unwieldy, the board opted not to repeat the full schedules in rule. After a period of inattention, the board is committed to regularly updating the schedules in the future, to avoid inconsistencies between the federal schedules and Montana's parallel schedules, which should serve the interests of law enforcement and the public.

NEW RULE III: Acceptable Cancer Drugs

COMMENT 7: One commenter observed that a change agreed upon during the drafting process was not included in the proposed new rule. The commenter suggested amending (2) to read, "Any cancer drug donated to the program cannot be used past its expiration date."

RESPONSE 7: The board agreed that the suggested language was offered and accepted in the drafting stage, but was inadvertently omitted from the proposed version. The board is amending New Rule III accordingly.

COMMENT 8: A commenter suggested clarifying that acceptable cancer drugs are only those approved by the FDA for use in the United States.

RESPONSE 8: The board discussed whether it was likely that an unapproved cancer drug could enter the repository system and observed that clinical trials of unapproved drugs are regulated by the FDA. While it is possible for a foreign drug unapproved for use in the United States to be offered to the repository, the likelihood seems remote. Consequently, the board is adopting that portion of the rule as proposed, but will monitor the issue and take responsive action if and when required.

NEW RULE VII: Record-Keeping Requirements

COMMENT 9: A commenter suggested the board clarify that the perpetual recordkeeping requirements in (1) and (2) apply only to donated cancer drugs.

RESPONSE 9: The board agrees and is amending the new rule accordingly.

NEW RULE XI: Definitions

COMMENT 10: One commenter suggested improving New Rule XI by clearly defining "clinical pharmacist practitioner" and adding an official abbreviation of CPP.

RESPONSE 10: The board concluded that defining "clinical pharmacist practitioner" in rule is unnecessary, as an adequate definition exists in statute at 37-7-306, MCA. While statutory title protection exists for some professionals such as nurses (37-8-408, MCA), physician assistants (37-20-303, MCA), and social workers (37-22-305, MCA), it does not in the case of clinical pharmacist practitioners. Consequently, the board declined to add an official abbreviation of the title in rule.

COMMENT 11: A commenter suggested amending (2) to revise the minimum time spent in clinical pharmacist practice from 50 to 30 percent and establish a weekly practice minimum in hours, rather than a percentage to manage instances where a pharmacist many not work full-time.

RESPONSE 11: In writing the rule, the board incorporated the experience of New Mexico and North Carolina. Additionally, 37-7-201(2)(e), MCA, requires the board to gain the concurrence of the Board of Medical Examiners in "defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner." Having gained the required concurrence, the board is adopting New Rule XI exactly as proposed.

NEW RULE XII: Requirements to Become a Clinical Pharmacist Practitioner

COMMENT 12: A commenter cautioned the board that setting the experience and credentialing standards for clinical pharmacist practitioners too high would restrict the registration to an elite few, which could then eliminate qualified clinicians and impact payments to pharmacists from third party payors. The commenter suggested the board adopt standards based on the North Carolina model.

RESPONSE 12: As noted above, the Legislature requires the board to develop rules on clinical pharmacist practitioner standards in concurrence with the Board of Medical Examiners. Having gained the required concurrence, the board is adopting New Rule XII exactly as proposed.

COMMENT 13: A commenter posited that a clinical pharmacist practitioner must work under a collaborative practice agreement, but such an agreement should not be a prerequisite to registration. The commenter believed this would engender administrative and logistical problems in initiating a new registered practice.

RESPONSE 13: See response 12 above.

4. The board received no comments regarding ARM 24.174.403, 24.174.805, 24.174.1003, 24.174.1201, 24.174.1302, NEW RULES I (24.174.1501), II (24.174.1502), IV (24.174.1504), V (24.174.1505), VI (24.174.1506), VIII (24.174.1508), IX (24.174.1509), X (24.174.1510), XIII (24.174.527), and XIV (24.174.528).

5. The board has amended ARM 24.174.401, 24.174.403, 24.174.805, 24.174.1003, 24.174.1201, 24.174.1302, and 24.174.1412 exactly as proposed.

6. The board has adopted NEW RULE I (24.174.1501), NEW RULE II (24.174.1502), NEW RULE IV (24.174.1504), NEW RULE V (24.174.1505), NEW RULE VI (24.174.1506), NEW RULE VIII (24.174.1508), NEW RULE IX (24.174.1509), NEW RULE X (24.174.1510), NEW RULE XI (24.174.525), NEW RULE XII (24.174.526), NEW RULE XIII (24.174.527), and NEW RULE XIV (24.174.528) exactly as proposed.

7. The board has adopted NEW RULE III (24.174.1503) and NEW RULE VII (24.174.1507) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (24.174.1503) ACCEPTABLE CANCER DRUGS (1) and (2) remain as proposed.

(3) Any cancer drug donated to the program cannot be used past its expiration date.

NEW RULE VII (24.174.1507) RECORD-KEEPING REQUIREMENTS (1) A pharmacy or facility must maintain a perpetual inventory log book of all donated cancer drugs received, dispensed, or distributed.

(2) The perpetual inventory log book must contain the following information regarding all donated cancer drugs received, dispensed, or distributed:

(a) through (2)(m) remain as proposed.

8. The board did not amend ARM 24.174.813 as proposed.

BOARD OF PHARMACY
LEE ANN BRADLEY, RPH, PRESIDENT

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

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

Certified to the Secretary of State December 13, 2010

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of 32.6.712, pertaining to food safety and inspection service (meat, poultry)	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010, the Department of Livestock published MAR Notice No. 32-10- 213 regarding the proposed amendment of the above-stated rule at page 2483 of the 2010 Montana Administrative Register, issue number 20.

2. The Department of Livestock has amended the above-stated rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

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

Certified to the Secretary of State December 13, 2010.

BEFORE THE DEPARTMENT OF LIVESTOCK
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 AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010, the Department of Livestock published MAR Notice No. 32-10-215 regarding the proposed amendment of the above-stated rules at page 2492 of the 2010 Montana Administrative Register, issue number 20.

2. The Department of Livestock has amended the above-stated rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

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

Certified to the Secretary of State December 13, 2010.

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

In the matter of the adoption of New Rules I through XXI and repeal of ARM 37.27.128, 37.27.129, 37.27.130, and 37.27.135 pertaining to emergency care, inpatient, and transitional living chemical dependency programs	)))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On September 23, 2010 the Department of Public Health and Human Services published MAR Notice No. 37-517 pertaining to the proposed adoption and repeal of the above-stated rules at page 2053 of the 2010 Montana Administrative Register, Issue Number 18.

2. The department has adopted New Rules I (37.106.1411), III (37.106.1420), IV (37.106.1425), V (37.106.1430), VII (37.106.1435), VIII (37.106.1440), IX (37.106.1450), X (37.106.1452), XI (37.106.1454), XII (37.106.1460), XIII (37.106.1462), XV (37.106.1475), XVI (37.106.1480), XVII (37.106.1482), and XXI (37.106.1491) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined. New Rule II (37.106.1413), VI (37.106.1432), XIV (37.106.1470), XVIII (37.106.1485), XIX (37.106.1487), and XX (37.106.1489).

NEW RULE II (37.106.1413) DEFINITIONS In addition to the terms defined in 53-24-103, MCA, the following definitions shall apply in the interpretation and enforcement of the rules in this subchapter:

(1) through (15) remain as proposed.

(16) "First aid" means emergency treatment by someone who has received appropriate training. The provider and all staff who provide or supervise client care must complete required training and hold current certification in first aid and cardiopulmonary resuscitation (CPR).

(17) through (23) remain as proposed.

AUTH: 50-5-103, 53-24-208, 53-24-301, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

NEW RULE VI (37.106.1432) PERSONNEL FILE REQUIREMENTS

(1) The administrator or designee must ensure there is a current secured personnel file for each employee~~,~~ and trainee~~, student, and volunteer,~~ and for each

student, volunteer, and contract staff person who provides or supervises client care. The file must include:

(a) and (b) remain as proposed.

(c) evidence that all staff who provide or supervise client care have current and valid certification in cardio-pulmonary resuscitation (CPR) and in first aid techniques;

(d) through (e) remain as proposed.

(f) evidence of an independent contractor status and contractual agreements for ~~interns and~~ contracted personal;

(g) through (j)(iii) remain as proposed.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, MCA

NEW RULE XIV (37.106.1470) FACILITY REQUIREMENTS (1) through (8)(a)(iv)(B) remain as proposed.

(C) a wardrobe, ~~or~~ dresser, or closet with shelving for storing a reasonable amount of clothing.

(9) through (15)(a) remain as proposed.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

NEW RULE XVIII (37.106.1485) HALFWAY HOUSE COMMUNITY-BASED PARENT AND CHILDREN RESIDENTIAL HOMES (ASAM LEVEL III.3 – MEDIUM INTENSITY)

(1) The community-based parent and children residential homes for individuals with substance use disorders serve parent(s) with dependent child(ren) who are in need of 24-hour supportive housing while undergoing on- or off-site treatment services for substance use disorder and life skills training for independent living. To be licensed to provide community-based parent and children residential homes for individuals with substance use disorders ASAM Level III.3 medium intensity treatment, a provider must meet the following:

(a) 24-hour staffing patterns or security patterns to afford sufficient security to assure the safety of residents, with the availability of 24-hour telephone consultation of a licensed clinician with competence in the treatment of substance dependence disorders. Staffing ~~staffing~~ requirements may include but are not limited to:

(i) and (ii) remain as proposed.

(iii) case managers that have a minimum of two years of higher education or four or more years of related work experience and orientation to the ~~facilities~~ facility's policies and procedures; and

(iv) through (b)(viii) remain as proposed.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

NEW RULE XIX (37.106.1487) HALFWAY HOUSE SINGLE GENDER RESIDENTIAL HOMES (ASAM LEVEL III.5 – HIGH INTENSITY) (1) The community-based single gender residential homes for individuals with substance use disorders serve individuals who are in need of 24-hour supportive housing while undergoing on- or off-site treatment services for substance use disorder and life skills training for independent living. To be licensed to provide community-based single gender residential homes for individuals with substance use disorders ASAM Level III.5 high intensity treatment, a provider must meet the following:

(a) 24-hour staffing patterns or security patterns to afford sufficient security to assure the safety of residents, with the availability of 24-hour telephone consultation of a licensed clinician with competence in the treatment of substance dependence disorders. Staffing ~~staffing~~ requirements may include but are not limited to:

(i) and (ii) remain as proposed.

(iii) case managers that have a minimum of two years of higher education or four or more years of related work experience and orientation to the ~~facilities~~ facility's policies and procedures; and

(iv) through (b)(vi) remain as proposed.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

NEW RULE XX (37.106.1489) HALFWAY HOUSE SINGLE GENDER COMMUNITY-BASED RESIDENTIAL HOMES (ASAM LEVEL III.3 – MEDIUM INTENSITY)

(1) Community-based single gender residential homes for individuals with substance use disorders may be located in residential neighborhoods, comparable to other homes in the neighborhood, and shall reflect the environment of a home. To be licensed to provide community-based residential homes for individuals with substance use disorders ASAM Level III.3 medium intensity treatment, a provider must meet the following:

(a) staffing or security measures sufficient to assure the safety of residents, staffing requirements may include but are not limited to:

(i) and (ii) remain as proposed.

(iii) case managers that have a minimum of two years of higher education or four or more years of related work experience and orientation to the ~~facilities~~ facility's policies and procedures; and

(iv) through (b)(v) remain as proposed.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

4. The department has adopted the following New Rule in response to a comment.

NEW RULE XXII (37.106.1415) APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3

conflict with the terms of this subchapter, the terms of this subchapter shall apply to a chemical dependency facility.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

5. The department has repealed ARM 37.27.128, 37.27.129, 37.27.130, and 37.27.135 as proposed.

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

COMMENT #1: One commenter objects to Rule II(16) (37.106.1413) and Rule VI(1)(c) (37.106.1432) regarding current certification in first aid and CPR indicating the requirement is burdensome for large organizations with over 135 employees. Commenter recommends that the requirement be changed to one on-duty staff member per shift per facility be certified in first aid and CPR.

RESPONSE #1: The department's intent was to require first aid and CPR certification for only those providers, employees, trainees, students, and contract staff who provide or supervise client care. Rule II(16) (37.106.1413) and Rule VI(1)(c) (37.106.1432) will be amended to indicate the intent of the certification requirements. Commenter recommends that Rule VI(1)(b) (37.106.1432) be changed to require "a criminal background check" for each person having direct contact with clients rather than "a criminal justice information network background check".

COMMENT #2: One commenter recommended that proposed New Rule VI be changed to require a "criminal background check" for each person having direct contact with clients, rather than "a criminal justice information network background information check."

RESPONSE #2: The department disagrees with the recommendation. A criminal justice information network (CJIN) background check provides more detailed information on charges and convictions outside the public domain.

COMMENT #3: One commenter recommends that "for interns" in Rule VI(1)(f) (37.106.1432) be deleted as interns are not independent contractors.

RESPONSE #3: The department will delete "interns" from the rule as the requirements for trainee/interns and volunteers are addressed in Rule VII (37.106.1435).

COMMENT #4: One commenter recommends that the words "student and volunteer" be deleted from Rule VI (37.106.1432) as requirements for students and volunteers are addressed in Rule VII (37.106.1435) and commenter indicates the

requirements may not be feasible for students who may be observing in the facility on a short-term basis.

RESPONSE #4: The department has amended Rule VI (37.106.1432) to indicate all employees and trainees and those students, volunteers, and contract staff who provide or supervise client care must have personnel files that meet the specified requirements.

COMMENT #5: One commenter objects to the requirement in Rule XIV (4)(g) (37.106.1470) that each facility must have an annual inspection by the local fire authority and indicates that the Fire Department will not inspect residential homes.

RESPONSE #5: The language in Rule XIV(4)(g) (37.106.1470) indicates "local fire authority" not limiting inspections to fire departments specifically. The State Fire Marshal or State Fire Marshal's designee may also have jurisdiction over licensed facilities. These residential facilities are licensed facilities and therefore subject to annual fire inspections for the safety of residents and staff.

COMMENT #6: One commenter recommended Rule XIV(6)(i) (37.106.1470) be changed to require only a mattress cover rather than both a mattress cover and a mattress pad and indicated a mattress cover is sufficient to assure sanitation.

RESPONSE #6: The department believes that both a mattress cover and mattress pad are necessary for the resident's comfort and to assure proper sanitation and therefore will require both to be used in these chemical dependency facilities. Replacing mattress pads and mattress covers is more cost-effective than replacing mattresses should mattresses become "soiled" and therefore unusable.

COMMENT #7: One commenter objects to the requirement in Rule XIV(7)(a)(iv) and (v) (37.106.1470) that the provider must provide hand cleansing soap and individual towels in a sober housing or community residential facility.

RESPONSE #7: The department believes the rule is written to provide flexibility in sober housing and community residential facilities by indicating that the provider must ensure hand cleansing soap and individual towels are provided. This language allows the provider to require residents to provide these items as a condition of residency. The provider's policies and procedures should address how this will be accomplished.

COMMENT #8: One commenter recommended that "closet" be added to Rule XIV(8)(a)(iv)(C) (37.106.1470) as an additional option for clothes storage.

RESPONSE #8: The department was hesitant to include closet as an option because some undergarments are more suited for drawers than for hanging while dressers can more easily accommodate all clothes. The department will amend the rule to include use of a closet with shelving to provide an additional option for clothes storage.

COMMENT #9: One commenter objects to the requirement in Rule XIV(12)(b) (37.106.1470) that the facility must assure adequate housekeeping services and supplies as their community residential facilities require residents to do their own housekeeping and purchase their own housekeeping supplies. In addition, it is important for the residents to accept the responsibility for keeping their homes clean.

RESPONSE #9: This language allows the provider to assure adequate housekeeping services and supplies as a condition of residency and does not require provision of these services and supplies to be the responsibility of the provider. The provider's policies and procedures should address how this will be accomplished.

COMMENT #10: One commenter objected to the requirement in Rule XXI(1)(a)(iii) (37.106.1491) that case managers in halfway house community-based single gender residential homes have a minimum of two years of higher education. The requirement would eliminate a staff member with two or more years of related experience but no college from functioning as a case manager for sober housing residents. Commenter's facility has several staff members with a background in recovery who have the knowledge and experience to function more effectively as case managers than an individual with two years of college but no experience. The employer should be allowed to determine the qualifications for a case management position.

RESPONSE #10: The department agrees that appropriate work experience may substitute for college education. The department will amend Rules XVIII (37.106.1485), XIX (37.106.1487), and XX (37.106.1489) to allow appropriate work experience. In adding this language, it was noticed that "and" was inadvertently omitted at the end of the Rule XX(1)(a)(iii) (37.106.1489), but will be added to make this subsection consistent with Rules XVIII (37.106.1485), XIX (37.106.1487), and XXI (37.106.1491).

COMMENT #11: The commenter objects to the requirement in Rules XVIII (37.106.1485) and XIX(1)(a) (37.106.1487) which require 24-hour staffing patterns for ASAM Level III.3 and III.5 residential homes. Commenter states when the clients are adults and facility is secured with alarms and cameras, it is not necessary to have 24-hour staffing to assure the safety of the residents. Because of the expense of providing 24-hour staffing, it becomes cost prohibitive to offer these levels of care which is contrary to the intent of the policy of Addictive and Mental Disorders Division to expand these service levels.

RESPONSE #11: The department understands the commenter's concerns and has determined it to be feasible to incorporate the concepts of the comments into these rules.

COMMENT #12: One comment was received regarding the use of the phrase "requirements include but are not limited to the following:". Commenter indicates the language gives the reader the impression that there are other department

requirements that are not stated in the rules and recommends that the use of this phraseology be clarified wherever it appears in the notice.

RESPONSE #12: The department understands the commenter's concerns. For decades, use of the phrase "requirements include but are not limited to the following:" or some variation thereof has been usual and customary in promulgating rules. In looking at just the 2010 Montana Administrative Register, Issues 15 through 20, the Departments of Revenue, Labor and Industry, Livestock, Public Service Regulation, and Environmental Quality used this language. The scenario is similar for Registers published in other years.

The common usage stems from contract language to indicate that the items may be part of a larger list and are not necessarily exclusive. It is inferred that what is listed is what is required under the specific rule; however, there may be other provisions applicable through some other authority. Depending upon the situation, other provisions of law, administrative rule, or local regulation may be applicable. In retrospect, the department was remiss and should have included a new rule with language that is commonly used in other health care facility licensure rules to indicate applicability of the health care facility minimum standards rules. This language will be inserted as the first rule in these chemical dependency facility rules.

These rules are the minimum requirements of the department necessary for chemical dependency programs. Nothing in these rules prohibits the provider from imposing other requirements as they deem necessary to meet the needs of their programs.

COMMENT #13: One comment was received indicating that the reasonable necessity statement for various rules did not address the "particular approach" taken or why the requirements were written like they were.

RESPONSE #13: The department acknowledges that the "particular approach" used was not cited for each of the individual rules. However, paragraph 5 generally addresses why the rules were proposed as they were. The department engaged stakeholders, providers, and others to develop the basis for the proposed rules. In doing so, this is the approach deemed by the department as most appropriate to implement through rule what was previously accomplished through contracts and nationally accepted substance use disorder treatment protocols. Using a joint statement instead of repeating information for individual rules avoids duplication and redundancy, makes the rule notice less cumbersome, and reduces cost.

7. The department intends the rules amendments to be applied effective July 1, 2011.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State December 13, 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 AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010 the Department of Public Health and Human Services published MAR Notice No. 37-522 pertaining to the proposed amendment of the above-stated rule at page 2512 of the 2010 Montana Administrative Register, Issue Number 20.

2. The department has amended the rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is 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 as proposed.

(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 (waiver).

(d) through (2) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

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

COMMENT #1: One commenter expressed a concern that the proposed rule change will take away the family's choice of a therapist for youth enrolled in Home and Community-Based Services waiver for youth with serious emotional disturbances (waiver).

RESPONSE #1: The department does not agree. The waiver will allow the family to choose therapists that are enrolled in the waiver. If a youth is already working with a therapist prior to the family participating in the waiver, the relationship with the therapist may continue as long as the therapist enrolls as a waiver provider of home-based therapy. There will be a list of wraparound facilitators for the family to choose from. If there are no available wraparound facilitators, the Plan Manager, who is an employee of the department, will be the wraparound facilitator. Plan Managers will recruit waiver providers, including wraparound facilitators and home-based therapists, to increase access in the urban and rural areas where the waiver is operational.

COMMENT #2: One commenter indicated there are some geographic areas of the state where there may only be one qualified provider for both the wraparound facilitation and home-based therapy. The commenter feared the family would be unable to access home-based therapy.

RESPONSE #2: The goal of the department is to aggressively increase capacity for wraparound facilitation. The department's response to comment #1 addresses the youth's continued involvement with a home-based therapist. In addition, the department has received federal approval to implement a "geographical factor" to offset travel costs for home-based therapists or wraparound facilitators who must travel outside their usual business locations to provide waiver services. The purpose of the "geographical factor" is intended to offset additional costs in rural service delivery which should encourage availability of home-based therapists and wraparound facilitators. The department is in the process of developing the policy to address geographical access challenges.

COMMENT #3: One commenter appreciates the department's creative and effective ways to meet the needs of families and children.

RESPONSE #3: The department appreciates this comment.

COMMENT #4: One commenter suggested the department develop a mechanism to support the objectivity of family choice in the provision of services to allow for the possibility that the wraparound facilitator and home-based therapist are from the same agency.

RESPONSE #4: The department does not agree. The role of the wraparound facilitator is to support families, including the family with the support needed to make good choices in the delivery of therapeutic services. Adding a mechanism to the facilitation process for the sake of gaining access to a home-based therapist from the same agency would add significant complexity to the facilitation process without significant benefit to families. When a family is in crisis, objectivity may be compromised. Some families may be accustomed to other service delivery models where choice has not been an option. When the wraparound facilitator and home-based therapist are from the same agency, the family may feel subtle pressure to choose only this agency.

COMMENT #5: One commenter expressed a concern that the proposed amendment limits family choice in the provision of services which contradicts the basic tenants of the wraparound philosophy.

RESPONSE #5: The department does not agree. Families are given the choice of whether to participate in the waiver. Once in the waiver, families have the choice of facilitators and home-based therapists. This structure is intended to encourage choice, not restrict it. As stated in the response to comment #1, "There will be a list of wraparound facilitators for the family to choose from. If there are no available wraparound facilitators, the Plan Manager, who is an employee of the department, will be the wraparound facilitator. Plan Managers will be recruiting waiver providers, including wraparound facilitators and home-based therapist, to increase capacity in the urban and rural areas where the waiver is operational". In addition to voice and choice, an important component of the values associated with wraparound services is that it is "community-based". "Community-based" includes team-based services where the individualized plan is developed by a wraparound team consisting of the family, natural supports, and formal supports that care about and know the youth and family. The process is family-focused with maximum family involvement; a design that supports the family's choice by allowing them to be fully participatory in identifying the needs of the youth and family and subsequently choosing programs and services to meet those needs.

COMMENT #6: One commenter noted his experience in the implementation of high fidelity wraparound services and stated his support for the proposed rule revisions. The commenter stated that when the wraparound facilitators and home-based therapists were from the same agency, the agencies were built "wraparound silos". A wraparound silo had the effect of excluding other outside community agency involvement.

RESPONSE #6: The department concurs with the commenter's observations.

COMMENT #7: One commenter suggested that the department add another section to the proposed rule to allow a small percentage of the cases to have the same agency employ the wraparound facilitator and home-based therapist.

RESPONSE #7: The department does not agree that an exception should be made even for a small percentage of enrolled waiver youth. For further detail, please refer to the department's response under comment #5 and comment #6.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State December 13, 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 AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 28, 2010 the Department of Public Health and Human Services published MAR Notice No. 37-525 pertaining to the proposed amendment and repeal of the above-stated rules at page 2528 of the 2010 Montana Administrative Register, Issue Number 20.

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

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

COMMENT #1: One practicing dentist commented on the proposed changes to the payment methodology for orthodontia services. The commenter suggests the department continue with full prepayment for all services. Monthly invoicing is problematic with patients going on and off Medicaid often and monthly billing is costly to the dental office.

RESPONSE #1: The department does not agree. The new payment methodology for orthodontia procedure codes is possible due to the publishing of an established unit value for such codes. In the past there were no published unit values for orthodontic procedure codes, necessitating the payment "by report" methodology. The department, by removing references to payment details for orthodontia is making it consistent with the payment methodology of all other dental procedure codes: fee-for-service. If the department pays a claim but subsequently discovers that the provider was not entitled to payment for any reason, the department is

entitled to recover the resulting overpayment, ARM 37.85.406(9). If prepayment was made in full and the patient never finished treatment, a recovery could also be made.

HMK Plus (Children's Medicaid) provides for 12 months of continuous coverage once eligibility is established. Further details can be found in ARM 37.79.120. The 12-month continuous coverage afforded to HMK Plus clients should alleviate the commenter's concern regarding the frequent migration into and out of Medicaid.

In regard to the cost of monthly billing, the department allows 365 days for a clean claim to be filed for payment. Multiple units of service could be billed at one time as opposed to monthly invoicing.

COMMENT #2: One practicing orthodontist commented that he is concerned about the long term commitment of the treatment plan and the potential loss of Medicaid. Another concern is that providers will have to keep track of a patient's eligibility. He is concerned that the proposed reimbursement method is a step backwards in reference to the amount of payment reimbursement.

RESPONSE #2: The department does not agree. As stated in the department's response to Comment #1, HMK Plus (Children's Medicaid) provides for 12 months of continuous coverage once eligibility is established. As a rule, providers are responsible to check eligibility monthly in the event a client's eligibility status has changed. The department has made available to providers several convenient methods for checking client eligibility. These methods can be found on the web at: www.medicaidprovider.hhs.mt.gov/pdf/clienteligibility.pdf.

The department's new payment methodology for orthodontia procedure codes is possible due to the publishing of an established unit value for such codes. In the past there were no published unit values for the orthodontic procedure codes, necessitating the payment "by report" methodology. The department, by removing reference to payment details for orthodontia makes it consistent with payment methodology of all other dental procedure codes: fee-for-service. Below are three comparative examples illustrating reimbursement before and after the rule change.

Current payment method Lump sum payment upfront			New Payment Method 1/2011 Payment is per procedure when performed			
#1						
D8080	$4986.00	24 mos.	D8080	$2980.25		
85%	$4161.60		D8670	$88.43/unit	24 units	$2122.32
			D8680	$275.10		
			Total	$5377.67		

#2						
D8080	$3792.00	18 mos.	D8080	$2980.25		
85%	$3223.20		D8670	$88.43/unit	18 units	$1591.74
			D8680	$275.10		

			Total	$4846.84		

#3						
D8060	$2300.00	12 mos.	D8080	$1211.75		
85%	$1955.00		D8670	$88.43/unit	12 units	$1061.16
			D8680	$275.10		
			Total	$2548.01		

COMMENT #3: The executive director of a dental professional association commented on the potential for ineligibility during the long treatment phase and the association's concern for denied claims. The commenter is concerned that providers will be providing care without payment.

RESPONSE #3: The department does not agree. As discussed in responses to comments #1 and #2, the 12-month continuous coverage afforded to HMK Plus clients should alleviate the commenter's concern regarding frequent migration into and out of Medicaid. In the event a client does become ineligible for Medicaid services, they are then responsible to pay their medical bills directly. It is essential that providers establish and frequently check a client's eligibility status.

DEPARTMENT COMMENT #1: The department intends to adjust the school-based services fee schedule on January 1, 2011 and again on April 1, 2011. This is necessary to keep pace with the American Recovery and Reinvestment Act (ARRA) adjustment to the Federal Medical Assistance Percentage (FMAP) for the state of Montana. The FMAP rate will be adjusted to 74.99% in January and again in April to 72.99%.

RESPONSE #1: The department's school-based fee schedule cited in ARM 37.86.2207(9) will be updated in January 2011 and again in April 2011.

4. The department intends the rule amendments to be applied effective January 1, 2011.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State December 13, 2010

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

In the matter of the adoption of New Rule I (38.3.1505) pertaining to motor carrier authority recognition	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 23, 2010, the Department of Public Service Regulation, Montana Public Service Commission published MAR Notice No. 38-2-209 pertaining to the proposed adoption of the above-stated rule at page 2179 of the 2010 Montana Administrative Register, Issue Number 18.

2. A public hearing was held on November 10, 2010, to consider the proposed adoption. Nineteen people offered verbal comments at the hearing. Two written comments were received by the November 10, 2010 deadline.

3. The department has adopted New Rule I (38.3.1505) as proposed.

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

COMMENT NO. 1: Jesse Rumble, Ron Kindsfather, Marc Rold representing the Montana Chauffeured Transportation Association (MCTA), and Kirk Hennefer commented limousine authorities allow a separate and distinct type of service. Jesse Rumble commented a certificate of public convenience and necessity without a limousine limitation should not be allowed to operate a limousine service.

RESPONSE: The department acknowledges that a certificate of public convenience and necessity limited to limousine service allows a motor carrier to provide transportation service at rates not subject to approval by the department. Generally, certificates of public convenience and necessity contain three types of authority including: 1) authority that permits a specific activity; 2) authority that prohibits specific activity; and, 3) authority that permits general activity with no specific prohibitions. The department has no basis for inserting limitations in existing certificates of public convenience and necessity. The department is not persuaded a limitation on a certificate of public convenience and necessity that limits an authority to limousine type services is required to operate a limousine type service if an operator has an authority broad enough to include limousine type services.

COMMENT NO. 2: Jesse Rumble and Marc Rold representing the MCTA commented the adoption of this rule would grant additional operating authority to motor carriers with passenger certificates of public convenience and necessity that are not limited to either a taxi or limousine service.

RESPONSE: The adoption of New Rule I does not create new certificates of public convenience and necessity or grant any additional authority to holders of current certificates of public convenience and necessity. The rule addresses authorities that were previously granted that did not place a limitation on the type of service provided. The rule clarifies how the authorities should be interpreted for administrative and enforcement purposes.

COMMENT NO. 3: Jesse Rumble and Marc Rold representing the MCTA commented the department should only grant authority to the extent need is established and the proposed rule grants additional authority to passenger motor carriers without the burden of proof necessary to establish need.

RESPONSE: The department grants certificates of public convenience and necessity based on the need proven by a motor carrier applying for a certificate of public convenience and necessity and if applicable, testimony taken at a public hearing. The language in the certificate of public convenience and necessity issued to a motor carrier reflects the department's findings. The department is not persuaded additional authority is granted by adopting the proposed rule.

COMMENT NO. 4: Jesse Rumble and Marc Rold (individually), and Marc Rold representing MCTA commented the department has not historically allowed limousines to protest or intervene in requests for new certificates of public convenience and necessity that authorize taxi service.

RESPONSE: The department has not identified an occurrence where a written protest or intervention was rejected by the department where the type of passenger service requested on the certificate of public convenience and necessity was different from the protestant's authority.

COMMENT NO. 5: Al Guay, Bob Young, Vance Vanderpan, Carrie Pintar, Dan Martin, Mike Hruska, Sue Young, Markus Kirchmayr, Dave Jackson, Ryan Kulesza, and KARST Stage, Inc. commented existing certificates of public convenience and necessity should not be restricted retroactively and suggested future certificates of public convenience and necessity be issued with language that clarifies the type of service provided.

RESPONSE: The department agrees that existing certificates of public convenience and necessity should not be restricted retroactively as noted in the response to Comment No. 1.

COMMENT NO. 6: Doug Mood commented certificates of public convenience and necessity have an inherent monetary value based on the operating authority granted by the certificate of public convenience and necessity and the ability of a motor carrier to transfer or lease a certificate of public convenience and necessity. Further, Doug Mood commented the department should not adopt a rule that would disrupt the values of the existing certificates.

RESPONSE: The department understands the existing certificates of public convenience and necessity have an inherent monetary value. The proposed rule clarifies the scope of authority on existing certificates thereby clarifying the value of the existing certificates.

COMMENT NO. 7: Ron Kindsfather commented the department should define the terms taxi and limousine based on the type of service each provides.

RESPONSE: Defining the terms taxi and limousine are beyond the scope of this proposed rule. However, the department may consider adopting rules that define terms such as taxi and limousine in the future.

COMMENT NO. 8: Kirk Hennefer and Al Guay commented the department should consider dormancy and either cancel or restrict existing certificates of public convenience and necessity based on whether a motor carrier is fully utilizing their operating authority.

RESPONSE: Dormancy as it relates to existing certificates of public convenience and necessity is beyond the scope of the proposed rule.

/s/ Al Brogan
Al Brogan
Rule Reviewer

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

Certified to the Secretary of State, December 13, 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 AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010, the Department of Public Service Regulation published MAR Notice No. 38-2-210 pertaining to the proposed amendment of the above-stated rules at page 2537 of the 2010 Montana Administrative Register, Issue Number 20.

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

3. No comments or testimony were received.

/s/ AL BROGAN
AL BROGAN
Rule Reviewer

/s/ GREG JERGESON
GREG JERGESON, Chairman
Department of Public Service Regulation

Certified to the Secretary of State, December 13, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.22.109) and amendment of ARM 42.22.101, 42.22.105, and 42.22.110 relating to centrally assessed property	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 9, 2010, the department published MAR Notice No. 42-2-846 regarding the proposed adoption and amendment of the above-stated rules at page 1977 of the 2010 Montana Administrative Register, issue no.17 and subsequently on October 28, 2010 at page 2542 of the 2010 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 22, 2010, to consider the proposed adoption and amendment. Oral and written testimony was received at the hearing and additional written comments were received prior to December 3, 2010, which was the date set for close of comment. Those comments and responses are provided in 4.

3. The department determined it would be beneficial to provide an Economic Impact Statement (EIS) to the Revenue and Transportation Interim Committee concerning the subject of these rules and at the September 16, 2010 Committee meeting the department advised the members that the EIS would be prepared and presented to the Committee at their next scheduled meeting, which was set for November 18 and 19, 2010. On November 17, 2010 the department presented the EIS to the Committee.

The information that follows is the contents of that Economic Impact Statement:

The department proposed in Notice 42-2-846 one new rule and amendments to three existing rules. With the exception of one item, the purposes of this proposed set of rules are as follows:

(a) To place established practices and procedures of the department with regard to centrally assessed property in rule form to comply with judicial interpretations of MAPA.

(b) To make information on department valuation methodologies and procedures publicly available in an authoritative reference document.

(c) To reduce taxpayer uncertainty about and misunderstanding of definitions and procedures, and

(d) To reduce time and money spent and uncertainty and risks associated with re-litigating settled issues.

The purposes of the proposed amendment replacing the biennial review of default percentages for intangible personal property deductions with an open process for taxpayer recommendations are as follows:

(a) To provide for greater taxpayer flexibility, convenience and clarity in submitting information or proposals to the department with regard to intangible personal property default percentages, and

(b) To bring the existing rule into alignment with department practice.

The proposals in this notice do not change any department practices or decisions concerning property assessments for any centrally assessed taxpayer and therefore would not have changed any assessments issued since 1999. Thus, the proposals do not have a direct effect on property assessments for any taxpayer.

The proposed rule and amendments can be divided into five distinct changes:

Change 1 - The proposed new rule would adopt the 2009 Western States Association of Tax Administrators – Committee on Centrally Assessed Properties appraisal handbook and the National Conference of Unit Valuation States standards.

For years, the department has followed the methods and standards in the latest versions of these documents in valuing centrally assessed property. The proposed rule formalizes and makes public this existing department policy. The department's assessment methods and standards have been affirmed by a number of court and State Tax Appeals Board decisions. (See, for example, *Montana Department of Revenue v. PPL Montana, 340 MT 124 (2007) and Qwest Corporation v. Department of Revenue, STAB No. SPT-2008-2*.)

Change 2 - The proposed amendments to ARM 42.22.101 and 110 clarify the definition of "intangible personal property" in 15-6-218(2), MCA and the application of that definition. The proposed amendment to ARM 42.22.101 defines the term "goodwill" and adds details to the definition of "intangible personal property" in 15-6-218(2), MCA. Section 15-6-218, MCA exempts intangible personal property from property taxation.

ARM 42.22.110 gives default percentages of centrally assessed companies' property that is assumed to be intangible personal property and a process for a company to propose a higher percentage. Proposed new (4) in ARM 42.22.110 specifies that in this rule, the term "intangible personal property" has the meaning given in 15-6-218(2), MCA and the proposed amendment to ARM 42.22.101.

The definitions in the proposed amendments embody established department practice and have been affirmed by the State Tax Appeals Board (See *Qwest Corporation v. Department of Revenue, STAB No. SPT-2008-2*). When department practices have been litigated, and STAB has either affirmed those practices or directed the department to change its practices, the department often places those practices in rule. The department's rules then give taxpayers a single authoritative reference for these settled practices.

Change 3 - The proposed amendment to ARM 42.22.105 clarifies reporting requirements for centrally assessed companies. Section 15-23-103, MCA and other sections require owners of centrally assessed property to make annual reports to the department. The department's long-standing procedure is for centrally assessed companies to file annual reports to the department's central office in Helena rather than to file reports with each county. The proposed amendment clarifies that it is the department's determination that a company's property is centrally assessed, subject to confirmation based on the information received, that triggers this reporting requirement. The amendment also specifies that a taxpayer that disagrees with the

department's determination that its property is centrally assessed must continue to meet the reporting requirements for centrally assessed property while it seeks an informal review or appeals the department's determination. The proposed amendment places this established procedure in rule.

Change 4 - Existing ARM 42.22.110(2) states that, for railroad property valued using the method set out in 15-23-205, MCA, the default deduction for intangible personal property is 5 percent. The proposed amendment clarifies that the default deduction for railroad intangible personal property is 5 percent regardless of the valuation method used.

Section 15-23-205, MCA gives detailed directions for how railroad property is to be assessed, using the previous year's value and formulas for calculating an annual change factor. However, there are situations where other methods must be used. Another method must be used for a new railroad. Also, Subsection 15-23-205(6), MCA directs the department to adjust assessments for unusual operating events or one-time financial changes. This requires using other information and valuation methods in addition to or instead of the ones given in 15-23-205, MCA.

This amendment reflects current department practice. If the proposed amendment is adopted, ARM 42.22.110 will still give taxpayers the ability to suggest changes to the default percentage or to make the case that the actual percentage for their property is higher than the default percentage.

Change 5 - The proposed amendment replacing existing ARM 42.22.110(3) with new ARM 42.22.110(5) replaces the requirement for biennial meetings to review default percentages for intangible personal property deductions with an open-ended process for taxpayer recommendations.

From 1999, when ARM 42.22.110(3) was adopted, until 2009, the department did not consistently hold the meetings it requires. The department did hold an industry meeting on June 12, 2009, at the request of Qwest and other telecommunication providers. The department's standing process is to discuss the intangible personal property exemption provision with each taxpayer upon a taxpayer request. For many of the large multi-state taxpayers this discussion occurs annually.

As noted above, the purpose of the proposed amendment is to make the rules and department practice consistent and to provide taxpayers with flexible, convenient and clear opportunities to suggest changes to default intangible percentages.

Changes 1 through 4 would place existing department procedures and currently-used definitions in rule. The impacts of these proposed changes are considered together. The impacts of Change 5 are considered separately.

Section 2-4-405(2)(a), MCA - Class of persons affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

All proposed changes in this notice will directly affect owners of centrally assessed property and indirectly affect other property tax payers and taxing jurisdictions. There are 129 centrally assessed property taxpayers. The proposed rule will benefit 498,400 other property taxpayers and the more than 1,800 local governments and school districts by reducing the fiscal uncertainty associated with

the re-litigation of settled issues in centrally property taxation. All property taxpayers, including centrally assessed property taxpayers, and local governments will benefit from clear and certain rules for the administration of property taxes in this area.

Alternatives Considered for This Economic Impact Statement:

Proposed Changes 1 - 4 - No action:

In addition to no action, the department considered other methods for informing taxpayers of existing procedures and terminology. The alternatives considered are:

(a) Explain methodologies and procedures in meetings with individual taxpayers; and

(b) Publish taxpayer guidance in a pamphlet and on the state web-site.

Proposed Change 5 - The alternatives considered are:

(a) Hold meetings every two years as required by the rule; or

(b) No action: Continue to hold meetings only as requested by taxpayers without changing the rule.

Alternatives Not Considered for This Economic Impact Statement:

Under the law governing economic impact statements, alternatives that are outside the purposes of a proposed rule are not subject to analysis in the statement. Notice 42-2-846 fulfills the department's duty to place established practices into rule form and, thus, does not propose any changes to existing department procedures or methodologies. If this notice were proposing substantive changes to department methodologies, it would be appropriate to consider alternative changes, along with the option of leaving procedures and methodologies unchanged. However, since no substantive changes are proposed, alternatives involving substantive changes were not considered for this economic impact statement.

Other options for getting information to taxpayers were briefly considered and discarded because they would be less effective, more expensive, or both.

Comparison of Alternatives: Proposed Changes 1 - 4:

Section 2-4-405(2)(b), MCA - A description of the probable economic impact of the proposed rule upon affected classes of person, including but not limited to providers of services under contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact.

The proposed rule changes will not affect the department's assessment of any taxpayer's property or the state and local property taxes on that property because the proposed changes simply place existing assessment practice into rule.

Compared to no action, each of the alternatives could reduce the probability that taxpayers would waste resources on unsuccessful appeals or procedural moves. They could reduce appeals that are based on uncertainty about department methodologies and procedures and they could reduce appeals that are based on the hope of overturning established methodologies and procedures.

A taxpayer's cost of unsuccessfully appealing an assessment is largely determined by the taxpayer. It will depend on the complexity of the appeal, the staff

and outside consultant time the taxpayer devotes to the appeal, and how far the taxpayer pursues the appeal. For a complex appeal that is pursued through STAB and the courts, fees for legal representation and expert witnesses can run into the hundreds of thousands of dollars.

It is impossible to quantify the likely reduction in resources wasted on unsuccessful appeals because it depends on future taxpayer actions. Based on history, it is likely that some owners of centrally assessed property will appeal their assessments each year regardless of which alternative is adopted. However, the alternatives may have different effects on the number of unsuccessful appeals. This makes it possible to rank the alternative's likely effects.

Publishing information in rules does not guarantee that taxpayers will initially be exposed to it or understand it, but does give taxpayers a permanent reference document they can consult at any time. In addition, rules convey information with greater force and authority than the other alternatives. For example, a taxpayer knows that a definition in rule has the force of law. A taxpayer may or may not know that a definition conveyed in some other format is backed by a STAB or court decision.

Most owners of centrally assessed property with a significant amount of property in the state meet with the department at least annually. Spending additional time explaining department procedures and methodologies in these meetings could do the most to increase taxpayer knowledge in the short run. These meetings would give the department the opportunity to explain its methods and procedures in detail and give taxpayers the opportunity to ask questions. On the other hand, these meetings may cover many topics, and taxpayers may not absorb all of the information they hear. Over time, the knowledge transferred in these meetings is likely to decay, as people change jobs or simply forget. Also, taxpayers may be less willing to take information provided informally as authoritative and may be more willing to challenge established procedures in an appeal if they are not in the rules.

Publishing information in a pamphlet mailed to all owners of centrally assessed property and on the department website would not guarantee that taxpayers would be exposed to it or understand it. This alternative would give taxpayers a permanent reference source, but taxpayers may be less likely to know how to find it than if it were in rule. Taxpayers also would be less certain that the information is authoritative. When the department, and other states' revenue agencies, publishes taxpayer information documents, it generally is to explain the law and rules in a general and non-technical way, not as a replacement for rules.

Compared to no action, all of the alternatives could reduce the wasting of taxpayer resources through unsuccessful appeals. Providing additional information on department procedures and methodologies in meetings with taxpayers may do more to reduce taxpayer uncertainty about those methodologies and procedures in the short run for taxpayers who meet with the department. However, not all taxpayers appear to be interested in meeting with the department on a regular basis, and this alternative would not provide any information to those who do not. The proposed rule changes will do more to inform taxpayers in the long run.

The proposed rule change would do the most to reduce unsuccessful appeals due to taxpayer's continuing to re-litigate issues that have already been decided by

STAB or the courts.

None of the alternatives will deter taxpayers who appeal as a matter of course.

Placing the department's assessment methodologies and procedures in rules would reduce the risk that future STAB or court decisions would depart from precedent and overturn existing department methodologies and procedures. A STAB or court decision overturning established methodologies could result in significant, unexpected shifts of property taxes between groups of taxpayers. Small businesses and other taxpayers will benefit from this reduction in risk. The other alternatives will not result in this risk reduction.

None of the alternatives will affect sate contracts or directly affect businesses with state contracts in their role as state contractors.

Section 2-4-405(2)(c), MCA - The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

No expected fiscal impacts. None of the alternatives, including the proposed rules and no action, will affect the department's valuation of any property. Because they would not affect assessments, they are not expected to affect state or local property tax revenue.

Difference in Fiscal Risks.

One of the purposes of the proposed rules is to reduce re-litigation of settled issues. When parties continue to bring forward the same issues, STAB and the courts generally follow precedent. In rare cases, they do not. This can have unexpected consequences for all parties.

Placing definitions and procedures in rule gives them the force of law and further reduces the chance that STAB or the courts will depart from precedent, with potentially large consequences for all taxpayers and taxing jurisdictions. Adopting the proposed rules would increase stability and certainty in tax administration. The other alternatives would not have this effect.

Differences in Department of Revenue Costs.

The alternatives differ in their cost of implementation. The cost of filing rules with the Secretary of State's office is $50 per page. When formatted, the proposed rule is likely to be four or five pages, for a filing cost of $200 to $250. Development of the proposed rules involved time from a number of department staff. Staff involved did not track their time on this project separately, but on the order of 50 to 100 hours were spent on these rules. The average compensation of staff involved, including benefits, was no more than $30 per hour. The cost of staff time was therefore on the order of $1,500 to $3,000.

Spending extra time in periodic meetings with taxpayers explaining department procedures and valuation methodologies would have a cost in terms of diverting staff resources from other uses, but would not have a direct monetary cost. Staff time can be valued at average compensation, including benefits, which is a little less than $30 per hour. If department staff spent an additional 100 hours per year explaining department procedures and methodologies, the cost would be about

than $3,000. At a discount rate of 5 percent, the present value of incurring this cost indefinitely would be less than $60,000.

Publishing and distributing 500 copies of a taxpayer information pamphlet and putting an additional page on the department website would cost about $530. In following years, updating the pamphlet and web page and mailing 500 pamphlets would cost about $530. Mailing the pamphlet with no updates would cost about $320. At a discount rate of 5 percent, the present value of annual mailings and maintaining a web page would be between about $6,600 and $10,600, depending on how often the taxpayer information pamphlet and web page were revised.

Section 2-4-405(2)(e) and (f), MCA - An analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule and an analysis of any alternative methods for achieving the purposes of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule and an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

Neither of the other alternatives would accomplish all of the purposes of the proposed rules.

All alternatives considered would provide information to taxpayers, and hopefully reduce the waste of resources on unsuccessful appeals due to taxpayers not knowing or not understanding department procedures and assessment methodologies.

Only the alternative of placing information in the department's rules provides taxpayers with an authoritative reference document and has the potential to reduce the waste of resources re-litigating settled issues.

Section 2-4-405(2)d), MCA - An analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction.

Benefits: To some extent, all of the alternatives may result in fewer resources being wasted on unsuccessful appeals of centrally assessed property valuations. This benefit cannot be precisely quantified because it depends primarily on future taxpayer choices. It could be very small or it could be up to hundreds of thousands of dollars per year.

Differences in benefits between alternatives cannot be quantified, because they depend on taxpayer's future choices. All of the alternatives could reduce appeals caused by taxpayers not knowing or misunderstanding assessment methodologies and procedures. The proposed rules may also reduce appeals attempting to re-litigate settled issues.

Costs: The process of developing, adopting, and publishing the proposed rules would have a one-time cost to the department of no more than $3,000. Interested parties' costs of participating in the process would probably be of the same order of magnitude. Total costs are likely to be less than $10,000.

Additional time spent explaining assessment methodologies and procedures in meetings with taxpayers would have an annual cost in department staff time of $3,000 or less. The cost of additional time for taxpayer representatives would be in

the same range. Total annual costs would be $6,000 or less. The present value of spending extra time explaining methodologies and procedures to taxpayers indefinitely would be $120,000 or less.

Publishing a taxpayer guide, distributing it annually, and posting it on the department website would have annual costs between $320 and $530. Taxpayers who study the taxpayer guide annually might spend about as much time on it as they would spend having the information explained in person, but some would probably spend little or no time on it. The present value of department and taxpayer costs of pursuing this option indefinitely would be between about $7,000 $70,000.

Risk: Adopting the proposed rules would reduce the risk that STAB or a court would overturn precedent and direct the department to change existing methodologies and procedures. If this happened, assessments, and therefore taxes, could decrease or increase for the directly affected property owners. This would shift local property taxes from one group of taxpayers to another and either reduce or increase total state property taxes. There would be a redistribution of benefits and costs, but no net change in the total. The benefits to taxpayers whose taxes were reduced would be offset by the cost of higher taxes on other property and the change in either services provided by public schools and the university system or non-property tax funding of education.

Section 2-4-405(2)(g), MCA - A determination as to whether the proposed rule represents an efficient allocation of public and private resources.

None of the alternatives would be likely to affect taxes paid by any taxpayer or state or local property tax revenue. Where they differ is in the public and private costs incurred in reaching the same outcome and in the risks they impose on state and local revenues and other taxpayers. The proposed rules have lower present value of costs than the other alternatives and may do more to reduce the waste of public and private resources on unsuccessful appeals of property values based on lack of information, misunderstanding, or the desire to keep litigating settled issues. The proposed rules are the only alternative that promotes stability and certainty in taxation by reducing the risk that established procedures and valuation methodologies will be overturned.

Comparison of Alternatives: Proposed Change 5:

Section 2-4-405(2)(b), MCA - A description of the probable economic impact of the proposed rule upon affected classes of person, including but not limited to providers of services under contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact.

None of the alternatives would affect tax assessments or taxes on any centrally assessed property.

If the department began holding the biennial meetings required by the existing rule, taxpayers who chose to attend would incur additional costs. Staff, and possibly consultants, would spend time in the meetings. Many of them would have to travel to Helena, and some would need to stay overnight in Helena. Time for consultants and some employees would represent an additional financial cost. The cost for other employees would come from diverting their time from other duties.

As an example of possible costs, suppose fifty industry representatives attended the meeting. Suppose that, on average, they spent eight hours attending the meeting and traveling to and from Helena, that their average compensation was $75 per hour, and that their average travel cost was $200. Then, participating taxpayers would incur costs of $40,000 to attend the meeting.

Actual costs would be higher or lower depending on how many taxpayers participated and who represented each taxpayer at the meeting. If only a few taxpayers participated, the cost could be a few thousand dollars. If most taxpayers participated and many sent multiple representatives, the cost could be a few hundred thousand dollars.

Section 2-4-405)2)(c), MCA - The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

None of the alternatives would affect state or local revenue.

No action would have no direct costs. It would expose the state to an unknown risk from the fact that the department is not following a procedure that is in rule.

Holding the meetings required by the existing rule would involve some costs for the department. The biennial meetings probably would be held in a state facility. If expected attendance were too large for any state-owned meeting rooms, the department would need to rent a facility. Several department staff would need to attend the meeting and spend time preparing for it. Staff time would also be spent on reviewing any information submitted at the meeting. Depending on the amount and type of information submitted staff time could vary from insignificant to requiring a significant amount of analysis and research time. Facility and staff costs would be absorbed in the existing department budget, and the cost would take the form of diverting staff time from other uses, and possibly the cost of renting a facility.

While the rulemaking process has some costs, the cost of adding this proposed change to a notice containing other changes is minimal.

Section 2-4-405(2)(e) and (f), MCA - An analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule and an analysis of any alternative methods for achieving the purposes of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule and an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The no-action alternative would not achieve the purpose of making the rule and department practice consistent.

Both the proposed rule and the alternative of holding the biennial meetings required by the existing rule would make the rule and department practice consistent. Holding the biennial meetings would have additional costs of thousands to hundreds of thousands of dollars every two years.

Section 2-4-405(2)(d), MCA - An analysis comparing the costs and benefits of the

proposed rule to the costs and benefits of inaction.

Both the proposed rule and holding the meeting required by the existing rule would have the benefit of reducing risk associated with having department procedures that are not consistent with department rules. This benefit has not been quantified in money terms.

The cost of adding the proposed amendment to a notice including other proposed rule changes is minimal.

The cost of holding the biennial meetings required by the current rule would be in the thousands to low hundreds of thousands of dollars. Most of these costs would be incurred by taxpayers who participated in the meetings.

Section 2-4-405(2)(g), MCA - A determination as to whether the proposed rule represents an efficient allocation of public and private resources.

Of the alternatives considered, the proposed rule accomplishes the goal of making department procedures and the rule consistent while continuing to give taxpayers the opportunity to suggest changes to default intangible percentages at the lowest cost to the department and interested taxpayers.

Section 2-4-405)2)(h), MCA - Quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and an explanation of how the data was gathered.

Costs of providing information to taxpayers were estimated by the department's Communications Officer based on the cost of recent mailings and web-site development. Department staff time required for the rule-making process was estimated by the department's rules coordinator. Hourly staff costs were provided by the department's budget analyst. The range of potential department and taxpayer costs of participating in property tax appeals were estimated by department Centrally Assessed Property staff based on department costs of recent cases, including hourly fees for expert witnesses and outside counsel.

4. Oral and written testimony received at the hearing, and subsequent to, is summarized as follows along with the response of the department:

COMMENT NO. 1: Definitions - Mr. Eric Feaver, representing the Montana Education Association and Montana Federation of Teachers (MEA-MFT); Mr. Bob Strong representing AT&T; Ms. Nancy Riedel and Mr. Michael Mupo, representing Verizon Wireless; Mr. Roy Adkins, representing Qwest Communications; Mr. Mark Baker and Mr. Jerry Lambert representing Bresnan Communications; and Mr. Michael Green and Ms. Mary Whittinghill, representing the Montana Taxpayers Association commented on the definitions.

Mr. Eric Feaver stated the MEA-MFT supports the proposed rules for valuing centrally assessed property. He stated that these rules narrowly define "goodwill" to keep the intangible exemption from swallowing centrally assessed values, ensure that the department determines what properties file centrally assessed property forms, and establish third party standards for valuation methods.

He commented that the department is right to keep the exemption for intangible property narrow and sharply defined. Exempting what centrally assessed

taxpayers may want to call intangible creates a loophole that the well-funded will exploit to shift tens of millions of dollars in local property taxes to homeowners and small businesses.

Mr. Feaver said the department is also on the right track when it adopts valuation standards. Both the department and centrally assessed taxpayers should know where they stand in disputes over value. Leaving things uncertain only benefits taxpayers with the determination and means to litigate.

Mr. Strong commented that the definition of "intangible" contradicts with the Montana statute and is probably unnecessary and possibly could be illegal.

Ms. Riedel commented that the proposed definitions would lower the exempt intangible value too low. She continued that using the book value for intangible personal property for the exemption would be inaccurate because the additional market value over book value for intangible personal property would not be part of the exemption.

Mr. Mupo stated that the definition of "goodwill" and "intangible personal property" do not need to be redefined because 15-6-218, MCA, clearly provides that a broad array of intangible assets are exempt from taxation. He suggested that instead of attempting to narrow the breadth of the statutory exemption, it would be more appropriate to clearly define the type of documentation that the department will accept to support the taxpayer's claim of intangible value. Mr. Mupo stated "it is beyond the DOR's authority to 'instruct the taxpayer on what is included in the taxable value and what is not'." That authority rests with the Montana legislature. Thus, for example, the proposal to limit goodwill to "booked or accounting goodwill" violates the statutory mandate by purporting to limit exempt goodwill to only the booked goodwill that is recorded subsequent to an acquisition transaction. This proposal contradicts not only the statutory goodwill exemption but also violates the requirement of taxing on the basis of current market value - which will not necessarily accord with the purported regulatory attempt to limit the valuation of goodwill to a booked amount, which is based on historical costs and prior transactions. He stated that "courts throughout the country have held that when intangibles are by statute exempt from taxation, the best way to [a] sic value the taxable, tangible personal property is by the use of a cost approach. Montana statutes are clear that intangibles are exempt and it is the DOR's responsibility to reasonably and fairly review and examine evidence taxpayer's present to support the value of the intangible property." Mr. Mupo suggests the portion of the rules relating to exempt intangibles should be deleted as it does not follow the statute or accepted appraisal practices.

Mr. Adkins stated that Montana code clearly contains intangible exemptions that are very broad. They are the broadest types of intangible exemptions that they normally see in a multi-state operation where they function. He further stated that the department currently has a rule which affects the spirit of this statute as well and indicates that for each unit valuation indicator that includes intangible property it should not be relied upon. This is the scheme currently being modified by the adoption of these rules.

Mr. Adkins stated that Qwest believes the definition of intangible personal property in the rule is inconsistent with Montana law, concerning separability. He continued that the definition of intangibles in 15-6-218(2)(a), MCA is broad and that

statutory definition is inconsistent with the proposed rule definition. Specifically, the statute states that licenses and software are exempt from tax but under the proposed rule any intangible asset that is separable, without causing harm to the unit is exempt. Mr. Atkins contends that removal of licenses or software destroys the value of the unit. Mr. Adkins stated that if the proposed standards regarding separability do not apply with respect to the property actually listed in the statute, they should not apply to property not listed that is commonly recognized as intangible property everywhere else.

Mr. Adkins addressed the definition of "goodwill" and stated that it is unreasonably restrictive and inconsistent with the statute. He stated for example, "goodwill" is not an asset that could be sold separately from the business enterprise - it is part and parcel of the going concern with which it is associated. It is included in 15-6-218, MCA, as a specific intangible asset that is exempt from tax. Then the definition that is incorporated in this proposed rule is not consistent with Montana law. Both "software" and "licenses" are specifically listed in 15-6-218, MCA as qualifying intangible assets. The proposed rule would completely contradict the statute, and would purportedly disqualify assets that are specifically referenced as being exempt. He further stated that to understand the effect of this proposed rule, it is necessary to first understand what goodwill is, and, how and when, it is recognized for financial statement purposes. Goodwill is customarily considered to be the value of a company's ability to achieve returns that cannot be attributed to specific assets. It is the value of a business over and above the value of its "hard" or identifiable assets; thus it is recognized within the intangible exemption in the Montana statutes. Goodwill is derived from such intangible attributes as history and reputation - the ability to obtain new and return customers or business as a result of the way it has conducted its business over time. For financial accounting purposes, goodwill is only recognized when one company acquires another company. When this occurs, Financial Accounting Standard (FAS) 141 requires an allocation of the purchase price among the values of all the acquired assets. Any value that remains after allocating value to tangible and other intangible assets is assigned to goodwill -- consistent with the idea that is represents this residual element of value that relates to the operation of the business. There is nothing in 15-6-218, MCA that limits the recognition of goodwill to the cost approach.

Mr. Adkins also stated, if the proposed rule cannot pass scrutiny with intangible assets that are specifically included as exempt within the statute, there is no reason to believe it would be appropriate for assets that are not so referenced. Section 15-6-218, MCA defines intangible property as "including but not limited to" certain listed assets. Those assets therefore are mere examples of property that is considered intangible.

Mr. Adkins stated he finds it ironic that the department would want companies to assign a certain amount of income to intangible assets when states and the IRS do not allow for that assignment, as the assigning of income to intangibles provides companies the ability to assign intangibles to tax favorable states or countries thereby allowing some of the revenue to escape income taxes.

Mr. Adkins further stated that the department has a rule that is currently in effect (ARM 42.22.110) on the intangible property exemption that paraphrases the mandate of the statute that if the unit method includes any intangible value, that

value "must" be removed. This rule identifies specific percentages of "default" intangible values for different industries, in each of the three valuation approaches, and uses 15 percent for the telecommunications industry. It puts the burden on the taxpayer to establish that the intangible property value exceeds this default percentage. Thus, even though the statute and the department's own rule state clearly that the department may not use the valuation approach if intangible property cannot be removed from that approach, the department will still use the approach unless the taxpayer proves the intangible property value exceeds this arbitrary 15 percent limit.

Mr. Adkins recommended the department reject the proposed rules and follow the mandate of the statute that if intangibles appear in a valuation approach - such as the income or market approach - the approach should not be used unless all that (intangible) value can be removed. Section 15-6-218, MCA requires that all intangible value be removed - not just 15 percent. ARM 42.22.110 requires the department "to the extent that each unit valuation indicator includes intangible personal property it shall not be relied upon unless such value of intangible personal property is excluded or removed." The rule does not say that a method may be relied upon if only 15 percent of the intangible property value is removed. It requires that all the intangible value be removed.

Mr. Baker commented that the rules, especially the definition of intangible, are contradictory to statute. He stated that 15-6-218, MCA, identifies certain property as intangible property including such things as contracts and franchises. If these rules are put up again the four point test that the department is proposing in its rules that perhaps contracts, franchises, would not qualify as intangible personal property, which is clearly contradictory to the statutory language.

Mr. Lambert offered a comment that the proposed definition for "intangible personal property" should not be adopted because it is unlawfully imposing property tax on intangible property that is exempt from tax under Montana law. This proposed regulation places a new condition on the ability of taxpayers to avail themselves of the exemption in violation of the clear intent of the Montana legislature. He stated the rule seeks to unlawfully narrow the scope of the exemption by imposing new conditions for intangible property to qualify for the exemption.

Mr. Lambert further stated that application of these new requirements to intangibles, that have historically been statutorily exempt from Montana property taxes, illustrates how they directly conflict with the statute.

He stated that "goodwill" is not the only item that the legislature exempted from property tax that the department now seeks to tax in the proposed rules. Franchises and customer contracts are also examples of intangible personal property that is exempt from property tax under 15-6-218(2)(a), MCA. These could also fail the department's new test for exempting intangibles. As a result of the proposed rule, assets that statutorily qualify as exempt intangible property could now be subject to a new property tax. The rule creates a significant administrative burden for both the taxpayers and government.

Mr. Green stated that during the 2002 special legislative session, Senator DePratu questioned the department as to whether the same definitions contained in these rules needed further clarification and he was told that clarification of intangible

personal property was not necessary at that time.

Mr. Green stated equalization issues will develop if the department limits goodwill to the booked amount.

Ms. Whittinghill asked the department to explain why "booked goodwill must be present on the subject properties' financial statements" in order to qualify for the exemption from taxation provided in 15-6-218, MCA. Further, she asked how "booked goodwill" and "intangible personal property" as stated in the proposed rule are consistent with and not more restrictive than, legislative intent as expressed in 15-6-218, MCA.

Ms. Whittinghill asked for an explanation for the term "contributory value" and the specific methods the department expects to employ when quantifying the "contributory value" of intangible personal property.

She asked the department to provide some examples of intangible personal property that the department believes to be "capable of earning an income as a standalone entity or apart from the other assets of the unit."

She asked the meaning of the term "normal rate of return" as used in ARM 42.22.101(12)(d). Also, she asked for an explanation of the specific procedure or method the department intends to employ to determine whether taxpayer owned assets are generating returns equivalent to a "normal rate of return," at a rate below a "normal rate of return", or at a rate above a "normal rate of return."

She questioned how the department intends to measure the existence or lack of "excess revenues" for the purposes of ARM 42.22.101(12)(d). Also, how does "excess revenues" impact a taxpayer's "normal rate of return." She asked why expected net cash flows are not a more appropriate measure of returns as opposed to "excess revenues."

Ms. Whittinghill also asked what the department means when it uses the term "intangible value" in ARM 42.22.101(12)(d).

RESPONSE NO. 1: The department appreciates the comments and participation in this rulemaking process.

The department would like to thank Mr. Feaver for his comments supporting the proposed rules.

The department believes the proposed rules are necessary to inform taxpayers of the department's current and historic practices as it applies to the exemption of intangible personal property and the standards and appraisal methods the department uses in arriving at the fair market value of centrally assessed properties. The department does not believe the proposed definitions contradict the statute. Rather, the department believes that the definitions are consistent with the statutory language and support the legislature's intent.

Ms. Riedel, Mr. Strong, Mr. Mupo, Mr. Adkins, Mr. Baker, Mr. Lambert, Mr. Green, and Ms. Whittinghill each voiced several concerns with the department's proposed rule. In many cases, these concerns overlapped or were related. The department has attempted to identify certain key issues or concerns, attribute those concerns to the appropriate individual, and provide the department's response.

Intangible value versus intangible personal property - Mr. Mupo, Mr. Adkins, Mr. Baker, and Mr. Lambert generally stated that the department's proposed rule avoids the exemption found at 15-6-218, MCA and improperly taxes intangible

property or intangible value. The department respectfully disagrees and believes that those concerns are founded on the mistaken assumption that intangible personal property has the same meaning as intangible value. The department believes that there is a clear difference between those two terms—and that the legislature understood that distinction when enacting 15-6-218, MCA.

The unit method values an entire operating system as a going concern and integrated organic whole irrespective of where it is located and without functional or geographic division of the whole into its component parts. The appraiser values an integrated group of assets functioning as an economic unit without reference to each component part. The value determined pursuant to the unit method is meant to capture all the operating assets both tangible and intangible as a going business concern. ARM 42.22.101(30) and (31). The unit method of valuation has been long-accepted by both the United States Supreme Court and the Montana Supreme Court. See; *Adams Express v. Ohio State Auditor*, 165 U.S. 194, 220 (1897); *Pullman Co. v. Richardson*, 261 U.S. 330 (1923); *Western Union Telegraph v. State Bd. of Equalization* (1932), 91 Mont. 310, 7 P.2d 551, 138 Mont. 603, 611, 358 P.2d 55, 60; *Dep't of Revenue v. PPL Montana*, 2007 MT 310, ¶ 41, 340 Mont. 124, 172 P.3d 1241. Therefore, the legislature was clearly aware of the department's use of the unit method when it enacted 15-6-218, MCA, to exempt intangible personal property, rather than intangible value.

Section15-6-218, MCA specifically exempts intangible personal property from taxation; the statute contains no language exempting intangible value. The department cannot omit language the legislature included in 15-6-218, MCA (intangible personal property) and insert language (intangible value) that the legislature chose not to include. In addition, 15-8-111, MCA requires the department to determine the fair market value of centrally assessed property for property tax purposes. As noted above, the department employs the unit method to reach such a determination. Intangible value or intangible influences on value are not exempt and are rightfully captured in the fair market value and correctly taxed.

Thus, the department finds that its current practices, as reflected in these proposed rules, are consistent with and supported by 15-6-218, MCA, with regard to limiting the intangible deduction to intangible personal property.

A thorough discussion regarding intangible value verses intangible personal property is referenced in the Qwest STAB decision, which is in part referenced below:

"Further, intangible assets listed by Qwest are not the same as 'intangible person property.' By statute, 'intangible personal property' is not the equivalent of intangibles that exist above and beyond the tangible value developed by the cost methodology.

Intangible personal property indicates property which can be sold or an ownership interest that can be transferred. The term personal property indicates items that may be the subject of private ownership (real, personal, and mixed); that is, items such as money, goods, chattels, things in action and evidences of debt. See 1-1-205; 15-1-101(n); and 15-1-101(p), MCA. The majority of the Montana cases previously addressing intangible personal property did not address its definition. See *Lewis v. Puget Sound Power & Light Co.*, 2001 MT 145, 29 P.3d 1028.

By current statutory definition, 'intangible personal property' includes certificate of stocks, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, franchises, and goodwill. The intangible personal property statute does not include the terms customer relationships, intellectual property or marketing rights. While not prohibited by statute from [being] sic included, there is no evidence which demonstrates those items should be properly included as intangible personal property. There is no indication those items have been properly valued as personal property, with any indication of an ownership interest, or that they may be valued for sale purposes as required for valuation purposes. There is also no indication those items are not already included in a valuation of goodwill.

The general terms customer relationships, intellectual property, and marketing rights are too nebulous in this instance to be properly considered personal property that can be exempted from unit valuation. Qwest failed to provide the Department or this Board with credible data that would support such wide-ranging claims for deduction of intangible personal property." *Qwest v. Dept. of Revenue*, STAB SPT-2008-2, p. 30.

Taxpayer obligation to substantiate a claimed exemption with reliable data - Ms. Reidel, Mr. Mupo and Mr. Baker expressed concerns with the documentation to be supplied by a taxpayer to the department with respect to claiming a deduction in excess of the default deduction permitted under ARM 42.22.110.

If the unit value of centrally assessed property includes intangible personal property, that value must be removed from the unit value. Section 15-6-218(3), MCA. The department implemented ARM 42.22.110 through a negotiated rulemaking process which included the centrally assessed taxpayers, which provides a default intangible personal property, to administer the above provision of law. As part of this negotiated rulemaking process the taxpayers were guaranteed a minimum deduction for the intangible personal property exemption even if no intangible personal property is present within the unit value. If a company believes that its intangible personal property exceeds the default percentage, it may "propose alternative methodology or information at any time during the appraisal process and the department will give it full and fair consideration. If the department concludes that the value of intangible personal property is greater than that allowed in (1), the unit value will be decreased accordingly. In no event, however, will the value of intangible personal property be less than that allowed in (1)." ARM 42.22.110(2). The foregoing rule is consistent with the general principle of taxation that it is the taxpayer who bears the burden of proving an entitlement to a claimed deduction or exemption.

The department believes that the proposed rule specifies the type of information that a taxpayer should provide if it feels that the value of its intangible personal property exceeds the default deduction.

Because the department utilizes three approaches to value (cost, income and market), currently a taxpayer must provide information relating intangible personal property on an approach by approach basis. Intangible personal property information should be provided on a historical cost less depreciation basis for cost approach. Intangible personal property information should depict income streams for use in an income approach. Intangible personal property information should

depict the fair market value for use in a market approach. If the exemption request satisfies the proposed definition of intangible personal property and has value, the information should be made available by the taxpayer.

Reliance on booked goodwill - Mr. Green, Mr. Mupo, Mr. Adkins, and Ms. Whittinghill expressed concerns about the department's proposed rule respecting booked goodwill.

Similar to the discussion about supporting an intangible personal property deduction with reliable data, the proposed rule defines goodwill and requires that the supporting goodwill information be derived from a reliable source, namely the company's financial statements. The department does not believe that the definition is unduly restrictive or contradicts the statute. Rather, the department believes the definition to be consistent with the unit method of appraisal. Additionally, the department thought it necessary that the value of goodwill is evidenced in the company's books and derived from certified standards such as GAAP to eliminate the possibility that an entity might overstate their goodwill for property tax purposes.

The department will allow a deduction for goodwill in the income and market approaches if the taxpayer provides the income and/or market information attributable to the intangible personal property, and if the totality of the taxpayer's intangible personal property exceeds the default percentage provided for in ARM 42.22.110.

Mr. Green stated that equalization issues will arise if the department limits the exemption of goodwill to the booked amount. The department, respectfully, is unclear as to the concern that Mr. Green is expressing with this comment.

Miscellaneous comments - The department does not believe that removal of a license or software would ruin the value of the unit. The department agrees that the value of the unit may be different. A request for an exemption above the default deduction must meet the proposed definition of intangible personal property to ensure that it is personal property, and not intangible value or an influence on intangible value. Thus, the rule is not in conflict with the statute but rather supports its intent and is consistent with the department's longstanding practices.

The department does not agree that the value of contracts and franchises will necessarily lose their exemption because of the proposed rule. Contracts and franchises are specifically identified as intangible personal property in 15-6-218, MCA, and will be exempt from taxation based on the fair market value of the contracts and franchises.

Mr. Green commented that in 2002 the department stated that no further definition of intangible value or goodwill was needed. Due to the recent litigation that has, in part, focused on these terms, the department determined it was necessary to define them in rule in order to inform the public of the department's position. The definitions are consistent with the positions the department has taken in those matters.

Contributory value - The definition and use of the term "contributory value" can be found in the 2009 WSATA handbook. The term is also used and defined in most appraisal texts such as; The Appraisal of Real Estate. Contributory value can be measured in several different ways: by developing market to book ratios and applying that ratio to the book cost of the intangible personal property or by using market sales of the intangible personal property or comparable intangible personal

property assets.

Specific examples of the types of intangible personal property that may be capable of earning an income as a standalone entity or apart from other assets of the unit would be assets that can be separated from the unit or held under separate ownership, can be bought and sold separate from the unit without causing harm or destroying the unit, have value, and are not intangible value or an influence on intangible value. Examples of these types of intangible personal property may be, but are not limited to patents, licenses, trademarks and copyrights.

Normal rate of return - Normal rate of return is the rate of return that an appraiser would use when determining what a willing buyer or seller could expect to earn. To determine if the normal rate of return is equivalent to, above, or below a given taxpayer's rate of return, an appraiser would undertake a financial analysis of the projected cash flows to calculate the taxpayer's internal rate of return. If the projected revenues exceed the probable revenues there is an excess rate of return. Excess revenues do not impact a taxpayer's normal rate of return.

Intangible Value - Intangible value is value that is not tangible, and does not meet the definition of being intangible personal property as defined in the amendments to ARM 42.22.101(12)(a), (b), (c), and (d). As described in (d) intangible value is specifically the value of an entity as a going-concern – its ability to make excess revenues over the normal rate of return. See the STAB *Qwest* decision referenced above.

COMMENT NO. 2: WSATA-CCAP handbook and NCUVS standards - Mr. Robert Strong; Mr. Michael Green; Ms. Mary Whittinghill; Mr. Michael J. Mupo; Mr. Norman Ross, representing PacifiCorp; and Senator Jeff Essmann, representing Senate District 28; stated that they oppose the adoption of the Western States Association of Tax Administrators (WSATA) handbook and the National Conference of Unit Valuation States (NCUVS) Standards.

Mr. Strong provided a resolution to lessen the amount of litigation that is legal, acceptable under the WSATA handbook, is consistent with appraisal theory, and is consistent with unitary valuation concepts which would encompass the application of the intangible deduction from a correlated value of the individual indicators of value.

Mr. Green, representing the Montana Taxpayers Association commented that the adoption of the NCUVS Standards and the WSATA handbook is a broad measure that does not provide much direction to the public. The large volume of the handbook and the standards make them difficult to use. Mr. Green continued that it would be better if the department identified the areas in the handbook that are contrary to the department's practice.

Ms. Mary Whittinghill, representing the Montana Taxpayers Association asked if the department considers the 2009 version of the WSATA handbook and the NCUVS standards to be an authoritative treatise with respect to the valuation of centrally assessed property. She asked the department to explain in detail the factors considered by the department when formulating its response to the previous question; the specific weight it gave to each factor; and its rationale for the belief that the identified text is or is not authoritative with respect to the valuation of centrally assessed property. She further stated, in view of the department's stated goal of providing direction to the industry, please identify each specific valuation approach,

method or technique discussed within the 350 page WSATA handbook that the department intends to utilize when valuing centrally assessed property.

Ms. Whittinghill questioned whether the 2009 WSATA handbook and the NCUVS standards are available for review on the department's web site and how taxpayers would obtain this information. She further questioned the cost to each taxpayer, if any, to obtain a copy of the WSATA handbook.

Ms. Whittinghill asked if the department would be prevented from relying on and utilizing the 2009 WSATA handbook and the NCUVS standards if New Rule I as proposed were not adopted. Also, if the answer is yes, what affect will not adopting New Rule I have on the department activities?

She further asked why it is now necessary to append by reference the entire contents of the 2009 WSATA handbook and the NCUVS standards in the rules but it is not necessary to incorporate numerous other reference materials, i.e., Value Line, Moody's, Ibbotson's SBBI Text, etc., which are also routinely used by the department.

Ms. Whittinghill also asked 100 questions pertaining to non related materials, information, directions, opinions, taxing positions of other states, and valuation standards that are not related to this rulemaking action.

Mr. Mupo commented that Verizon objects to the regulatory incorporation of the WSATA-CCAP appraisal handbook and the NCUVS standards. He stated that both contain provisions that are extremely controversial and the subject of ongoing litigation. The defects incorporated in these have been pointed out on numerous occasions by industry representatives, including the Western States Association of Taxpayer Representatives (WSATR), and are particularly inapt in a state like Montana that exempts intangible personal property from assessment for property tax purposes.

Mr. Ross also commented that the proposed rule that adopts the WSATA handbook and the NCUVS standards is a mistake as both of these sources are not commonly accepted or authoritative material. In addition, both of these materials are not readily available to the public which runs counter to the department's efforts of transparency practices and full communication. He further suggested that until such time that these documents are made publicly available for taxpayers on the department's web site that these rules ought to be postponed.

Mr. Ross presented numerous correspondences and supporting documents that offered the assistance of various parties and expertise to the WSATA executive committee during the development of the WSATA handbook.

Senator Jeff Essmann, representing Senate District 28 stated that attempting to adopt the proposed manuals that contain language that is contrary to Montana statute is not an appropriate action by the department.

RESPONSE NO. 2: The department believes that the 2009 WSATA handbook and NCUVS standards are authoritative sources that should be relied upon when determining the fair market value of centrally assessed property.

The Montana Supreme Court has stated that "the term 'method' refers to a consistent process for arriving at market value, the details of which may vary from place to place, depending on available data, and which will necessarily include a number of different approaches--e.g., the market data approach, the income

approach, the cost approach--or some combination of these approaches, depending on the market in the area where appraisals occur." *Albright v. Dept. of Revenue*, 281 Mont. 196, 208-209 (1997).

The department considers all approaches to value the WSATA handbook is the only authoritative handbook that describes the proper techniques and methodologies for developing all approaches to value for use in unitary appraisal for property tax purposes. The 2009 WSATA handbook and the NCUVS standards are an excellent resource for appraisal methods and practices that align with the department's historical appraisal practices. The 2009 WSATA handbook was adopted by WSATA Executive Committee pursuant to that organizations review and approval as authorized by its by-laws. The NCUVS standards are developed and approved by that organization's by-laws.

WSATA is an organization of thirteen states that offers assistance and guidance to state appraisers who perform unit valuations of centrally assessed companies. In addition to promulgating an appraisal handbook, WSATA also conducts an annual appraisal school for state appraisers at Utah State University. NCUVS is a national organization that develops standards of appraisal practice for unit valuation appraisals.

The WSATA handbook has been utilized by the department since the 1950's and is currently on its fourth edition. The department has historically used this handbook as an appraisal resource when performing unit valuations of complex centrally assessed companies. These handbooks reflect the accumulated experience and expertise of the thirteen western member states that conduct unit valuations. For example, the state of Oregon had adopted the 1989 version and, more recently, the 2009 WSATA handbook through an administrative rule under 150-308.655

The department believes that the governing bodies of the 2009 WSATA handbook and NCUVS standards provided sufficient oversight and evaluation to ensure that the information included in the treatises is appropriate for use in the valuation of centrally assessed property. Therefore, the department did not feel the need to develop independent factors and rationale tests for the two treatises.

Some comments were made that the size of the 2009 WSATA handbook makes it difficult to use. The 2009 WSATA handbook's size is evidence of the complexity of these appraisal issues and attempting to summarize these practices does not provide clarity or good direction to the readers. Unfortunately, accurately and completely explaining how taxes work and are administered cannot be done briefly. Centrally assessed property valuation and taxation is no exception. The Internal Revenue Service publishes hundreds of thousands of pages of documentation explaining what Congress intended in passing thousands of pages of Internal Revenue Code. The Internal Revenue Code is far more complex and affects hundreds of thousands of Montanan's annually. The average Montanan struggles through thousands of pages of tax code and instructions to file their federal tax return, many without any assistance from paid professionals.

There was a request that the department identify all of the practices outlined in the 2009 WSATA handbook that are counter to department's practices. The department uses the 2009 WSATA handbook and NCVUS standards in their entirety. An appraiser would use the handbook and standards to develop an

understanding of centrally assessed appraisal theory in total. In situations where Montana law is contrary to the 2009 WSATA handbook or NCUVS standards, Montana law must be followed. The 2009 WSATA handbook and NCUVS standards clearly state this fact to eliminate any confusion or doubt as to which should prevail.

Concerning the comment that issues inside the 2009 WSATA handbook and the NCUVS standards are controversial, subject to current litigation, and inapt for the state of Montana, the department respectfully disagrees that the proposed rules should not be adopted because of current litigation. The department asserts that providing prospective certainty is a valid purpose.

The department agrees that having a viewable copy of the 2009 WSATA handbook available on the department's web site for the convenience of the centrally assessed property taxpayers is a good idea and will make it available there. The department will also facilitate the purchase of the 2009 WSATA handbook through the web site. The NCUVS standards are currently readily available and easily found on the NCUVS web site. In addition, to make sure that centrally assessed property taxpayers can have convenient access to the NCUVS standards the department will include a link to the NCUVS standards on the department's web site.

Regarding the question of whether the department would be prevented from relying on the 2009 WSATA handbook and NCUVS standards if New Rule I was not adopted, the answer is "no". The department would not be prevented from relying on the 2009 WSATA handbook or NCUVS standards if New Rule I was not adopted. But the department feels strongly that taxpayers should be aware that the department relies on these sources when appraising centrally assessed properties. The department has not proposed adopting the reference materials suggested by Ms. Whittinghill because those references are used by the department primarily as sources of data to develop capitalization rates. They are not authoritative references on the appraisal of centrally assessed properties.

There were numerous documents and correspondence presented at the hearing which were provided to the WSATA Executive Committee during the development of the 2009 WSATA handbook. During these rule proceedings, it was stated that some of the responses were addressed by the developers of the 2009 WSATA handbook and the executive committee while others were not. It is the department's belief, however, that the WSATA Executive Committee undertook an extensive analysis of all comments made during the comment period before adopting the 2009 WSATA handbook. Although there may have been legitimate reasons why some of the issues were not addressed by the WSATA Executive Committee, the department believes that this rule hearing is not the appropriate forum to address those issues. Rather, if a participant to this rule hearing is concerned that the WSATA Executive Committee ignored a specific comment or certain materials before adopting the 2009 WSATA handbook, such concerns should be sent to the WSATA Executive Committee for its review.

Regarding the proposal provided by Mr. Strong, the current method of applying the intangible personal property deduction separately by approach was put into the current rule at the request from the centrally assessed property taxpayers. The department disagrees with the Mr. Strong's suggestion that application of a mathematical intangible percentage after correlation more accurately reflects market value. To correctly remove intangible personal property market value from the

centrally assessed unit, the intangible personal property market value must be deducted in each approach to determining market value. The same concept holds true for the income and market approaches of value. Although the department appreciates Mr. Strong offering an alternative to deducting exempt intangible personal property from the centrally assessed property unit, the department believes that this approach would not arrive at a fair market value for the property.

COMMENT NO. 3: Legislative Intent - Senator Jim Peterson, representing Senate District 15, Senator Kim Gillan, representing Senate District 24; Senator Jeff Essman; Ms. Nancy Riedel; Mr. Lambert; and Ms. Whittinghill all had comments on the legislative intent of the rules.

Senator Peterson stated that the rules appear to ignore legislative intent and the department is conducting expensive litigation that holds up funds needed by local municipalities.

Senator Peterson asked "what's the hurry?"

Senator Peterson further commented that when the rule proposal notice was first published in September of this year, the Revenue and Transportation Interim Committee requested an Economic Impact Statement (EIS) be prepared by the department before moving forward. The department prepared the EIS and presented it to the Revenue and Transportation Interim Committee just before the last meeting of that committee. During the committee meeting in November, the committee attempted to delay the implementation of these rules but was unable to do that.

Ms. Riedel also stated that the legislative intent was to exempt goodwill.

Senator Essmann stated the department is ignoring the plain meaning of the law and ignoring obvious legislative intent. Therefore, the department is attempting to exceed its delegated authority in attempting to implement these rules. The language in the proposed rule concerning intangibles is contrary to the plain meaning of the law and therefore is in direct violation of legislative intent. The department alleges these changes are simply clarification of the current practice, but if that is the case, the current practice violates the plain meaning of the adopted statute and should cease immediately.

He also stated the department's late notices and scheduling maneuvers are an attempt to circumvent the legislative process.

Senator Gillan commented that after reviewing the Economic Impact Statement it still remains unclear as to whether the rules reflect statutory authority.

Mr. Lambert stated the department cannot deprive taxpayers of a statutorily authorized tax exemption by creating new, and in many cases insurmountable, rules that could effectively prohibit taxpayers from claiming a tax exemption. Where the legislature intends for a specific group of taxpayers to receive intended tax benefits such as the exemption here, the department cannot single-handedly deny those benefits.

He further stated the Montana legislature enacted this exemption in 1999 and has taken no steps to amend it since. The department is now seeking to unilaterally contravene the legislature's will by imposing new requirements on a taxpayer's ability to exempt its intangible personal property. If the scope of the exemption is to be changed, such change should come from the legislature, not the department.

Ms. Whitttinghill asked how the proposed amendments to ARM 42.22.101 is consistent with and not an expansion of the legislative intent expressed in 15-6-218, MCA.

RESPONSE NO. 3: Respectfully, the department believes that the proposed rules implement the legislative intent. The legislature requires through its adoption of 15-8-111, MCA the department to value centrally assessed property at 100 percent of its market value. Section15-6-218, MCA specifically states that intangible personal property is exempt from taxation; the statute does not mention anything regarding the exemption of intangible value. The department does not have the authority to grant tax exemptions or deductions without explicit consent of the legislature through statutory language. Intangible value or intangible influences of value are not exempt and are rightfully captured in the fair market value of a unit of operating assets.

Statutory construction would dictate that tax exemptions be narrowly construed and construed in favor of the taxing agency's interpretation of the exemption. Similarly, it is well established that taxpayers bear the burden of establishing an entitlement to a deduction or exemption from tax. The department respectfully disagrees that the department is holding up or delaying the use of tax revenues, rather, the department is following the statutory direction to arrive at fair market value of property. Some companies do not agree with the values the department has assigned to their properties, and thus appeal the department's values. In all instances the department believes that its appraised values accurately reflect the fair market value of the assets. The department has a duty to apply 15-8-111, MCA, and not concede the fair market values to avoid lengthy litigation.

Many of the taxpayers providing comments in this matter have advocated expansive definitions of intangibles or believe that the department should have to prove that its valuations contain no value contributed by intangibles. In the case of the telecommunications industry there have been allegations that 75 to 80 percent of the value of the industry value should be deducted as intangible. If these positions are accepted by the courts or legislature they could have a significant destabilizing effect on the Montana tax system and measurably shift the burden of taxation to other classes of property particularly to class 4 residential and commercial property which represents the majority of the tax base in Montana.

The 2009 WSATA handbook and NCUVS standards are subservient to Montana state law and that law prevails when detailed matters in the handbooks or standards conflict with the law. In all respects, the department through its traditional valuation practices has clearly implemented legislative intent on achieving full market valuation of centrally assessed properties for decades and continues to do so today by adopting these practices in the rules.

In response to the question "What is the hurry?" The department believes that a general criticism has been lodged that the department's practices regarding valuation of centrally assessed companies are not found within the department's administrative rules. The absence of these rules raised many questions that the department believes these rules will clarify. Over the last several years, the department has advised the Committee of the litigation between the department and centrally assessed companies. Some of these cases have been fully adjudicated

while others await adjudication in the appropriate venue. It is the department's intent through the adoption of these proposed rules to alleviate confusion surrounding the department's practices of valuing centrally assessed properties.

Concerning the department's notices and the timing of the department's work, the department apologizes for any inconvenience that may have occurred related to this rule action. The department published the first proposal notice for this rulemaking action on September 9, 2010 in MAR No. 42-2-846, which scheduled a public hearing for October 6, 2010. The department determined that there was a public interest, and volunteered to have an EIS prepared for the rules. Based on that understanding, the department advised the Committee that the rule hearing previously scheduled for October 6, 2010 would be postponed pending the preparation of an EIS. The department convened a meeting with the industry representatives on October 6, 2010 to listen to their concerns with the proposed rules. Subsequent to that meeting, on October 28, 2010, the department filed a new proposal notice scheduling a hearing for November 22, 2010. The EIS was prepared and provided to the Committee on November 17, 2010. Whatever the perception, the department's actions have been within MAPA's statutory timeframes for promulgating administrative rules and have been delayed to permit preparation of, and review of, the accompanying EIS.

COMMENT NO. 4: Biennial Review - Ms. Riedel; Mr. Green, Mr. Mupo; and Mr. Adkins provided comments concerning the biennial review portion of the rules.

Ms. Riedel stated they would argue for maintaining the biennial review of the percentages that are in the rules.

Mr. Green stated the department failed in its obligation to biennially review the intangible deduction percentages and they are concerned that the department has elected that rather than to start operating in a way consistent with the rule, it simply is abolishing the rule that would require some kind of regular review of these percentages. There was a fairly extensive process which resulted in these rules through the negotiated rulemaking process and the expectation of the participants is that there would be fairly extensive discussions with the department, on a going forward basis, as to whether or not any or all of these default percentages remain or are appropriate. The rule is making clear, or clarifying the department's position in a way that was never discussed in the negotiated rulemaking process that these percentages really are a default in a way that imposes a burden on taxpayers that was never intended.

Mr. Mupo stated the biennial review is a very important provision that was originally negotiated to prevent he DOR from ignoring changes affecting centrally assessed industries. Recent wireless sales transactions over the past several years indicate that the majority of the value has been made up of intangible assets.

Mr. Adkins stated that there is a provision in the department's current rules that states the department and the taxpayers will review the 15 percent limit every two years, but the department has not complied with that rule and, until 2009, had never held hearings or conducted meetings to review the rule since it was adopted in 1999. It is noteworthy that the proposed rules eliminate this review process.

RESPONSE NO. 4: Regarding the elimination of the biennial review between

the industry and the department, the department already contains an open door policy for any issue the industry or any company wishes to discuss. Maintaining a scheduled biennial review is not needed and could prove to be inefficient by delaying the discussion of important matters at a scheduled time instead of immediately when the issues are identified.

COMMENT NO. 5: Litigation - Senator Peterson; Ms. Riedel, Mr. Ross; Mr. Baker; Senator Gillan; Ms. Tara Veazey, representing the Montana Budget and Policy Center; Mr. Lambert; and Mr. Adkins all provided comments concerning litigation.

Senator Peterson stated that the rule tries to validate current tax practices by the department retroactively to strengthen their position in current litigation.

Ms. Riedel stated that the proposed rules would lessen litigation because there would be no gray area, everything would be taxable the way that the department is currently doing it. The reason there is so much litigation right now in the industry is because the industry thinks there is a fundamental disconnect with the statutes and the methodologies that are being put forth by the department.

Mr. Ross, representing PacifiCorp stated that the department's proposed rules are an attempt to strengthen its legal position for current and future litigation. The proposed rules are a direct attack on the PacifiCorp litigation against the department.

Mr. Baker further stated the rules do not provide clarity and will not lessen the amount of litigation.

Senator Gillan asked the department to consider reassessing the proposed rules to ensure that they do not trigger additional litigation. She stated that it is critical that all taxpayers feel that tax rules are transparent, based on statutes and predictable.

Ms. Veazey commented that the rules adopt the existing practices of the department as those practices relate to the valuation of centrally assessed properties in Montana. Doing so provides certainty and stability for Montana taxpayers, reduces expensive and unnecessary litigation related to those practices, and provides for consistent revenue streams to the state of Montana to fund its common investments in education, health and human services, corrections, infrastructure and other public functions that help make Montana's communities safe, healthy, and vibrant.

Ms. Veazey further stated failure to adopt the rule changes will result in continued and increased litigation. If centrally assessed property owners challenging the rule and bringing litigation ultimately succeed in reducing the valuations of their intangible property, it will ultimately lead to a property tax shift toward Montana homeowners and small businesses.

Mr. Lambert suggested that the proposed rules will lead to years of controversies and litigation.

Mr. Adkins stated there has been litigation concerning the proper interpretation of 15-6-218, MCA, and ARM 42.22.110. The proposed rule would formalize the department's position in this litigation, and Quest believes there is no basis for that position and in fact is contrary to Montana statutes.

RESPONSE NO. 5: The adoption of administrative rules cannot be retroactive unless the agency has a specific retroactive applicability statute allowing the agency to apply the rules retroactively, as stated in 2-4-306, MCA. Therefore, the adoption of the rules will have no effect on current litigation.

The proposed rules may lessen the amount of litigation and increase the taxpayers understanding of the department's position in these matters.

The department disagrees that there is a fundamental disconnect with the statutes and the methodologies that the department uses. Section 15-8-111, MCA, states that all property must be assessed at 100 percent of its market value. The current methods used by the department and the methods explained in the 2009 WSATA handbook and the NCUVS standards are accepted ways to arrive at market value.

The department has not proposed the rules in MAR Notice 42-2-846 to strengthen its litigation position or to attack the PacifiCorp litigation but rather to inform the public of the department's practices, provide more tax policy transparency, and to possibly lessen litigation. Specifically the rules provide clarity and inform the industry of the department's position as it applies to intangible personal property, the standards, and appraisal methods used by the department. The proposed rules will make the department's tax positions more predictable and will continue to be based on the statute.

The department appreciates Ms. Veazey's comments in support of the proposed rules.

COMMENT NO. 6: Delay Adoption - Senator Peterson and Senator Essmann provided comments requesting a delay of the adoption of the rules.

Senator Peterson requested the department delay of the adoption of the rules to allow the legislative process to address the issues discussed in the rule hearing during the upcoming legislative session, which is an open transparent accountable process, which would avoid costly litigation and very expensive tax protests.

Senator Essmann urged the department to not adopt the proposed rules citing the reasons mentioned in the other comments found in this notice.

RESPONSE NO. 6: Regarding Senator Peterson and Senator Essmanns' request to delay the adoption of these proposed rules until the legislature can review the issues and provide a remedy to lessen the amount of litigation, the department believes that the points in the proposed rules are the main issues of dispute and need to be communicated and made clear to the taxpayers in the quickest and earliest manner possible. The department welcomes the legislature's assistance in these matters but the department believes the best avenue to take at this time is to fully disclose the department's practices through the adoption of the proposed rules. The legislature has continual authority to review rules.

COMMENT NO. 7: Safe Harbor Percentages - Mr. Mupo provided comments concerning the safe harbor percentages as they apply to the proposed rules.

Mr. Mupo provided comments related to the safe harbor percentages and his understanding that the safe harbor percentages were proposed to ease the burden on small taxpayers. He stated that if such taxpayers relied on the safe harbor

percentages, they would not be required to incur the time and expense of annually valuing their exempt intangible property. But these safe harbor percentages were developed without any input from the wireless industry. Until 2007 the wireless property was assessed locally on a cost approach. Now that wireless companies are subject to central assessment, the disparity between the department's outdated safe harbor percentages and the reality of wireless company intangibles will lead to substantial over-taxation. The failure of the department to properly establish a reasonable safe harbor percentage for exempt intangibles discriminates against the wireless industry. He suggested that the department should follow the statutory requirement and meet with the wireless industry to ascertain the correct percentage which should be established as a safe harbor amount.

RESPONSE NO. 7: The department has always allowed companies an opt-out provision for the "safe harbor" percentages. If a company does not believe that their current safe harbor percentage accurately reflects their intangible personal property values, ARM 42.22.110 states that the department will consider any evidence of additional intangible personal property value when the company provides that information. Specifically ARM 42.22.110(2) states: "If any taxpayer believes that the value of its intangible personal property is greater than that allowed under (1), the taxpayer may propose alternative methodology or information at any time during the appraisal process and the department will give it full and fair consideration. If the department concludes that the value of intangible personal property is greater than that allowed in (1), the unit value will be decreased accordingly. In no event, however, will the value of intangible personal property be less than that allowed in (1)."

The department does not believe that it has discriminated against the wireless industry.

COMMENT NO. 8: Correct classification for assessments - Mr. Feaver; Senator Peterson; Senator Essmann; and Mr. Green all provided comments regarding whether taxpayers should be centrally assessed.

Mr. Feaver further stated the department should definitely administer who files centrally assessed returns. If there is a dispute over whether a property should be centrally assessed or locally assessed, all the cards should be on the table when the taxpayers appeal.

Senator Peterson stated the legislature attempted in the 2009 Session to define centrally assessed property, particularly gathering systems related to pipelines. He further stated that it appears the department is ignoring legislative intent which is leading to very time consuming, costly litigation.

Senator Essmann further stated attempting to adopt rules to apply central assessment on targeted companies and including a penalty for refusal to file when the statutory authority is not well established violates the procedures of the Montana Administrative Procedures Act.

Mr. Green commented that it creates a situation where the department is ordering taxpayers, which do not believe they should be centrally assessed, and which have not been historically centrally assessed, to begin reporting on a central assessment basis. He stated that they believe this rule is an effort to bolster the

department's assessment of penalties against particular companies and to enhance its position in pending litigation.

RESPONSE NO. 8: The department would like to thank Mr. Feaver for his support of these proposed rules.

The proposed rules support the legislation enacted by the 2009 legislature that defined gathering systems related to centrally assessed property. The proposed rule amendment provides these entities and other centrally assessed companies with direction to submit the annual reports in Helena.

The department respectfully disagrees with the comment that the filing requirement is not well established. The rule substantiates the requirements of 15-23-101, MCA which identifies the industries that are subject to central assessment.

It is common practice for a revenue or tax collecting agency to apply a filing penalty when a taxpayer refuses to file in the manner desired by a tax authority and this requirement does not violate the Montana Administrative Procedures Act.

The department is not including language requiring companies to file as a centrally assessed company in an effort to increase the department's penalty and interest assessments but rather to require companies to file correctly, use the correct forms, and file at the correct location.

COMMENT NO. 9: Economic Impact Statement (EIS) - Ms. Whittinghill posed several questions related to the Economic Impact Statement (EIS) which was provided to the Revenue and Transportation Interim Committee upon their request.

RESPONSE NO. 9: In response to the questions posed by Ms. Whittinghill concerning the EIS, the department presented the EIS to the Revenue and Transportation Interim Committee pursuant to 2-4-405, MCA. It is the department's understanding that the Committee has taken no action formally or informally that the EIS is insufficient or otherwise contrary to Montana law. To date the department has received no correspondence from the Committee concerning the EIS. The department believes that Ms. Whittinghill's questions concerning the validity to the EIS are beyond the scope of the requirements under the Montana Administrative Procedures Act as part of this rulemaking action. The department will provide answers, as appropriate, to the appropriate forum.

5. The department adopts New Rule I (42.22.109) and amends ARM 42.22.101, 42.22.105, and 42.22.110 as proposed.

6. 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/ Alan G. Peura
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 13, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.21.157, and 42.22.1311 relating to property taxes and the trend tables for valuing property	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 14, 2010, the department published MAR Notice No. 42-2-853 regarding the proposed amendment of the above-stated rules at page 2314 of the 2010 Montana Administrative Register, issue no. 19.

2. A public hearing was held on November 4, 2010, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received.

3. No comments were received at or subsequent to the hearing; however, the department further amends ARM 42.21.123 as shown below. The amendments are necessary upon further review of the department's alternative valuation methods. When the current guide does not provide a value for a piece of farm equipment, the department applies alternative valuation methods to derive the value. The alternative methods sometimes result in an increase in the assessed value above the value provided for in the current guide. In an effort to ensure equalization and not disadvantage the taxpayer, the department will lower the value to more closely align with the current guide. The department is also amending ARM 42.12.131(5) to remove the reference to "salvage," as that language was inadvertently included in the revised depreciation schedule, and to correct the percentages.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The department applies the valuation methods in sequential order as shown in (2) through (8).

(1) and (2) remain as proposed but are renumbered (2) and (3).

~~(3)~~(4) For all farm machinery and equipment which cannot be valued under ~~(1)~~(2) and ~~(2)~~(3)~~,~~:

(a) the department shall try to ascertain the original FOB (free on board value) through old farm machinery and equipment valuation guidebooks~~.~~; and

(b) ~~If~~ if an original FOB cannot be ascertained, the department may use trending to determine the FOB.

(5) The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in ~~(5)~~(8) to arrive at a value that approximates average wholesale value.

(6) A trended average wholesale value shall be applied to equipment if:

(a) the equipment cannot be valued under (2) but an average wholesale value is available for the same make and model with a different year new; and

(b) the equipment cannot be valued under (4) or the value as calculated under (4) results in a higher value being placed on a piece of farm equipment than the last year listed in the current Official Guide mentioned in (2) for the same make and model. The trended average wholesale value for farm equipment shall be ascertained by trending the average wholesale as found in the guide in (2), for the same make and model with a different year new. The trend factors are the same as those mentioned in (4).

~~(4)~~(7) If the methods mentioned in ~~(1)~~(2) through ~~(3)~~(5) cannot be used to ascertain average wholesale value for farm machinery and equipment, ~~or the value as calculated under (3) is higher than the most recent average wholesale value from the guide in (1),~~ the owner or applicant must certify to the department the year acquired and the acquired price before that value can be applied to the schedule in ~~(5)~~(8).

~~(5)~~(8) The trended depreciation schedule referred to in (2) through ~~(4)~~(6) is listed below and shall be used for tax year 2011. The schedule is derived by using the guidebook listed in ~~(1)~~(2) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

YEAR NEW/ACQUIRED	TRENDED % GOOD AVERAGE WHOLESALE
2011	80%
2010	75%
2009	67%
2008	67%
2007	64%
2006	59%
2005	53%
2004	50%
2003	44%
2002	40%
2001	36%
2000	35%
1999	32%
1998	31%
1997	29%
1996	27%
1995 and older	24%

(6) and (7) remain as proposed but are renumbered (9) and (10).

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

42.21.131 HEAVY EQUIPMENT (1) through (4) remain as proposed.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year 2011. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ACQUIRED	TRENDED % GOOD WHOLESALE
2011	80%
2010	~~65%~~ 58%
2009	~~58%~~ 52%
2008	~~56%~~ 43%
2007	~~50%~~ 41%
2006	~~44%~~ 34%
2005	~~41%~~ 31%
2004	~~38%~~ 30%
2003	~~36%~~ 30%
2002	~~36%~~ 26%
2001	~~29%~~ 25%
2000	~~25%~~ ~~22%~~
1999	~~24%~~ ~~18%~~
1998	~~24%~~ 20%
1997	~~25%~~ 19%
1996	~~22%~~ 19%
1995	~~21%~~ 15%
1994	~~22%~~ 16%
1993	~~21%~~ 17%
1992	~~21%~~ 16%
~~Salvage~~	~~14%~~

(6) remains as proposed.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

4. Therefore, the department amends ARM 42.21.123, and 42.21.131 with the amendments listed above and amends ARM 42.21.113, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.21.157, and 42.22.1311 as proposed.

5. An electronic copy of this adoption notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this adoption

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

/s/ Cleo Anderson	/s/ Alan G. Peura
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State December 13, 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 AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010, the department published MAR Notice No. 42-2-857 regarding the proposed amendment of the above-stated rules at page 2559 of the 2010 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 18, 2010 to consider the proposed amendment. No one appeared at the hearing to testify.

3. The department amends ARM 42.15.315, 42.15.401, and 42.15.403 as proposed.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State December 13, 2010

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through 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 6-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.

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I-VI Medicaid for Workers with Disabilities, p. 1271, 2733
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
37.12.401 Laboratory Testing Fees, p. 488, 1207
37.27.128 and other rules - Emergency Care - Inpatient and Transitional Living Chemical Dependency Programs, p. 2053

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in November 2010 appear. Vacancies scheduled to appear from January 1, 2011, through March 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 December 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 NOVEMBER 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Barbers and Cosmetologists (Labor and Industry)			
Ms. Sherry Dembowski-Wieckowski	Governor	Graves	11/8/2010
Thompson Falls			10/1/2013
Qualifications (if required): barber			
Ms. Sara Dobbins	Governor	Lund	11/8/2010
Helena			10/1/2015
Qualifications (if required): public representative			
Ms. Corie Mora	Governor	Collins	11/8/2010
Great Falls			10/1/2015
Qualifications (if required): manicurist			
Board of Dentistry (Labor and Industry)			
Ms. Luella Vogel	Governor	Germann	11/15/2010
Great Falls			3/29/2011
Qualifications (if required): public representative			
Board of Outfitters (Labor and Industry)			
Mr. John Wilkinson	Governor	reappointed	11/24/2010
Miles City			10/1/2013
Qualifications (if required): fishing and hunting outfitter			
Board of Veterans' Affairs (Military Affairs)			
Ms. Sylvia Beals	Governor	reappointed	11/8/2010
Forsyth			8/1/2014
Qualifications (if required): veteran from Region 4			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Veterans' Affairs (Military Affairs) cont.			
Ms. Mary Creech	Governor	reappointed	11/8/2010
Butte			8/1/2014
Qualifications (if required): veteran from Region 2			
Mr. James English	Governor	reappointed	11/8/2010
Helena			8/1/2014
Qualifications (if required): individual experienced with veterans' issues			
Mr. Bernard Jacobs	Governor	Williams	11/8/2010
Helena			8/1/2014
Qualifications (if required): representative of Public Health and Human Services			
Children's Trust Fund (Public Health and Human Services)			
Ms. Roberta Kipp	Governor	Brengle	11/15/2010
Browning			1/1/2012
Qualifications (if required): public representative			
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)			
Ms. Diane Cashell	Governor	reappointed	11/8/2010
Bozeman			6/16/2012
Qualifications (if required): prevention programs/services experience			
Ms. Patty Stevens	Governor	reappointed	11/8/2010
Ronan			6/16/2012
Qualifications (if required): prevention programs/services experience			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Historical Society Board of Trustees (Historical Society)			
Secretary Bob Brown	Governor	Horse Capture	11/10/2010
Whitefish			7/1/2011
Qualifications (if required): public member			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Randy Hinebauch	Governor	Fast	11/8/2010
Conrad			8/20/2013
Qualifications (if required): wheat and/or barley producer in District 2			
Mr. Chris Kolstad	Governor	Skari	11/8/2010
Ledger			8/20/2013
Qualifications (if required): wheat and/or barley producer in District 3			
Small Business Health Insurance Pool Board (State Auditor)			
Ms. Jessica Rhoades	Governor	Franklin	11/18/2010
Helena			0/0/0
Qualifications (if required): Governor's representative			
Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)			
Mr. Drew Arnot	Governor	Custer	11/15/2010
Missoula			7/1/2011
Qualifications (if required): independent local exchange company representative			
Tourism Advisory Council (Commerce)			
Ms. Gail Richardson	Governor	Cahill	11/10/2010
Bozeman			7/1/2011
Qualifications (if required): resident of Yellowstone Country			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Vocational Rehabilitation Council (Public Health and Human Services)			
Ms. Nina Cramer	Governor	reappointed	11/23/2010
Missoula			10/1/2013
Qualifications (if required): representative of organized labor			
Ms. Kate Gangner	Governor	Vance	11/23/2010
Great Falls			10/1/2013
Qualifications (if required): community rehabilitation program representative			
Ms. Mary Hall	Governor	reappointed	11/23/2010
Missoula			10/1/2013
Qualifications (if required): parent organization representative			
Ms. Chanda Hermanson	Governor	reappointed	11/23/2010
Helena			10/1/2013
Qualifications (if required): advocacy program representative			
Mr. Bob Maffit	Governor	Lambert	11/23/2010
Helena			10/1/2013
Qualifications (if required): statewide independent living coucil representative			
Ms. Nikki Sandve	Governor	Trerise	11/23/2010
Helena			10/1/2013
Qualifications (if required): state education agency representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2010

Appointee	Appointed by	Succeeds	Appointment/End Date
Water and Waste Water Operator's Advisory Council (Environmental Quality)			
Mr. John Alston	Governor	Emrick	11/22/2010
Bozeman			10/16/2016
Qualifications (if required): representative of a municipality			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 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 Architects and Landscape Architects (Labor and Industry)		
Mr. Bayliss Ward, Bozeman	Governor	3/27/2011
Qualifications (if required): registered architect with three years continuous practice		
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		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice) cont.		
Rep. Angela Russell, Lodge Grass Qualifications (if required): tribal court representative	Governor	1/1/2011
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 Dentistry (Labor and Industry)		
Dr. Mark Colonna, Whitefish Qualifications (if required): licensed dentist with at least 5 years experience	Governor	3/29/2011

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Board of Dentistry (Labor and Industry) cont.		
Ms. Laura Germann, Glendive	Governor	3/29/2011
Qualifications (if required): public representative		
Board of Environmental Review (Environmental Quality)		
Mr. Joseph Russell, Kalispell	Governor	1/1/2011
Qualifications (if required): county health officer		
Ms. Heidi Kaiser, Park City	Governor	1/1/2011
Qualifications (if required): public member		
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Board of Housing (Commerce) cont.		
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		
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 Livestock (Livestock)		
Ms. Janice French, Hobson	Governor	3/1/2011
Qualifications (if required): cattle producer		
Mr. Ed Waldner, Chester	Governor	3/1/2011
Qualifications (if required): swine producer		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Board of Livestock (Livestock) cont.		
Mr. Jeffery Lewis, Corvallis	Governor	3/1/2011
Qualifications (if required): dairy producer		
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		
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)		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Board of Personnel Appeals (Labor and Industry) cont.		
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 Regents (Higher Education)		
Ms. Janine Pease, Billings	Governor	2/1/2011
Qualifications (if required): resident of District 2		
Board of Respiratory Care Practitioners (Labor and Industry)		
Mr. Thomas Fallang, Butte	Governor	1/1/2011
Qualifications (if required): respiratory care practitioner		
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		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Human Rights Commission (Labor and Industry) cont.		
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Milk Control Board (Livestock) cont.		
Mr. Jerrold A. Weissman, Great Falls	Governor	1/1/2011
Qualifications (if required): public representative and a Republican		
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		
Mr. Steve Barnard, Hinsdale	Governor	1/1/2011
Qualifications (if required): grazing district director		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 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 -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
Small Business Health Insurance Pool Board (Auditor)		
Mr. Bob Marsenich, Polson	Governor	1/1/2011
Qualifications (if required): consumer representing small business		
State Employee Charitable Giving Campaign Advisory Council (Administration)		
Ms. Joy McGrath, Helena	Director	2/14/2011
Qualifications (if required): Federal Representative		
Mr. Matthew Dale, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Ms. Mary Wright, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Ms. Marcia Armstrong, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Ms. Kathy Miller, Helena	Director	2/14/2011
Qualifications (if required): Federal Representative		
Mr. Gary Owen, Great Falls	Director	2/14/2011
Qualifications (if required): Federal Representative		
Mr. Jack Lynch, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Mr. Rob Mayer, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2011 THROUGH MARCH 31, 2011

Board/current position holder	Appointed by	Term end
State Employee Charitable Giving Campaign Advisory Council (Administration) cont.		
Ms. Marie Matthews, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Mr. Dave Paton, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Ms. Shannon Lewis, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
Mr. Joe Hamilton, Helena	Director	2/14/2011
Qualifications (if required): Employee Representative		
State Tax Appeals Board (Administration)		
Ms. Samantha Sanchez, Helena	Governor	1/1/2011
Qualifications (if required): public representative		
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 -- JANUARY 1, 2011 THROUGH MARCH 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		