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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ARM 8.2.503 pertaining to the administration of the Quality Schools Grant Program – Project Grants	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 11, 2012, at 11:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m., January 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2771; or e-mail pclark2@mt.gov.

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

8.2.503 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE QUALITY SCHOOLS GRANT PROGRAM – PROJECT GRANTS (1) The Department of Commerce adopts and incorporates by reference the Quality Schools Grant Program Application Guidelines and Administration Manual as rules for the Quality Schools Grant Program - Projects (~~January 2010~~ December 2011 Draft).

(2) and (3) remain the same.

AUTH: 90-6-819, MCA
IMP: 90-6-819, MCA

REASON: It is reasonably necessary to amend this rule for the department's administration of the school facility and technology grant components of the Quality Schools Grant Program, 90-6-801, *et seq*., MCA. Public school districts must have these guidelines available before the entities may apply to the department for project financial assistance under the Quality Schools program. The guidelines describe the department requirements with which public school districts must comply in order to apply for, receive, and administer Quality School project grant funds.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2771; or e-mail pclark2@mt.gov, and must be received no later than 5:00 p.m., January 19, 2012.

5. Jennifer Olson, Community Grants Bureau Chief, Department of Commerce, has been designated to preside over and conduct these hearings.

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

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

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

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State December 12, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3815, and the repeal of ARM 8.94.3806, 8.94.3808, 8.94.3810, 8.94.3811, and 8.94.3813 pertaining to governing the submission and review of applications for funding under the Treasure State Endowment Program (TSEP)	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 11, 2012, at 9:30 a.m., the Department of Commerce will hold a public hearing in Room 228, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., January 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Becky Anseth, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2865; TDD (406) 841-2702; facsimile (406) 841-2771; or e-mail to banseth@mt.gov.

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

<u>8.94.3815 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM – PROJECT GRANTS</u>

(1) The Department of Commerce adopts and incorporates by reference the Treasure State Endowment Program Application Guidelines ~~dated January 2010~~ <u>(December 2011 Draft)</u> as rules governing the submission and review of applications under the TSEP program.

(2) and (3) remain the same.

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to adopt this rule because local government entities must have these application guidelines before the eligible entities may apply to the department for financial assistance. The guidelines describe the types of

projects that are eligible for TSEP grants and the types of grants available. They also describe the review process by which the department evaluates applications for TSEP funding.

4. The department proposes to repeal the following rules:

8.94.3806 INCORPORATED BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS UNDER THE 2000/2001 TREASURE STATE ENDOWMENT PROGRAM

8.94.3808 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UDNER THE TREASURE STATE ENDOWMENT PROGRAM

8.94.3810 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM

8.94.3811 INCORPORATION BY REFERENCE OF RULES GOVERING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM

8.94.3813 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to repeal these rules because they are outdated and will be replaced in their entirety by the proposed amendment of ARM 8.94.3815.

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 Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; by facsimile to (406) 841-2771, or e-mail to banseth@mt.gov, and must be received no later than 5:00 p.m., January 19, 2012.

6. Becky Anseth, TSEP Program Manager, 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 may make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to bmartello@mt.gov, or 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/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State December 12, 2011.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.301, 17.24.302, 17.24.303, 17.24.304, 17.24.308, 17.24.313, 17.24.314, 17.24.401, 17.24.403, 17.24.416, 17.24.418, 17.24.425, 17.24.501, 17.24.623, 17.24.639, 17.24.642, 17.24.645, 17.24.646, 17.24.702, 17.24.711, 17.24.718, 17.24.723, 17.24.725, 17.24.726, 17.24.901, 17.24.924, 17.24.926, 17.24.927, 17.24.1001, 17.24.1002, 17.24.1003, 17.24.1005, 17.24.1016, 17.24.1018, 17.24.1111, 17.24.1112, 17.24.1113, 17.24.1114, 17.24.1116, 17.24.1201 pertaining to definitions, format, data collection, and supplemental information, baseline information, operations plan, reclamation plan, plan for protection of the hydrologic balance, filing of application and notice, informal conference, permit renewal, transfer of permits, administrative review, general backfilling and grading requirements, blasting schedule, sedimentation ponds and other treatment facilities, permanent impoundments and flood control impoundments, ground water monitoring, surface water monitoring, redistribution and stockpiling of soil, establishment of vegetation, soil amendments, management techniques, and land use practices, monitoring, period of responsibility, vegetation measurements, general application and review requirements, disposal of underground development waste, permit requirement, renewal and transfer of permits, information and monthly reports, drill holes, bond requirements for drilling operations, notice of intent to prospect, bonding, frequency and methods of inspections; the adoption of New Rules I through V pertaining to the department's	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL (STRIP AND UNDERGROUND MINE RECLAMATION ACT)

obligations regarding the applicant/ violator system, department eligibility review, questions about and challenges to ownership or control findings, information requirements for permittees, and permit requirement - short form; and the repeal of 17.24.763 pertaining to coal conservation

TO: All Concerned Persons

1. On January 18, 2012, 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, adoption, and repeal 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 9, 2012, 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:

17.24.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and subchapters 3 through 13 of this chapter:

(1) through (12) remain the same.

(13) "Applicant/violator system" or "AVS" means an automated information system of applicant, permittee, operator, violation, and related data that the Office of Surface Mining maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977.

~~(13)~~ (14) "Approximate original contour" is defined in 82-4-203, MCA.~~, as "that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:~~

~~(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased;~~

~~(b) the reclaimed area blends with and complements the drainage pattern of~~

~~the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;~~

~~(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area; and~~

~~(d) the reclaimed surface configuration is appropriate for the postmining land use."~~

(14) through (53)(c) remain the same, but are renumbered (15) through (54)(c).

~~(54)~~ (55) "Hydrologic balance" is defined in 82-4-203, MCA.~~, as "the relationship between the quality and quantity of water inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area."~~

(55) through (106)(b) remain the same, but are renumbered (56) through (107)(b).

~~(107)~~ (108) "Road" means a surface right-of-way for purposes of travel by land vehicles used in prospecting or strip or underground mining or reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access, haul, and ramp roads constructed, used, reconstructed, improved, or maintained for use in prospecting or strip or underground mining operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. Subcategories of roads are as follows:

(a) and (b) remain the same.

(c) "Public road" is defined in ARM 17.24.1132(1)~~(f)~~(g).

(d) remains the same.

(108) through (119) remain the same, but are renumbered (109) through (120).

~~(120)~~ (121) "Substantially disturb" means, for purposes of prospecting, to significantly impact land or water resources by:

(a) drilling of uranium prospecting holes or blasting. Drilling of coal prospecting holes and installation and use of associated disposal pits or installation of ground water monitoring wells does not constitute substantial disturbance;

(b) through (e) remain the same.

(121) through (129) remain the same, but are renumbered (122) through (130).

~~(130)~~ (131) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct strip or underground mining operations under a permit issued by the department. See ARM ~~17.24.412 and 17.24.413~~ 17.24.418.

(131) through (145)(b) remain the same, but are renumbered (132) through (146)(b).

AUTH: 82-4-204, MCA
IMP: 82-4-203, MCA

REASON: The term "applicant/violator system" or "AVS" appears in several proposed revisions and in New Rules I through IV, which are being adopted to comply with federal requirements in order for the Department of Environmental Quality to maintain primacy to regulate coal mining under the Surface Mining Control and Reclamation Act of 1977. The proposed amendment to ARM 17.24.301(13) defines that term to bring the rules into conformance with 30 CFR 701.5.

The proposed amendments to ARM 17.24.301(13) and (54) delete direct quotes from 82-4-233, MCA. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language. The board has determined it is not necessary to repeat statutory language in the rule when a reference to the statute will suffice. This amendment would also avoid the necessity of amending the rule in the future, should the Legislature amend 82-4-233, MCA, again.

The proposed amendments to (107)(c) and (130) are necessary to correct internal reference cites. The amendment to (107) (proposed (108)) is necessary to conform to proper drafting practice. Because of the Secretary of State's style rules for the Administrative Rules of Montana, the three subsections in (107) cannot be consecutively earmarked as (a), (b), and (c), as would be required by the Legislative Services Division if (107) were being adopted into the Montana Code Annotated. To ensure that citations to (107) will include (a), (b) and (c), the introductory sentence is being added.

Senate Bill 286 (Chapter 407, Laws of 2011), passed by the 2011 Legislature, amended 82-4-226, MCA, and modified certain coal prospecting procedures. The bill provided for a streamlined permitting process for coal exploration using drilling that does not substantially disturb the land surface. The process is codified in 82-4-226(8), MCA. The change to the definition of "substantially disturb" would bring this definition into conformance with the Legislature's use of the term in Senate Bill 286.

17.24.302 FORMAT, DATA COLLECTION, AND SUPPLEMENTAL INFORMATION (1) Information set forth in the application must be accurate, current, presented clearly and concisely, submitted in a format acceptable to the department, and supported by appropriate references to technical and other written material available to the department.

(2) through (9) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to ARM 17.24.302 allows the department to have authority over the format in which the required information for an application is submitted. This proposed amendment remedies time-consuming efforts by the department caused by submission of data to the department in

improper formats. For example, large database information that requires statistical analyses, by the department should not be submitted in a paper format. Additionally, information that is submitted in an electronic format must be in a format that is usable with the department's current software technology. This amendment would provide the department with the authority to require a specific format, thus allowing for more efficient use of department resources.

17.24.303 LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION (1) through (1)(g)(v) remain the same.

(h) for any surface coal mining operations that the applicant or the applicant's operator owned or controlled within the five-year period preceding the date of the submission of the application, and for any surface coal mining operation the applicant or the applicant's operator owns or controls on that date, the applicant must provide the:

(i) permittee's and operator's name and address;

(ii) permittee's and operator's taxpayer identification numbers;

(iii) federal or state permit number and corresponding Mine Safety and Health Administration number;

(iv) regulatory authority with jurisdiction over the permit; and

(v) permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure;

(h) through (k) remain the same, but are renumbered (i) through (l).

~~(l)~~ (m) a certified statement of whether the applicant, operator, any subsidiary, affiliate, or persons controlled by or under common control with the applicant or operator, is in compliance with 82-4-251, MCA, and, if known, whether any officer, partner, director, or any individual owning of record or beneficially, alone or with associates, ~~10%~~ ten percent or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251, MCA, and whether any of the foregoing parties or persons have ever had a strip mining or underground mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip mining or underground mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached including:

(i) identification number and date of issuance of the permit ~~or~~ and, when applicable, date and amount of bond or similar security;

(ii) through (v) remain the same.

(m) through (y) remain the same, but are renumbered (n) through (z).

AUTH: 82-4-204, MCA
IMP: 82-4-222, MCA

REASON: The department regulates coal mining under a delegation of authority by the federal Office of Surface Mining (OSM). That delegation is subject to the department adopting rules consistent with the federal regulations that govern surface and underground coal mining. The OSM maintains an automated information system of applicant, permittee, operator, violation, and related data to assist in implementing the Surface Mining Control and Reclamation Act of 1977.

That is known as the applicant/violator system, or AVS. Previously, the department's obligations to input data and utilize data from the AVS was regulated by a memorandum of understanding between the OSM and the department. However, in 2009, the OSM directed the department to adopt rules to govern the state's obligations related to the AVS. The amendment adding (1)(h) through (h)(v) is proposed to comply with the OSM's directive and 30 CFR 778.12. It is necessary to ensure that information related to ownership and control of coal mining operations is readily available to the department to ensure that rules relating to the issuance, suspension, and revocation of coal prospecting and operating permits due to current or historical violations are complied with.

The proposed amendment to (1)(m) is intended to comply with the directive from the OSM to adopt rules to implement the federal applicant/violator system referenced above by providing information required for input into the system. The amendment brings the rule into conformance with 30 CFR 778.14.

The amendment to (1)(m)(i) is proposed because the department only needs bond information for bonds that have been forfeited.

17.24.304 BASELINE INFORMATION: ENVIRONMENTAL RESOURCES

(1) The following environmental resources information must also be included as part of an application for a strip or underground mining permit:

(a) through (f)(iv) remain the same.

(g)~~(i)~~ a detailed description of all overburden and mineral materials (all materials other than soil) that will be handled during mining or backfilling operations. The description must include:

(A) through (C) remain the same, but are renumbered (i) through (iii).

~~(D)~~ (iv) a narrative addressing the suitability or unsuitability of the materials to be handled for reclamation purposes. This narrative must address or reference the data, characteristics of materials, and aspects of reclamation described in ~~(6)~~ (1)(f), and ~~(7)(a)(ii) and (iii)~~ (1)(g)(ii) and (iii), and ARM 17.24.322(2)(a)(iii); and

~~(E)~~ (v) additional studies or information determined by the department to be useful or necessary to evaluate the application~~;~~.

~~(ii) a~~All laboratory work ~~in this regard~~ conducted under (g) must be conducted in accordance with ARM 17.24.302(3);

(h) through (i)(ii) remain the same.

(j) a narrative of the results of a wildlife survey. The operator shall contact the department at least three months before planning the wildlife survey to allow the department to consult state and federal agencies with fish and wildlife responsibilities to determine the scope and level of detail of information required in the survey to help design a wildlife protection and enhancement plan. At a minimum, the wildlife survey must include:

(i) through (iii) remain the same.

(iv) a wildlife habitat map for the entire wildlife survey area including habitat types that are discussed in (c), and ARM 17.24.751(2)(f) ~~through (h)~~ and (g); and

(v) remains the same.

(k) through (l)(ii)(D) remain the same.

AUTH: 82-4-204, MCA

IMP: 82-4-222, MCA

REASON: The proposed amendment to ARM 17.24.304(1)(g) is necessary to comply with formatting requirements of the Secretary of State's office, which prohibits use of double earmarking practice, e.g. "(g)(i)."

The other proposed amendments to ARM 17.24.304 are necessary to correct internal reference cites.

17.24.308 OPERATIONS PLAN (1) Each application must contain a description of the operations proposed to be conducted during the life of the mine including, at a minimum, the following:

(a) remains the same.

(b) a narrative, with appropriate cross sections, design drawings, and other specifications sufficient to demonstrate compliance with ARM 17.24.609 and applicable rules of subchapter 10, explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in ARM 17.24.762):

(i) through (vi) remain the same.

(vii) facilities or sites and associated access routes for environmental monitoring and data gathering activities or for the gathering of subsurface data by trenching, drilling, geophysical or other techniques to determine the natures, depth, and thickness of all known strata, overburden, and coal seams; and

(viii) through (f) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-222, MCA

REASON: Currently, ARM 17.24.308(1)(b)(vii) requires a description for facilities associated with environmental monitoring and data gathering activities for the gathering of subsurface data. The word "or" was inadvertently left out of this rule in a previous rulemaking. As written, the language is nonsensical because environmental data and coal data are not the same things. Adding the word "or" as proposed, will require a description to be included for all facilities associated with environmental monitoring, data gathering, or gathering of subsurface data.

17.24.313 RECLAMATION PLAN (1) Each reclamation plan must contain a description of the reclamation operations proposed, including the following information:

(a) through (g)(iv) remain the same.

(h) a narrative of the method for revegetation including, but not limited to, a discussion of:

(i) through (ix) remain the same.

(x) measures to be used to determine the success of revegetation, including the use of reference areas and/or technical standards in relation to the revegetation types pursuant to ARM 17.24.724 and 17.24.726;

(xi) through (i) remain the same.

(j) a narrative explaining reclamation of facilities and sites identified under

ARM 17.24.308~~(2)~~(1)(b).

AUTH: 82-4-204, MCA
IMP: 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, MCA

REASON: The proposed amendment to ARM 17.24.313(1)(h)(x) provides internal references to the reference area requirements and technical standards referenced in the rule. This amendment is necessary to direct the reader's attention to those requirements and standards.

The proposed amendment to ARM 17.24.313(1)(j) is necessary to correct an erroneous internal reference cite.

17.24.314 PLAN FOR PROTECTION OF THE HYDROLOGIC BALANCE

(1) Each permit application must contain a detailed description, supported by appropriate maps, data, and other graphics, of the measures to be taken during and after the proposed mining activities to minimize disturbance of the hydrologic balance on and off the mine plan area and to prevent material damage to the hydrologic balance outside the permit area in accordance with subchapters 4 through 9. The measures must minimize disturbance of the hydrologic balance sufficiently to sustain the approved postmining land use and the performance standards of subchapters 5 through 12 and must provide protection of:

(a) and (b) remain the same.

(c) the quantity of surface and ground water within both the proposed mine plan area and adjacent areas from adverse effects of the proposed mining activities, or to provide alternative sources of water in accordance with ARM 17.24.304~~(5)~~(1)(e) and ~~(6)~~(f), and 17.24.648, where the protection of quantity cannot be ensured.

(2) The description must include:

(a) through (c) remain the same.

(d) plans for monitoring and semiannual reporting of ground and surface water quality and quantity data collected and analyzed in accordance with ARM 17.24.304~~(5)~~(1)(e) and ~~(6)~~(f), 17.24.645, and 17.24.646.

(3) through (5) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-222, MCA

REASON: The proposed amendments to ARM 17.24.314 are necessary to correct erroneous internal reference cites.

17.24.401 FILING OF APPLICATION AND NOTICE (1) and (2) remain the same.

(3) Upon receipt of notice of the department's determination of administrative completeness, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed activity at least once a week for four consecutive weeks. The advertisement must contain, at a minimum, the following information:

(a) remains the same.

(b) a map or description, which must:

(i) remains the same.

(ii) for all applications except major revision applications, clearly show or describe the exact location and boundaries of the proposed permit area and state the acreage of that area; and

~~(iii) state the names of the US geological survey 7.5- or 15-minute quadrangle maps that contain the area shown or described, if available; and~~

(iv) remains the same, but is renumbered (iii).

(c) through (6) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-222, 82-4-226, 82-4-231~~(4)~~, 82-4-232, 82-4-233, MCA

REASON: The proposed amendments to ARM 17.24.401(3)(b)(ii), (iii), and (iv) are necessary to remove an antiquated requirement in (iii). It is antiquated because the maps have been superseded by electronic mapping.

17.24.403 INFORMAL CONFERENCE (1) through (1)(c) remain the same.

(2) Except as provided in (3) of this rule, if an informal conference is requested in accordance with this rule, the department shall hold an informal conference within 30 days following the receipt of the request. The informal conference shall be conducted according to the following:

(a) and (b) remain the same.

(c) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the department may arrange with the applicant to grant parties to the conference access to the ~~mine plan~~ proposed mining area for the purpose of gathering information relevant to the conference.

(d) through (4) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, MCA

REASON: The proposed amendment to (2)(c) reconciles the rule language to the statutory language in 82-4-231(6), MCA.

17.24.416 PERMIT RENEWAL (1) through (3) remain the same.

(4)~~(a)~~ The department shall, upon the basis of application for renewal and completion of all procedures required under this rule, issue a renewal of a permit, unless it is established and written findings by the department are made that:

(i) through (iv) remain the same, but are renumbered (a) through (d).

(A) and (B) remain the same, but are renumbered (i) and (ii).

~~(v)~~ (e) any additional revised or updated information required by the department that has not been provided by the applicant;

(vi) remains the same, but is renumbered (f).

~~(vii)~~ (g) the renewal is prohibited by the denial provisions of 82-4-227, 82-4-234, and 82-4-251, MCA; ~~or~~

~~(viii)~~ (h) the operation has been in a state of temporary cessation for six or more years; or

(i) the department determines, following an eligibility review and determination as described in [NEW RULE II], that the owner or operator is not eligible for a permit.

(b) through (d) remain the same, but are renumbered (5) through (7).

(5) remains the same, but is renumbered (8).

AUTH: 82-4-204, MCA
IMP: 82-4-221, 82-4-226, MCA

REASON: The proposed amendment to ARM 17.24.416(4)(a) is necessary to comply with the Secretary of State's prohibition on double earmarking and the proposed amendment to (4)(a)(v) is necessary to correct a grammatical error.

The proposed addition of (4)(i) conforms the rule to the requirements of proposed New Rule II. See the first paragraph of the reason given for the proposed amendment to ARM 17.24.303.

17.24.418 TRANSFER OF PERMITS (1) remains the same.

(2) The department may not approve any transfer or assignment of any permit unless the potential transferee or assignee:

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

(b) provides the department with an application for approval of such proposed transfer, assignment, or sale, including:

(i) and (ii) remain the same.

(iii) the same information as is required in ~~subchapter 3~~ ARM 17.24.303 for applications for new permits.

(3)(a) through (6)(b) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-238, MCA

REASON: The proposed amendment to ARM 17.24.418 is necessary to make an internal reference cite more specific.

17.24.425 ADMINISTRATIVE REVIEW (1) remains the same.

(2) The ~~department~~ board shall commence the hearing within 30 days of such request. For the purposes of the hearing, the ~~department~~ board or its hearing officer may order a site inspection. The hearing is a contested case hearing and no person who presided at an informal conference shall either preside at this hearing or participate in the decision thereon.

(3) The ~~department~~ board may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(a) through (5) remain the same.

(6) Within 20 days after the close of the record, the ~~department~~ board shall issue and furnish the applicant and each person who participated in the hearing with

the written findings of fact, conclusions of law, and order of the department with respect to the appeal.

(7) The burden of proof at such hearing is on the party seeking to reverse the decision of the ~~department~~ board.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-206, 82-4-221, 82-4-226, 82-4-231, 82-4-232, MCA

REASON: The proposed amendments to ARM 17.24.425 reflect the enactment of HB 370 (Chapter 127, Laws of 2005) by the 2005 Legislature transferring the responsibility for holding a hearing from the Department of Environmental Quality to the Board of Environmental Review. See 82-4-231(9), MCA.

17.24.501 GENERAL BACKFILLING AND GRADING REQUIREMENTS

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

(4) All final grading on the area of land affected must be to the approximate original contour of the land in accordance with 82-4-232(1), MCA.

(a) The operator shall transport, backfill, and compact to ensure compliance with (3)(b) and ARM 17.24.505, and grade all spoil material as necessary to achieve the approximate original contour. Highwalls must be reduced or backfilled in compliance with ARM 17.24.515(1), or reclaimed using approved highwall reduction alternatives in compliance with ARM 17.24.515(2).

(b) through (7) remain the same.

AUTH: 82-4-204, 82-4-231, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to ARM 17.24.501 is necessary to provide clarification that an alternative to reducing or backfilling is allowed. The methods for highwall reclamation may include reducing, backfilling, or reclaiming to a replacement bluff feature pursuant to ARM 17.24.515(2). As currently worded, the rule conflicts with ARM 17.24.515(2).

17.24.623 BLASTING SCHEDULE (1) through (5)(f) remain the same.

(6) Before blasting in areas or at times not in a previous schedule, the operator shall prepare and distribute a revised blasting schedule according to the procedures of (1) and (2). Whenever a schedule has previously been provided to the owner or residents under ~~(1)~~ (2) with information on requesting a preblasting survey, the notice of change need not include information regarding preblast surveys.

(7) remains the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendments to ARM 17.24.623 are necessary to

ensure that the modifications of the blasting schedule are not only prepared but are also distributed appropriately according to (2) and to correct an internal citation error. Distribution is necessary to protect public safety.

17.24.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES (1) through (19) remain the same.

(20) If a sedimentation pond meets any of the criteria of 30 CFR 77.216(a), the following additional requirements must be met:

(a) an appropriate combination of principal and emergency spillways that will discharge safely the runoff resulting from a 100-year, ~~24~~ six-hour precipitation event, or a larger event specified by the department, assuming the impoundment is at full pool for spillway design, must be provided;

(b) through (28)(b) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to ARM 17.24.639 requires sedimentation ponds that meet any of the criteria of 30 CFR 77.216(a) to be designed to have an appropriate combination of principal and emergency spillways that will discharge safely the runoff resulting from a 100-year, six-hour storm. This amendment requires the specified sedimentation ponds to safely pass a generally smaller peakflow than the existing rule requiring the safe passage of a 100-year, 24-hour storm. This amendment will align the spillway design to the same requirements as the stream channel reclamation found in ARM 17.24.634. A 100-year, six-hour event still represents a large and rare runoff event, would comply with 30 CFR 816.49(a)(9)(ii)(B), and would provide adequate protection for the facility.

17.24.642 PERMANENT IMPOUNDMENTS AND FLOOD CONTROL IMPOUNDMENTS (1) Permanent impoundments are prohibited unless constructed in accordance with ARM 17.24.504 and 17.24.639~~,~~ and have open-channel spillways that will safely discharge runoff resulting from a 100-year, ~~24~~ six-hour precipitation event, assuming the impoundment is at full pool for spillway design or larger event specified by the department. The department may approve a permanent impoundment upon the basis of a demonstration that:

(a) through (7) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to ARM 17.24.642 requires permanent impoundments to be designed to have open channel spillways that will discharge safely the runoff resulting from a 100-year, six-hour storm. This amendment requires permanent impoundments to safely pass a generally smaller peakflow than the existing rule requiring the safe passage of a 100-year, 24-hour storm. A 100-year, six-hour event, however, still represents a large and rare runoff event and would make the rule consistent with federal regulations. See 30 CFR

816.49(a)(9)(ii)(B) pertaining to impoundments of this class. The current 100-year, 24-hour design results in inconsistencies between geomorphic stream channel reclamation designs (ARM 17.24.634) and spillway engineering designs. The proposed amendment will alleviate this inconsistency and provide for an uninterrupted peakflow stream channel design.

17.24.645 GROUND WATER MONITORING (1) Ground water levels, subsurface flow and storage characteristics, and the quality of ground water must be monitored based on information gathered pursuant to ARM 17.24.304 and the monitoring program submitted pursuant to ARM 17.24.314 and in a manner approved by the department to determine the effects of strip or underground mining operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit and adjacent areas. When operations may affect the ground water system, ground water levels and ground water quality must be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. The information must be submitted to the department in a format approved by the department.

(2) through (8) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: This amendment will allow the department to require the permittee to submit the ground water hydrology data in a format that will ensure the long-term usability of the data, increase review efficiency, and provide consistency for data comparison.

17.24.646 SURFACE WATER MONITORING (1) through (1)(b) remain the same.

(2) The operator shall submit semiannual reports including analytical results from each sample taken during the semester to the department. Sampling results must be submitted in a format approved by the department. In addition, all monitoring data must be maintained on a current basis for review at the minesite. Any sample results that indicate a permit violation must be reported immediately to the department. However, whenever the discharge for which water monitoring reports are required is also subject to regulation by a MPDES permit and that permit requires filing of the water monitoring reports within 90 days or less of sample collection, the operator shall submit to the department on the time schedule required by the MPDES permit or within 90 days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet MPDES permit requirements.

(3) through (7) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: This amendment will allow the department to require the permittee to submit the surface water hydrology data in a format that will ensure the long-term usability of the data, increase review efficiency, and provide consistency for data comparison.

17.24.702 REDISTRIBUTION AND STOCKPILING OF SOIL (1) through (3)(b) remain the same.

(4) Prior to redistribution of soil or soil substitutes, regraded areas must be:

(a) sampled and analyzed to determine the physicochemical nature of the surficial spoil material in accordance with ARM 17.24.313(1)~~(g)~~(h)(xi);

(b) through (7) remain the same.

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

REASON: The proposed amendment to ARM 17.24.702 is necessary to correct an internal reference cite.

17.24.711 ESTABLISHMENT OF VEGETATION (1) Vegetation must be reestablished in accordance with 82-4-233~~(1), (2), (3), and (5)~~, MCA~~, as follows:~~. For purposes of that statute, "other constructed features" means discrete man-made features less than two acres in size that are incorporated into reclaimed areas, that have been constructed to an approved design, and that do not require revegetation to achieve the approved postmining land use or postmining slope stability.

~~(a) Sections 82-4-233(1), (2), and (3), MCA, state: "(1) The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:~~

~~"(a) diverse, effective, and permanent;~~

~~"(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;~~

~~"(c) at least equal in extent of cover to the natural vegetation of the area; and~~

~~"(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.~~

~~"(2) The reestablished plant species must:~~

~~"(a) be compatible with the approved postmining land use;~~

~~"(b) have the same seasonal growth characteristics as the original vegetation;~~

~~"(c) be capable of self-regeneration and plant succession;~~

~~"(d) be compatible with the plant and animal species of the area; and~~

~~"(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.~~

~~"(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:~~

~~"(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c)~~

~~are not applicable;~~

~~"(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;~~

~~"(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates."~~

~~(b) Section 82-4-233(5), MCA, states: "For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department and on which the reclaimed vegetation otherwise meets the requirements of subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."~~

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

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.711 would delete a direct quotation of 82-4-233, MCA, which is no longer accurate, and would substitute a reference to that statute. The proposed amendment brings the rule into compliance with 2-4-305(2), MCA, which provides that rules may not unnecessarily repeat statutory language and would avoid the necessity of amending the rule in the future, should the Legislature amend 82-4-233, MCA, again. The board also proposes to amend (1) by adding a definition of "other constructed features" to address a concern raised by the Office of Surface Mining that all of reclamation could be considered "constructed" and so the exemption of establishing vegetation could broadly be applied to the whole affected area (see Volume 72 Federal Register 57826, October 10, 2007). To ensure that the entire reclaimed area cannot be considered to be a constructed feature, the board's proposed definition provides a limit on the size of the other constructed feature. Furthermore, the proposed definition requires that the constructed feature would not interfere with the achievement of the postmining land use or slope stability. This would ensure that the exemption from revegetation in 82-4-233, MCA, does not impair reclamation. Finally, the proposed definition requires the other constructed feature to be constructed to an approved design. By requiring an approved design, the department would have the opportunity to review the proposed feature to ensure the reclamation will not negatively affect the post mine land use or slope stability while not limiting the permit holder to specific reclamation features.

17.24.718 SOIL AMENDMENTS, MANAGEMENT TECHNIQUES, AND LAND USE PRACTICES (1) remains the same.

(2) ~~An operator may use only normal husbandry practices to ensure the establishment of vegetation consistent with the approved reclamation plan.~~ An operator may use husbandry practices, approved by the department, for management of vegetation consistent with the approved reclamation plan without affecting the minimum responsibility period. If husbandry practices other than those

specified for the approved land use are employed, the minimum responsibility period will start after the last such unapproved practice is used.

(3) remains the same.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.718 addresses a concern raised by the Office of Surface Mining in Volume 72 Federal Register No. 195, 57830 (2007). Currently ARM 17.24.718(2) requires that operators use normal husbandry practices as management techniques. The Office of Surface Mining is concerned that the current language could be construed to include any normal husbandry practice. The proposed amendment addresses this concern by requiring the operator to use only approved normal husbandry practices.

17.24.723 MONITORING (1) The operator shall conduct periodic vegetation, soils, and wildlife monitoring under plans submitted pursuant to ARM 17.24.312(1)(d) and 17.24.313(1)~~(f)(iv) and (1)(g)(ix)~~(g) and (h) and the approved postmining land use as approved by the department.

(2) through (4) remain the same

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.723 is necessary to correct an erroneous internal reference cite.

17.24.725 PERIOD OF RESPONSIBILITY (1) Except as provided in 82-4-235~~(3)~~(4), MCA, et seq., the minimum period of responsibility for reestablishing vegetation begins after the last seeding, planting, fertilizing, irrigating, or other activity related to phase III reclamation as determined by the department unless it can be demonstrated that such work is a normal husbandry practice that can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.

(2) Except as provided in 82-4-235(3), MCA, an ~~A~~application for phase III bond release may not be submitted prior to the end of the tenth growing season.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.725(1) corrects an erroneous reference cite resulting from the enactment of HB 278 by the 2009 Legislature (Chapter 72, Laws of 2009) adding 82-4-235(3), MCA, and renumbering the formerly described 82-4-235(3) to (4).

The proposed amendment to (2) adds the reference citation for the statute that provides the exception to when a bond release application may be submitted.

This amendment is necessary to reflect the enactment of HB 278, in which exceptions to the ten-year responsibility period were adopted.

17.24.726 VEGETATION MEASUREMENTS (1) Standard, ~~and~~ consistent, and statistically valid field and laboratory methods must be used to obtain and evaluate vegetation data consistent with 82-4-233 and 82-4-235, MCA, and to compare revegetated area data with reference area data and/or with technical standards. Specific field and laboratory methods used and schedules of assessments must be ~~detailed in a plan of study and be~~ approved by the department for inclusion in the permit. ~~Sample adequacy must be demonstrated.~~ In addition to these and other requirements described in this rule, the department shall supply guidelines regarding ~~acceptable~~ representative field and laboratory methods.

(2) remains the same.

(3) ~~The revegetated a~~Areas to be developed for grazing land, pastureland, or cropland must meet or exceed the applicable performance standards in (1) and (2) ~~for at least two of the last four years~~ in any two years after year six of the phase III bond period of responsibility. Pursuant to ARM 17.24.1113, the department shall evaluate the vegetation at the time of the bond release inspection for phase III to confirm the findings of the quantitative data.

(4) Areas to be developed for fish and wildlife habitat, forestry, or recreation must meet or exceed the performance standards in (1) and (2), excluding production, and a minimum tree and shrub density following the requirements of (1). Tree and shrub density must be sampled during the last growing season of the phase III bond period of responsibility. Sampling must demonstrate the following conditions:

(a) all trees and shrubs must be healthy and have been in place for not less than two growing seasons;

(b) at least 80 percent of the trees and shrubs used to determine success shall have been in place for at least the last six years of the phase III bond period of responsibility; and

(c) volunteer and sucker trees and shrubs of the approved species may be included in the accounting for success.

(5) For areas to be developed for residential or industrial/commercial post-mine land use, the vegetative ground cover shall not be less than that required to control erosion within two years after regrading is completed.

(4) remains the same, but is renumbered (6).

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.726(1) addresses a concern raised by the Office of Surface Mining in Volume 72 Federal Register 57830, October 10, 2007. Currently, (1) requires the permittee to submit a plan of study regarding vegetation measurements to be approved by the department. The Office of Surface Mining is concerned that the current language is less stringent than the federal regulations which require that each permit application contain measures proposed to be used to determine success of revegetation. See 30 CFR

780.18(b)(5). The proposed amendment addresses the concern of the Office of Surface Mining by requiring the methods and schedules of vegetation measurements to be included in the permit.

The proposed amendments to (3) are necessary to conform Montana's administrative rules with the corresponding federal requirements located at 30 CFR 816.116(c)(3). Currently, the rule reads that the vegetation standards must be met in any two of the last four years. The proposed amendment (any two years after year six) has the same meaning if the responsibility period is exactly ten years. The need for this rule amendment is evident when the operator chooses or the vegetation requires a period longer than ten years. As the rule currently exists, Montana's language has a different meaning than the CFR because vegetation data collected may "expire" if a longer responsibility period is taken. This would require additional expense in sampling that is unnecessary.

The proposed addition of (4) is necessary to conform Montana's rule with the corresponding federal requirements located at 30 CFR 816.116(b). Currently, the rule requires all revegetated areas to meet or exceed standards for production, cover, and density. However, the statute that the rule implements, 82-4-235(1)(c), MCA, does not require land reclaimed to fish and wildlife habitat, forestry, and recreation land uses to meet a production standard. The addition of (4) is proposed to further define what conditions must be present for acceptable sampling time frames for tree and shrub density and what constitutes a tree or shrub. These provisions are required by 30 CFR 816.116(b)(3).

The proposed addition of (5) is necessary to conform Montana's rule with the corresponding federal requirements located at 30 CFR 816.116(b)(4). The proposed language acknowledges that a vegetative standard for cover, production, and density are not appropriate for a land use of residential or industrial/commercial. Rather, the appropriate measurement is to require vegetative ground cover sufficient to control erosion.

17.24.901 GENERAL APPLICATION AND REVIEW REQUIREMENTS

(1) through (1)(h)(iv) remain the same.

(2) The requirements of (1)~~(f)~~(g) and ~~(g)~~(h) also apply to pneumatic backfilling operations, except where the operations are exempted by the department from requirements specifying hydrologic monitoring.

AUTH: 82-4-204, MCA
IMP: 82-4-222, MCA

REASON: The proposed amendments to ARM 17.24.901 are necessary to correct erroneous internal reference citations.

17.24.924 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: GENERAL REQUIREMENTS (1) through (15) remain the same.

(16) Surface water runoff from the area above a structure must be diverted away from the structure and into stabilized diversion channels designed to pass safely the runoff from a 100-year, ~~24~~ six-hour precipitation event or larger event specified by the department. Surface runoff from the structure surface must be

diverted to stabilized channels off the fill that will safely pass the runoff from a 100-year, ~~24~~ six-hour precipitation event. Diversion design must comply with the requirements of ARM 17.24.637.

(17) through (20) remain the same.

AUTH: 82-4-204, 82-4-231, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: The proposed amendments to ARM 17.24.924 are necessary to eliminate a difference in the design criteria located in ARM 17.24.634, which is referenced in ARM 17.24.637, that requires the surface water drainage to be constructed to safely pass a 100-year, six-hour storm. These amendments require the surface water drainage to safely pass a generally smaller peakflow than the existing rule requiring the safe passage of a 100-year, 24-hour storm. A 100-year, six-hour event, however, still represents a large and rare runoff event. This amendment would make the rule consistent with federal regulations (30 CFR 817.83(a)(2)) and would provide adequate protection for the facility.

17.24.926 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: HEAD-OF-HOLLOW FILL (1) remains the same.

(2) The drainage control system for the head-of-hollow fill must be capable of passing safely the runoff from a 100-year, ~~24~~ six-hour precipitation event, or larger event specified by the department.

AUTH: 82-4-204, 82-4-205, 82-4-231~~(10)(h)~~, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: The proposed amendment to ARM 17.24.926 requires drainage control systems to be designed to safely pass the runoff resulting from a 100-year six-hour storm. This amendment requires the drainage control system to safely pass a generally smaller peakflow than the existing rule requiring the safe passage of a 100-year, 24-hour storm. A 100-year, six-hour event, however, still represents a large and rare runoff event. This amendment would make the rule consistent with federal regulations pertaining to head-of-hollow drainage systems (30 CFR 817.72(a)(2)) and would provide adequate protection for the facility.

17.24.927 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: DURABLE ROCK FILLS (1) through (3)(c) remain the same.

(4) Surface water runoff from the areas adjacent to and above the fill must not be allowed to flow into the fill and must be diverted into stabilized channels that are designed to pass safely the runoff from a 100-year, ~~24~~ six-hour precipitation event. Diversion design must comply with the requirements of ARM 17.24.637.

(5) remains the same.

(6) Surface runoff from the outslope of the fill must be diverted off the fill to properly designed channels that will pass safely a 100-year, ~~24~~ six-hour precipitation event. Diversion design must comply with the requirements of ARM 17.24.637.

(7) through (7)(c) remain the same.

AUTH: 82-4-204, 82-4-231, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: The proposed amendments to ARM 17.24.927 are necessary to eliminate an inconsistency in the design criteria located in ARM 17.24.634, which is referenced in ARM 17.24.637, that requires the surface water drainage to be constructed to safely pass a 100-year, six-hour storm. This amendment requires the surface water drainage to safely pass a generally smaller peakflow than the existing rule requiring the safe passage of a 100-year, 24-hour storm. A 100-year, six-hour event, however, still represents a large and rare runoff event. This amendment would make the rule consistent with federal regulations pertaining to disposal of excess spoil (30 CFR 817.73(f)) and would provide adequate protection for the facility.

17.24.1001 PERMIT REQUIREMENT (1) A person who intends to prospect for coal or uranium on land not included in a valid strip or underground mining permit must obtain a prospecting permit from the department if the prospecting will be:

(a) remains the same.

(b) conducted to determine the location, quality, or quantity of mineral using drilling operations; or

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

(2) An application for a prospecting permit must be made on forms provided by the department and, except for an application for a coal drilling operation that is subject to the application and review requirements of 82-4-226(8), must be accompanied by the following information:

(a) through (g) remain the same.

(h) a prospecting map that meets the following requirements:

(i) and (ii) remain the same.

(iii) each map must contain:

(A) through (E) remain the same.

(F) the location of habitat of species described in ~~(d)~~(e); and

(G) through (o) remain the same.

(p) the proposed post-disturbance land use; and

(q) the proposed public notice of the prospecting activities and proof of publication, in accordance with ARM 17.24.303~~(23)~~(1)(x). The procedures of ARM 17.24.401(3) and (5), 17.24.402, and 17.24.403 must be followed in the processing of a prospecting permit application.

(3) through (6)(d) remain the same.

(7) Prospecting-related activities or facilities that are conducted or created in accordance with this rule and ARM 17.24.1002 through 17.24.1014 and 17.24.1016 through ~~17.24.1018~~ [NEW RULE V] must be transferred to a valid strip or underground mining permit whenever such activities or facilities become part of mine operations in conjunction with ARM 17.24.308~~(2)~~(1)(b) or 17.24.609.

AUTH: 82-4-204, MCA
IMP: 82-4-226, MCA

REASON: The proposed amendments to ARM 17.24.1001 are necessary to correct erroneous internal reference cites and to correct a typographical error in (2)(p) by adding a hyphen to the word "post-disturbance."

Senate Bill 286, passed by the 2011 Legislature, amended 82-4-226, MCA, and modified certain coal prospecting procedures. The bill provided for a streamlined permitting process for coal exploration using drilling that does not substantially disturb the land surface. The process is codified in 82-4-226(8), MCA. The addition of (1)(b), the new language in (2), and the amendment to (7) would bring these provisions into conformance with 82-4-226, MCA, as amended by Senate Bill 286.

17.24.1002 INFORMATION AND MONTHLY REPORTS (1) through (2)(m) remain the same.

(3) Annual reports must be filed in accordance with 82-4-226~~(7)~~(6) and 82-4-237, MCA, and must include the information required under (2) for all activities conducted during the report year.

AUTH: 82-4-204, MCA
IMP: 82-4-226, MCA

REASON: The proposed amendment to ARM 17.24.1002(3) is necessitated by the changes to 82-4-226, MCA, made by HB 370 (Chapter 127, Laws of 2005) during the 2005 legislative session and to conform the citation to the current statute.

17.24.1003 RENEWAL AND TRANSFER OF PERMITS (1) An application for renewal of a prospecting permit must be submitted by the permittee on forms provided by the department. The application must be submitted at least ~~120~~ 15 ~~but not more than 150~~ days prior to the anniversary date of the permit and must include:

(a) through (4) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-226, MCA

REASON: Currently, an application to renew a prospecting permit must be submitted at least 120 days prior to the renewal date. The board believes that 15 days is sufficient time for review of the renewal application and will result in quicker department action on the application.

17.24.1005 DRILL HOLES (1) through (1)(b) remain the same.

(2) The prospector shall use appropriate techniques to:

(a) through (c) remain the same.

(d) reclaim all surface impacts and prevent ~~subsidence~~ settling that may result from prospecting-related activities.

(3) through (4) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-226, MCA

REASON: The proposed amendment to ARM 17.24.1005 is necessary to correct the improper use of the word "subsidence." Subsidence is defined in 82-4-204(49), MCA, as "... a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations." The proposed amendment will replace the word "subsidence" with the word "settling," which is an appropriate word to be associated with prospecting-related activities.

17.24.1016 BOND REQUIREMENTS FOR DRILLING OPERATIONS

(1) and (2) remain the same.

(3) Each drill site is considered to be ~~0.~~1.0 acre unless otherwise approved by the department.

(4) remains the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-223, 82-4-226, MCA

REASON: The proposed amendment to ARM 17.24.1016 would increase the area associated with each drill site to 1.0 acre. This disturbance area would then be bonded at $200 per acre. The current area of 0.1 acre allows for set up of the drill rig and minimal disturbance around it. Increasing the size of the drill site will better allow for use of mud pits when needed, storage of drilling materials, and better blending of reclamation with adjacent native areas.

17.24.1018 NOTICE OF INTENT TO PROSPECT (1) This rule applies to a prospecting operation that is outside an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, MCA, and that is:

(a) remains the same.

(b) conducted ~~for the purpose of determining the location, quality, or quantity of a natural mineral deposit but does not substantially disturb, as defined in ARM 17.24.301, the natural land surface~~ to determine drill hole locations and access routes prior to submittal of an application to prospect to determine the location, quality, and quantity of a mineral reserve.

(2) A person who conducts a prospecting operation as described in (1) must, before conducting the prospecting operations, file with the department a notice of intent to prospect that meets the requirements of (3) ~~or~~ and (4). A notice of intent to prospect is effective for one year after it is filed. If prospecting activities described in a notice are not conducted within the year, they may be incorporated by reference in a subsequent notice of intent to prospect.

(3) remains the same.

(4) The notice must document that the owners of the land affected have been notified and understand that the department shall make investigations and inspections necessary to ensure compliance with the Act, applicable rules, and ~~permit~~ notice of intent conditions. The notice must also include the current mailing address and phone number of each affected landowner.

(5) A notice of intent for prospecting activities that will not substantially disturb, as defined in ARM 17.24.301, the natural land surface must contain the

following:

(a) ~~information required in ARM 17.24.1001(2)(a) through (i), and (2)(l) through (n)~~ a map of sufficient size and scale to adequately show all areas to be prospected. Standard United States geological survey topographic quadrangle maps, or other similar map showing the same level of detail, must be used as base maps. The following must be clearly identified on the map~~;~~:

(i) topography (minimum of ten-foot contours), locations of streams, lakes, stockwater ponds, wells, and springs that are known or readily discoverable proximate to the prospecting operations;

(ii) surface ownership;

(iii) roads and access routes;

(iv) locations of proposed installations of monitoring facilities; and

(v) location of occupied dwellings and pipelines; and

(b) remains the same.

(6) A notice of intent to prospect for prospecting operations that will substantially disturb, as defined in ARM 17.24.301, the natural land surface, must contain the following to the extent that it is applicable to the proposed prospecting operation:

(a) through (c) remain the same.

(7) Within 30 days of receipt of a notice of intent to prospect ~~pursuant to (3) or (4)~~, the department shall notify the person who filed the notice whether the notice meets the requirements of ~~(3) or (4)~~ this rule.

(8) Each person who conducts prospecting ~~which substantially disturbs the natural land surface~~ under a notice of intent shall, while in the prospecting area, have available to the department for review upon request a copy of the notice of intent to prospect.

(9) All provisions of this subchapter, except ARM 17.24.1001~~(1), (2)(j), (k), and (q), (3), (4), and (5)~~, 17.24.1003, 17.24.1014, 17.24.1016, ~~and~~ 17.24.1017, and [NEW RULE V] apply to a ~~prospecting operation for which a permit is not required pursuant to ARM 17.24.1001~~ notice of intent to prospect.

AUTH: 82-4-226, MCA
IMP: 82-4-226, MCA

REASON: The amendment to (1)(b) and the first amendment to (2) are proposed to bring the rule into conformance with 82-4-226, MCA, as amended by SB 286 (Chapter 407, Laws of 2011), which does not allow prospecting to determine the location, quality, or quantity of a mineral deposit to be conducted under a notice of intent. The replacement of "or" with "and" in (2) is made because both (3) and (4) apply to each notice of intent. The amendments to (5)(a) eliminate information requirements that are not necessary for operations that do not create a substantial disturbance. The amendment to (6) is proposed because not all of the requirements referenced in (6)(a) through (c) apply to every prospecting operation. The amendments to (8) are necessary because, when a department employee on an inspection trip observes a prospecting operation, the employee must have access to the notice of intent to ensure that the operation has a notice of intent and that the operation is in compliance with it. The amendment to (9) is made because the

information requirements for notices of intent are specified in (5) and (6) of the rule.

17.24.1111 BONDING: BOND RELEASE APPLICATION CONTENTS

(1) and (2) remain the same.

(3) The application must include the permit number and date approved or renewed, a proposed public notice of the precise location of the land affected, the location and acreage for which bond release is sought, the amount of bond release sought, a description of the completed reclamation, including the dates of performance and how the results of the reclamation satisfy the requirements of the approved reclamation plan, and copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters must be sent before the permittee files the application for release.

(4) remains the same.

(5) ~~Within 30 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by ARM 17.24.1112. Such proof of publication is considered part of the bond release application.~~ The department shall determine whether an application is administratively complete within 60 days of receipt and shall immediately notify the applicant in writing of its determination. If the department determines an application is not administratively complete, the notice must list the specific items not adequately addressed in the application. Any items not listed in the notice are presumed to be addressed.

(6) Within 45 days of the department's determination of administrative completeness, the applicant shall submit proof of publication of the advertisement required by ARM 17.24.1112.

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

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.1111(3) is necessary to bring the rule into compliance with 82-4-232(6), MCA, as amended by HB 370 during the 2005 legislative session. (See Chapter 127, Laws of 2005.) The proposed language provides clear direction to the bond release application requirements found at 82-4-232(6), MCA.

The proposed amendment to (5) also is necessary to reflect changes in 82-4-232, MCA. The proposed amendment deletes the current requirement to submit proof of publication of the public notice for bond release within 30 days of submission of the application, and replaces it with a requirement in (6) that proof of publication be submitted to the department within 45 days after the application is determined to be administratively complete. This time frame will allow the company to run the public notice for four consecutive weeks after the date set by 82-4-232(6)(c), MCA, to begin publication and still have two weeks to submit the affidavit of publication. Section 82-4-232(6)(c), MCA, allows the department a maximum of 60 days to review a bond release application. The proposed language in (6) reflects that amendment and includes a starting time for when the 60 days begins.

17.24.1112 BONDING: ADVERTISEMENT OF RELEASE APPLICATIONS AND RECEIPT OF OBJECTIONS (1) ~~At the time of filing an application for bond release~~ Upon receipt of notice of the department's determination of administrative completeness, the ~~permittee~~ applicant shall advertise the ~~filing~~ approved public notice of the application in a newspaper of general circulation in the locality of the permit area. The advertisement must:

(a) through (2)(b)(ii) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.1212 reflects changes in 82-4-232(6)(c) as amended by HB 370 during the 2005 Legislative session. (See Chapter 127, Laws of 2005.) The current language in (1) requires that the applicant advertise the public notice for the bond release at the time of the application. However, 82-4-232, MCA, was amended during that session to require the department to review a proposed public notice for form and content prior to advertisement, thus the proposed public notice is not available for circulation in the newspaper until the department approves it. The proposed amendment is requested to reconcile the timing of the advertisement with the timing required in 82-4-323(6)(c), MCA.

17.24.1113 BONDING: INSPECTION OF SITE AND PUBLIC HEARING OR INFORMAL CONFERENCE (1) Within 30 days~~, weather permitting,~~ of ~~receiving a complete bond release request~~ determining that a bond release application is administratively complete pursuant to 82-4-232(6)~~(a)~~(h), MCA, the department shall, weather permitting, inspect and evaluate the reclamation work. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the department in making the bond release inspection. Upon request of any person described in ARM 17.24.1112(2), the department may arrange with the permittee to allow that person access to the permit area for the purpose of gathering information relevant to the proceeding.

(2) The department shall ~~schedule~~ hold a public hearing if written objections are filed and a public hearing is requested within 30 days of the last publication of notice of application. The public hearing must be held in the locality of the permit area for which bond release is sought or in Helena, at the option of the objector.

(a) Notice of a public hearing must be published in the Montana Administrative Register at least two weeks before the date of hearing and in a newspaper of general circulation in the locality of the hearing ~~at least two weeks~~ for two consecutive weeks before the date of the hearing.

(b) The public hearing must be held within 30 days from the date of the ~~notice~~ hearing request.

(c) through (e) remain the same.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.1113(1) reflects changes in 82-4-232, MCA. In 2005, the Legislature amended what is now 82-4-232(6)(h), MCA, by changing the beginning of the 30-day period for the department to complete the bond release inspection from the date the application is received to the date the department determines the application is administratively complete, weather permitting. (See Chapter 127, Laws of 2005.) The proposed language reflects those changes to the statute.

The proposed amendments to (2) also reflect amendments to 82-4-232, MCA, by the 2005 Legislature in the same bill. The first proposed change in (2) clarifies, but does not change the meaning of, the rule. The second change in (2) allows the hearing to be held in Helena at the option of the objector, and brings the rule into compliance with 82-4-232(6)(d).

The proposed amendment to (2)(a) is necessary to provide clarification for the duration of the public notice of the hearing. The current language requires the notice to be published at least two weeks before the hearing, but it does not require two consecutive weeks as specified in 82-4-232(6)(d), MCA. The proposed language adds the "consecutive" clarification.

The proposed amendment to (2)(b) is necessary to correct the beginning point of the 30-day period during which the public hearing must be held. The current language begins the 30-day period from the date of the notice. ARM 17.24.1113 refers to two separate notices, which adds a level of confusion. Additionally, 82-4-232(6)(d), MCA, states that the public hearing must be held within 30 days of the request for hearing.

17.24.1114 BONDING: DEPARTMENTAL REVIEW AND DECISION ON BOND RELEASE APPLICATION (1) through (1)(c) remain the same.

(2) If no informal conference or public hearing has been held under ARM 17.24.1113, the department shall notify the permittee, the surety, or other persons with an interest in the bond collateral who have requested notification of actions pursuant to the bond at the time the collateral was offered, and persons who filed objections of its decision to release or not to release all or part of the performance bond or deposit. This decision must be submitted, in writing, within 60 days ~~of filing of the bond release application~~ from the date of the inspection.

(3) and (4) remain the same.

(5) The department may not release the bond until it has given the ~~town or city~~ municipality or county in which the permit area is located, at least 30 days notice of the release by certified mail. ~~If the permit area is not located in a town or city, notice must be sent to the county in which the permit area is located.~~

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to ARM 17.24.1214(2) would bring (2) into compliance with 82-4-232(6), MCA, as amended by the 2005 Legislature. The 2005 Legislature changed the deadline for the department's decision from 60 days after the request for bond release was filed to 60 days after the date of the inspection. (See Chapter 127, Laws of 2005.)

The proposed amendment to (5) would bring (5) into compliance with 82-4-232(6), MCA, as well. The 2005 Legislature in that same bill amended 82-4-232(6)(m), MCA, by adding the phrase "or county" to the required parties to be notified by the department of the bond release application. The proposed amendment removes the phrase "town or city" and replaces it with the phrase "municipality or county" in order to be consistent with the corresponding statute. Additionally, the last sentence in (5) is proposed to be deleted as it becomes redundant to include the county if the proposed modification to include "or county" is approved.

17.24.1116 BONDING: CRITERIA AND SCHEDULE FOR RELEASE OF BOND (1) through (5) remain the same.

(6) For the purposes of these rules, reclamation phases are as follows:

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

(c) reclamation phase III is deemed to have been completed when:

(i) through (iv) remain the same.

(v) the lands meet the special conditions provided in 82-4-235~~(3)~~(4)(a), MCA;

(d) through (8) remain the same.

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

REASON: The proposed amendment to ARM 17.24.1116 corrects a reference cite that reflects the enactment of HB 278 by the 2009 Legislature adding 82-4-235(3), MCA, and renumbering the formerly described 82-4-235(3) to (4).

17.24.1201 FREQUENCY AND METHODS OF INSPECTIONS (1) remains the same.

(2) A partial inspection is an on-site or aerial observation of the operator's compliance with some of the mining or prospecting permit conditions and requirements. Aerial inspections shall be conducted in a manner and at a time that reasonably ensure the identification and documentation of conditions at each operation in relation to permit conditions and requirements. Any potential violation observed during an aerial inspection shall be investigated on site within three days, provided that any indication of a violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources shall be investigated on site immediately. On-site investigations of potential violations observed during an aerial inspection must not be considered to be an additional partial or complete inspection for the purposes of ARM 17.24.1201.

(3) and (4) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-205, 82-4-235, 82-4-237, 82-4-251, MCA

REASON: The proposed amendment to ARM 17.24.1201 is necessary for Montana's permanent program to remain as stringent as the corresponding federal

requirements located at 30 CFR 840.11(d)(2). The proposed addition of this language provides clear requirements for further on-site investigation, to be conducted by the department, upon identification of a potential violation. Without the addition of this language, Montana's program is less stringent than the federal program.

4. The proposed new rules provide as follows:

NEW RULE I THE DEPARTMENT'S OBLIGATIONS REGARDING THE APPLICANT/VIOLATOR SYSTEM (1) The department shall enter into the applicant/violator system (AVS) the following data:

(a) information that the applicant is required to submit under ARM 17.24.303(1)(f), (g), and (h);

(b) information submitted by the applicant pursuant to ARM 17.24.303(1)(l) and (m) [amended as (1)(m) and (n) above] pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired; and

(c) any additional information of the kind described in (1)(a) or (b) submitted or discovered during the department's permit application review, upon verification by the department of that additional information.

(2) If, at any time, the department discovers that any person owns or controls an operation with an unabated or uncorrected violation, the department shall take appropriate enforcement action. The department shall enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(3) The information provided to or obtained by the department must be entered into AVS pursuant to the following table:

The department shall enter into AVS all:	Within 30 days after:
1. permit records	the permit is issued or subsequent changes are made
2. unabated or uncorrected violations	the abatement or correction period for a violation expires
3. changes to information initially required to be provided by an applicant under ARM 17.24.303(1)(g)(i) through (iv) and (h)	receiving notice of a change
4. changes in violation status	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal
5. additional information submitted or discovered during the department's permit application, permit renewal application, or permit amendment application review	verification by the department of the additional information

(4) If, at any time, the department identifies a person who owns or controls an entire coal mining operation or any relevant portion or aspect of a coal mining

operation, the department shall issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

(5) A person subject to a preliminary finding under (4) has 30 days in which to submit to the department information tending to demonstrate that person's lack of ownership and control. If, after reviewing the submitted information, the department determines the person is not an owner or controller, the department shall serve written notice of that determination on that person. If, after reviewing the submitted information, the department determines the person is an owner or controller or if no information is submitted during the 30-day period, the department shall issue its finding in writing and shall enter that finding into AVS.

(6) A person identified as an owner or controller under (5) may challenge the finding using the provisions of [NEW RULE III].

(7) Whenever a court of competent jurisdiction enters a judgment against a person under 82-4-254(4) or convicts a person of under 82-4-254(6) or (7), MCA, the department shall update the AVS.

AUTH: 82-4-204, MCA
IMP: 82-4-227, MCA

REASON: The reason for adopting New Rule I is the same as that stated in the first paragraph for the proposed amendment to ARM 17.24.303.

NEW RULE II DEPARTMENT ELIGIBILITY REVIEW (1) In making a permit eligibility determination, the department shall rely upon the information supplied by the applicant pursuant to [NEW RULE I(1)], information from AVS, and any other available information to review. The department shall review:

(a) the organizational structure and ownership or control relationships of the applicant and the operator;

(b) the permit histories of applicant and the operator;

(c) the previous mining experience of the applicant and the operator; and

(d) the history of compliance with Surface Mining Control and Reclamation Act and the Montana Strip and Underground Mine Reclamation Act (the Act), implementing rules, any permits issued thereunder, and any other applicable air or water quality laws, by the applicant, the operator, operations the applicant owns or controls, and operations the operator owns or controls.

(2) If the applicant and the operator have no previous mining experience, the department may conduct an additional review to determine if someone else with mining experience controls the mining operation.

(3) Based on the reviews pursuant to (1) and (2), the department shall determine whether the applicant is eligible for a permit under (4).

(4) Except as provided in ARM 17.24.405(6)(h), the applicant is not eligible for a permit if approval is prohibited by 82-5-227(11) or (12), MCA.

(5) After approving a permit under ARM 17.24.405, the department may not issue the permit until:

(a) the applicant updates and certifies all information required by ARM

17.24.303(1)(g), (h), and (i) and [NEW RULE I(1)]; and

(b) the department obtains and reviews an updated compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect permit eligibility under (5) and (6). The department shall request this report no more than five business days before issuance under ARM 17.24.405.

(6) If the applicant is ineligible for a permit under this rule, the department shall send written notification of the decision to the applicant, stating the reason for the finding of ineligibility and giving notice of the applicant's right to challenge the decision under [NEW RULE III].

AUTH: 82-4-204, MCA
IMP: 82-4-227, MCA

REASON: The department regulates coal mining under a delegation of authority by the federal Office of Surface Mining (OSM). That delegation is subject to the department adopting rules consistent with the federal regulations that govern surface and underground coal mining. The OSM maintains an automated information system of applicant, permittee, operator, violation, and related data to assist in implementing the Surface Mining Control and Reclamation Act of 1977. That is known as the applicant/violator system, or AVS. Previously, the department's obligations to input data and utilize data from the AVS was regulated by a memorandum of understanding between the OSM and the department. However, in 2009, the OSM directed the department to adopt rules to govern the state's obligations related to the AVS. This proposed New Rule II is intended to comply with the OSM's directive. It is necessary to ensure the department submits to the AVS, has access to, and reviews, all information necessary to ensure that permits are not issued to persons or entities that are not entitled to obtain them.

NEW RULE III QUESTIONS ABOUT AND CHALLENGES TO OWNERSHIP OR CONTROL FINDINGS (1) At any time a person listed in AVS as an owner or controller of a surface coal mining operation in Montana may request an informal explanation from the department as to the reason that person is shown in AVS in an ownership or control capacity. Within 14 days of the request, the department shall provide a response describing why the person is listed in AVS.

(2) An applicant or permittee affected by an ownership or control listing or finding, a person listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation or any portion or aspect thereof, or person found to be an owner or controller of an entire surface coal mining operation or any portion or aspect thereof, may challenge an ownership or control listing or finding to:

(a) the board if the challenge concerns a pending permit application; or

(b) the department if the challenge concerns the challenger's ownership or control of a surface coal mining operation, and the challenger is not currently seeking a permit.

(3) Challenges to an ownership or control listing or finding may be made as follows:

(a) when the challenge is made in connection with the approval or denial of a permit application, permit amendment application, or permit renewal application, by

submitting a request for a hearing to the board pursuant to 82-4-206, MCA; or

(b) when the challenge is not made in connection with the approval or denial of a permit application, permit amendment application, or permit renewal application, by submitting to the department a challenge, including written explanation of the basis for the challenge, along with evidence and explanatory materials.

(4) A person who challenges a finding of ownership or control under [NEW RULE I(5)] or a listing or finding of ownership or control bears the burden of proving by a preponderance of the evidence that the person either:

(a) does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(b) did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(5) In meeting that burden of proof, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the board or department. The materials presented in connection with the challenge must become part of the permit file, an investigation file, or another public file. The challenger may request that information be kept confidential. The board or department shall determine whether the information may be kept confidential under Montana law. If the board or department determines that the information may not be kept confidential, the board or department shall notify the challenger and shall hold the documents confidential for ten days in order to allow the challenger to obtain a court order requiring the board or department to keep the documents confidential.

(6) Materials that may be submitted in response to the requirements of (8) include, but are not limited to:

(a) notarized affidavits containing specific facts concerning the specific duties the challenger performed for the relevant operation, the beginning and ending dates of the challenger's ownership or control of the operation, and the nature and details of any transaction creating or severing the challenger's ownership or control of the operation;

(b) certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(c) certified copies of documents filed with or issued by any state, municipal, or federal governmental agency; and

(d) an opinion of counsel, when supported by:

(i) evidentiary materials;

(ii) a statement by counsel that he or she is qualified to render the opinion; and

(iii) a statement that counsel has personally and diligently investigated the facts of the matter.

(7) When the department receives a written challenge to an ownership or control listing pursuant to (2)(b), the department shall review and investigate the evidence and explanatory materials submitted with the challenge and any other reasonably available information that has bearing on the challenge, and shall issue a written decision within 60 days of receipt of the challenge, stating whether the department finds that the person who submitted the challenge owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. The department shall send its decision to the challenger by

certified mail or by any means consistent with the rules governing service of a summons and complaint under the Montana Rules of Civil Procedure. Service of the decision is complete upon delivery and is not incomplete if the challenger refuses to accept delivery.

(8) The department shall post all decisions made under this rule on AVS.

(9) Following the department's written decision or any decision by the board or a court, the department shall review the information in AVS to determine if it is consistent with the decision. If it is not, the department shall promptly revise the information in AVS to reflect the decision.

AUTH: 82-4-204, MCA
IMP: 82-4-227, MCA

REASON: The department regulates coal mining under a delegation of authority by the federal Office of Surface Mining (OSM). That delegation is subject to the department adopting rules consistent with the federal regulations that govern surface and underground coal mining. The OSM maintains an automated information system of applicant, permittee, operator, violation, and related data to assist in implementing the Surface Mining Control and Reclamation Act of 1977. That is known as the applicant/violator system, or AVS. Previously, the department's obligations to input data and utilize data from the AVS was regulated by a memorandum of understanding between the OSM and the department. However, in 2009, the OSM directed the department to adopt rules to govern the state's obligations related to the AVS. This proposed New Rule II is intended to comply with the OSM's directive. Due process requires that persons affected by department decisions have a process to challenge those decisions. New Rule III provides such a process.

NEW RULE IV INFORMATION REQUIREMENTS FOR PERMITTEES

(1) Except as provided in (2), within 30 days after the issuance of a cessation order under 82-4-251, MCA, the permittee of the operation subject to the cessation order shall provide or update the following information:

(a) a statement indicating whether the permittee and any operator are corporations, partnerships, associations, sole proprietorships, or other business entities;

(b) taxpayer identification numbers for the permittee and any operator;

(c) the name, address, and telephone number for:

(i) the permittee;

(ii) the permittee's resident agent who will accept service of process; and

(iii) any operator;

(d) each business entity in the applicant's and any operator's organizational structures, up to and including the ultimate parent entity of the applicant and any operator and, for every such business entity, the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, of record, ten percent or more of the entity;

(e) for the permittee and any operator, the information required by (f) of this section for every:

(i) officer;
(ii) partner;
(iii) member;
(iv) director;
(v) person performing a function similar to a director; and
(vi) person who owns, of record, ten percent or more of the permittee or operator; and

(f) the following information for each person listed in (e):
(i) the person's name, address, and telephone number;
(ii) the person's position title and relationship to the permittee or operator, including percentage of ownership and location in the organizational structure; and
(iii) the date the person began functioning in that position.

(2) The permittee is not required to submit the information required in (1) if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

(3) Within 60 days of any addition, departure, or change in position of any person identified in (1)(e), the permittee must notify the department in writing of the addition, departure, or change. The notice must include:
(a) the information required in (1)(f); and
(b) the date of any departure.

AUTH: 82-4-204, MCA
IMP: 82-4-227, MCA

REASON: The department regulates coal mining under a delegation of authority by the federal Office of Surface Mining. That delegation is subject to the department adopting rules consistent with the federal regulations that govern surface and underground coal mining. New Rule IV provides requirements that are the equivalent of 30 CFR 774.12.

NEW RULE V PERMIT REQUIREMENT - SHORT FORM (1) This rule applies to a prospecting operation that is outside an area designated unsuitable and conducted to determine the location, quality, or quantity of a coal deposit pursuant to 82-4-226(7), MCA, that does not remove more than 250 tons of coal and that does not substantially disturb the natural land surface.

(2) A person who conducts a coal prospecting operation pursuant to (1) must, before conducting the prospecting operations, file with the department a prospecting permit application on a form provided by the department. Prospecting operations must not be conducted until the department has reviewed the application pursuant to 82-1-226(8), MCA, and issued a permit.

(3) All provisions of this subchapter, except ARM 17.24.1001, 17.24.1006(2), (3)(b) and (c), 17.24.1007, 17.24.1009, 17.24.1014, and 17.24.1018 apply to a prospecting operation permitted pursuant to 82-4-226(8), MCA.

AUTH: 82-4-226, MCA
IMP: 82-4-226, MCA

REASON: Senate Bill 286, passed by the 2011 Legislature, amended 82-4-226, MCA, and modified certain coal prospecting procedures. (See Chapter 407, Laws of 2011.) This rule is needed to ensure that the new coal prospecting permit provisions in 82-4-226(8), MCA, are reflected in the rules. In (3), ARM 17.24.1001 is listed because 82-4-226(8) MCA, contains the application requirements for these permits. ARM 17.24.1007, 17.24.1009, and portions of 17.24.1006 are listed because those provisions address substantial disturbance of the land surface, which is not allowed under this type of permit. ARM 17.24.1014 is listed because that rule applies to test pits, which cannot be permitted under 82-4-226(8), MCA. ARM 17.24.1018 is listed because it applies to statements of intent to prospect.

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

17.24.763 COAL CONSERVATION (AUTH: 82-4-204, MCA; IMP: 82-4-231, MCA), located at page 17-2180, Administrative Rules of Montana. The proposed repeal of ARM 17.24.763 is necessary to remove a repetitive rule. ARM 17.24.523(2) contains nearly identical language as ARM 17.24.763. Repeal of this rule will provide a single location in the ARM that describes the requirements for coal conservation.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 23, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The sponsors were notified by letter sent by U.S. mail dated January 22, 2010.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, December 12, 2011.

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

In the matter of the amendment of ARM 24.174.301 definitions, 24.174.402 dangerous drug fee schedule, 24.174.503 administration of vaccines by pharmacists, 24.174.523 transmission of prescriptions, 24.174.1003 identification of pharmacist-in-charge, 24.174.1202 minimum information required for licensure, 24.174.1302 telepharmacy operations, 24.174.1503 acceptable cancer drugs, the adoption of NEW RULES I emergency prescription refills, II remote medication order processing services, III schedule I dangerous drugs, IV schedule II dangerous drugs, V schedule III dangerous drugs, VI schedule IV dangerous drugs, VII schedule V dangerous drugs, VIII through XVI board-established medical assistance program, XVII through XXII quality improvement program, XXIII limited service pharmacy, and the repeal of ARM 24.174.813 class IV facility	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On January 23, 2012, 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, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on January 18, 2012, to advise us of the nature of the accommodation that you need. Please contact Ronald Klein, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2344; e-mail dlibsdpha@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to amend the rules throughout to eliminate outdated, redundant, and unnecessary provisions, and to align terminology with current national trends, curricula, industry usage, and standards. Other changes replace out-of-date terminology for current board and department processes, and amend rules for grammatical accuracy, consistency, simplicity, better organization, and ease of use. Punctuation and rule numbering is amended to comply with ARM formatting requirements. 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:

24.174.301 DEFINITIONS (1) through (26) remain the same.

(27) "Pharmacist-in-charge" means a pharmacist licensed in Montana who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy, who assures that the pharmacy and all pharmacy personnel working in the pharmacy have current and appropriate licensure and certification, and who is personally in full and actual charge of such pharmacy. The pharmacist-in-charge at an out-of-state mail service pharmacy does not have to be licensed in Montana.

(28) through (36) remain the same.

AUTH: 37-1-131, 37-7-201, 50-32-314, MCA
IMP: 37-7-102, 37-7-201, 37-7-301, 37-7-321, 37-7-406, 37-7-603, 37-7-604, 37-7-605, 50-32-314, MCA

REASON: The board office has recently received numerous inquiries from mail order pharmacies and mail order pharmacy applicants regarding pharmacist-in-charge licensure requirements. The board is amending this rule to address confusion and clarify that pharmacists-in-charge for out-of-state mail service pharmacies are not required to be licensed in Montana.

24.174.402 DANGEROUS DRUG FEE SCHEDULE (1) The fees to be assessed for registration to manufacture, distribute, dispense, conduct research, or analyze~~,~~ a dangerous drug shall be assessed according to the following schedule:

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

(ii) ~~ambulatory surgical facilities~~
outpatient centers for surgical services 75

(d) remains the same.

AUTH: 37-1-134, 37-7-201, 50-32-103, 50-32-314, MCA
IMP: 37-1-134, 37-7-201, 37-7-321, 50-32-103, 50-32-314, MCA

REASON: The board is amending this rule to update terminology as used in board statute at 37-3-101(20), MCA, and as defined in 50-5-101, MCA.

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS (1) remains the same.

(2) A pharmacist may administer vaccines to persons 18 years of age or older and administer influenza vaccine to persons 12 years of age or older provided that:

(a) through (6) remain the same.

(7) The authority of a pharmacist to administer immunizations may not be delegated, however, an immunization-certified intern may immunize under the direct supervision of a pharmacist or other ~~health care~~ healthcare provider qualified in vaccine administration and deemed appropriate by the preceptor.

(8) and (9) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-101, 37-7-105, 37-7-201, MCA

REASON: The 2011 Montana Legislature enacted Chapter 119, Laws of 2011 (Senate Bill 189), an act allowing pharmacists to administer the influenza vaccine to individuals who are 12 years of age or older. The bill was signed by the Governor on April 1, 2011, and became effective on October 1, 2011. The board determined it is reasonably necessary to amend this rule to align with and implement the new legislation. Implementation cites are being amended to reflect the new statute implemented through this rule.

24.174.523 TRANSMISSION OF PRESCRIPTIONS BY ELECTRONIC MEANS (1) A pharmacist may dispense directly any legend drug, which requires a prescription to dispense (except as provided in (2) and (3) below for Schedule II, III, IV, and V, controlled substances)~~,~~ pursuant to either a written prescription signed by a practitioner or a prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to ~~hard copy~~ hardcopy by the pharmacist, containing all information required. The prescription shall be maintained in accordance with ARM 24.174.512.

(2) A pharmacist may dispense directly a controlled substance in Schedule II, which is a prescription drug as determined by the Federal Food, Drug, and Cosmetic Act (FD&C Act), only pursuant to a written prescription signed by the practitioner. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by electronic means provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. The original prescription shall be maintained in accordance with ARM 24.174.512.

(a) A signed prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the ~~home infusion~~ pharmacy by electronic means. The electronic transmission serves as the original written prescription for the purpose of this rule and it shall be maintained in accordance with ARM 24.174.512.

(b) A signed prescription for a Schedule II substance for a resident of a ~~long term~~ long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by electronic means. The electronic transmission serves as the original written prescription for purposes of this rule and it shall be maintained in accordance with ARM 24.174.512.

(c) A signed prescription for a Schedule II substance for a patient enrolled in a hospice care program, certified and/or paid for by Medicare under Title XVIII of the Social Security Act, or a hospice program which is licensed by the state of Montana, may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by electronic means. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient. The electronic transmission serves as the original written prescription for purposes of this rule and it shall be maintained in accordance with ARM 24.174.512.

(3) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V, which is a prescription drug as determined under the ~~Federal Food, Drug and Cosmetic~~ FD&C Act, only pursuant to either a written prescription signed by a practitioner or a copy of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to ~~hard copy~~ hardcopy by the pharmacist, containing all information required. The prescription shall be maintained in accordance with ARM 24.174.512.

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

(c) An electronically transmitted prescription shall contain all information required by state and federal law, including the date and time of transmission, the prescriber's telephone number for verbal confirmation, and the name of the prescriber's agent transmitting the order, if other than the prescriber;

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

(j) A pharmacist or pharmacy shall not provide a computer or computer modem, personal digital assistant, facsimile machine, or any other electronic device to a prescriber or ~~health care~~ healthcare facility for the purpose of providing an incentive to refer patients to a particular pharmacy.

(5) and (6) remain the same.

AUTH: 37-7-201, 50-32-103, MCA
IMP: 37-7-102, 37-7-201, 50-32-208, MCA

REASON: In addition to grammatical corrections, the board is deleting home infusion from (2)(a) because any pharmacy is authorized to prepare an infusion for administration.

24.174.1003 IDENTIFICATION OF PHARMACIST-IN-CHARGE OF DISPENSING TO MONTANA (1) Each out-of-state mail service pharmacy that ships, mails, ~~or~~ delivers prescription drugs and/or devices and oversees the pharmacy services provided to ~~a patient~~ patients in ~~the state of~~ Montana shall identify a ~~pharmacist in charge~~ pharmacist-in-charge of dispensing prescriptions for shipment to Montana and oversee the pharmacy services provided. Each pharmacist so identified shall meet the following requirements:

(a) through (3) remain the same.

AUTH: 37-7-201, 37-7-712, MCA
IMP: 37-7-101, 37-7-201, 37-7-703, MCA

REASON: The board is amending this rule in response to recent complaints before the screening panel concerning the adequacy of patient counseling by mail service pharmacies, particularly the pharmacies' failure to offer counseling to patients. Evolving pharmacy practice and standards of practice now include significant patient counseling, not just the delivery of the drug product to the patient. It is necessary to amend the rule at this time to include the proper supervision of the delivery of pharmaceutical care, including counseling, drug utilization, and drug regimen review, and to hold the pharmacist-in-charge accountable for delivery of pharmaceutical care to Montana patients.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.174.1202 MINIMUM INFORMATION REQUIRED FOR LICENSURE

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

(c) the name, address, telephone number, and title of the designated person in charge of the facility who will serve as the responsible individual of the wholesale drug distributor with the board and who is actively involved in and aware of the actual daily operation of the wholesale drug distributor;

(d) through (2) remain the same.

AUTH: 37-7-201, 37-7-610, MCA
IMP: 37-7-201, 37-7-604, 37-7-605, MCA

REASON: The board is amending the rule to clarify (1)(c), which permitted uncertainty about the duties and responsibilities of the designated person in charge. The board's screening panel has encountered difficulties with numerous corporations and businesses that operate from multiple sites and multiple warehouses. At times, the person in charge of the warehouse is located at another distant site. To maintain the integrity of the prescription drug distribution system, the board determined it is necessary to amend this rule to require there be a responsible individual overseeing the operation of a warehouse who is familiar with its operation. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.174.1302 TELEPHARMACY OPERATIONS (1) remains the same.

(2) A site cannot be licensed as a remote telepharmacy site if it is located within a ~~ten~~ twenty-mile radius of an existing pharmacy.

(3) A remote telepharmacy site manned by a registered pharmacy technician shall access and use the parent pharmacy's central processing unit or common database.

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

(ii) be currently certified with the Pharmacy Technician Certification Board (PTCB), or Exam for the Certification of Pharmacy Technicians (ExCPT), or other board-approved certifying entity; and

(iii) have at least ~~six months of active~~ 500 hours experience as a pharmacy technician, technician-in-training, or experience deemed as equivalent by the board.

(c) and (d) remain the same.

(e) All prescription records and consecutive prescription numbers must be maintained at the parent pharmacy or remote site. The remote telepharmacy site must transmit copies of new prescriptions via secure electronic means to the parent pharmacy, keeping the original prescription blank at the remote telepharmacy site.

(f) remains the same.

(g) Daily reports for both the parent pharmacy and remote telepharmacy site must be maintained at the parent pharmacy or telepharmacy site.

(h) and (i) remain the same.

(j) All records must be stored at the parent pharmacy or telepharmacy site, except those required by DEA to be at a DEA registered site.

(k) through (p) remain the same.

(q) The computer, video, and audio link must be operational ~~and the remote telepharmacy site must be closed if the link malfunctions, unless a pharmacist is working at the remote site~~ at all times. In the event of connectivity loss to the parent location, no new prescriptions may be processed, filled, or dispensed from the telepharmacy site until connectivity is reestablished. Refill prescriptions that have a final check by the pharmacist may be dispensed.

(r) and (s) remain the same.

(t) The pharmacist shall offer to counsel the patient or the patient's agent via video ~~and~~ and/or audio link on all new prescriptions~~, but may provide counseling on refills only when the pharmacist deems additional counseling necessary~~.

(u) remains the same.

(v) The license holder, agent of the parent pharmacy, or the pharmacist-in-charge of the parent pharmacy, or the pharmacist-in-charge of the remote site, if different from the parent pharmacist-in-charge, shall apply for a license for the remote telepharmacy site.

(w) and (x) remain the same.

(y) The pharmacist at the parent pharmacy shall perform an ongoing analysis of incident reports and outcomes, with appropriate corrective action taken when necessary, to ensure patient safety.

(z) remains the same.

AUTH: 37-7-201, MCA
IMP: 37-7-101, 37-7-201, 37-7-321, MCA

REASON: Following a biennial rule review, the board is amending this rule to encourage the practice of telepharmacy operations to promote pharmaceutical care in rural areas of Montana.

The board is amending (2) to address issues raised by a rural Montana pharmacist. The board is increasing the required distance for remote telepharmacy

sites from ten to twenty miles to help ensure necessary access to pharmaceutical care by maintaining viable local community pharmacies.

The board determined it is reasonably necessary to amend (3) to allow remote telepharmacy sites to use a common database. The board concluded this will allow a pharmacy operation to avoid the purchase of duplicative computer equipment and promote efficient use of resources.

The board is amending (4)(b)(ii) to acknowledge the pharmacy technician certification tests currently accepted by the board and coordinate with ARM 24.174.701(3) and 24.174.702(1)(d).

It is reasonably necessary to amend (4)(b)(iii) to quantify in hours the training requirement for pharmacy technicians in a telepharmacy operation and allow experience obtained as a technician-in-training. The board notes that telepharmacy operations have found it difficult to employ certified technicians with the experience requirement. The board is also amending (4) to clarify record-keeping requirements for both parent and telepharmacy operations, so that all necessary records are being maintained consistent with ARM 24.174.512.

The board is amending (4)(q) to no longer require that telepharmacies close in the event of power or communication failure, as the board concluded it is an onerous and unnecessary burden on telepharmacy operations. The amendment specifies that only refill prescriptions may be dispensed during a failure, and that new prescriptions may only be processed once the connectivity has been restored.

It is reasonably necessary to amend (4)(t) to clarify patient counseling requirements and harmonize them with ARM 24.174.903(1). The board is amending (4)(v) to clarify who may apply for a license to operate a telepharmacy to reflect current business practices.

24.174.1503 ACCEPTABLE CANCER DRUGS (1) remains the same.

~~(2) Any cancer drug donated to the program must have at least six months remaining before its expiration date occurs.~~

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

AUTH: 37-7-1401, MCA
IMP: 37-7-1401, 37-7-1404, 37-7-1405, MCA

REASON: The board is amending this rule to correct an inadvertent error when the rule was originally adopted. The board never intended to put a six-month expiration date limit on donated cancer drugs, as it is not necessary to ensure the public's protection. This amendment will provide for the maximum possible use of drugs donated to the cancer repository program, while assuring their safety and efficacy before expiring.

5. The proposed new rules provide as follows:

NEW RULE I EMERGENCY PRESCRIPTION REFILLS (1) A pharmacist may refill a prescription without practitioner authorization when:

(a) the pharmacist is unable to contact the practitioner after reasonable effort; and

(b) in the professional judgment of the pharmacist, failure to refill the prescription may result in an interruption of a therapeutic regimen or cause patient suffering.

(2) If a prescription is not refillable, a pharmacist dispensing an emergency refill:

(a) may exercise professional judgment to dispense a minimum sufficient quantity until authorization can be obtained from a prescriber:

(i) for drugs which must be dispensed in their original containers, the pharmacist may dispense the smallest trade size available;

(b) may not dispense a prescription medication listed in Schedule II;

(c) must inform the patient or the patient's representative at the time of dispensing that the refill is being provided without the practitioner's authorization, and that practitioner authorization is required for any future refill;

(d) must inform the practitioner of the emergency refill at the earliest reasonable time; and

(e) comply with all applicable record-keeping requirements.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board determined it is reasonably necessary to propose this new rule to address recurrent practice issues raised by pharmacists. This new rule will provide for emergency prescription refills when optimal patient care requires a prescription refill, but the practitioner cannot be reached to authorize a refill.

NEW RULE II REMOTE MEDICATION ORDER PROCESSING SERVICES

(1) A hospital pharmacy may outsource medication order processing to another pharmacy provided the pharmacies have the same owner or the pharmacy has entered into a written contract or agreement with an outsourcing company that outlines the services to be provided and the responsibilities and accountabilities of each party to the contract or agreement in compliance with federal and state statutes and regulations.

(2) The hospital pharmacy must provide a copy of the contract or agreement to the board and receive approval from the board or its designee prior to initiation of remote order entry services.

(3) A hospital pharmacy utilizing remote order entry shall ensure that all pharmacists providing such services have been trained on the pharmacy's policies and procedures relating to medication order processing. The training of each pharmacist shall be documented. Such training shall include, but is not limited to, policies on drug and food allergy documentation, abbreviations, administration times, automatic stop orders, substitution, and formulary compliance. The pharmacy and the pharmacy/outsourcing company shall jointly develop a procedure to communicate changes in formulary and changes in policies and procedures related to medication order processing.

(4) A hospital pharmacy utilizing a remote order entry pharmacist shall maintain a record of the name and address of such pharmacist, evidence of current

licensure in Montana, and the address of each location where the pharmacist will be providing remote order entry services.

(5) The director of pharmacy shall ensure that any remote order entry pharmacist shall have secure electronic access to the hospital pharmacy's patient information system and to other electronic systems that the on-site pharmacist has access to when the pharmacy is open.

(6) The remote order entry pharmacist must be able to contact the prescribing practitioner to discuss any concerns identified during the pharmacist's review of patient information and the drug order. A procedure must be in place to communicate any problems identified with the practitioner and the nursing staff providing direct patient care.

(7) Each remote entry record must comply with all recordkeeping requirements and shall identify by name or other unique identifier, the pharmacist involved in the review and verification of the drug order.

(8) A pharmacy utilizing remote order entry processing services is responsible for maintaining records of all orders entered into their information system, including orders entered from a remote location. The system shall have the ability to audit the activities of the individuals remotely processing medication orders.

(9) All records shall be readily available upon request by the board, its designee, or agent of the board for inspection, copying, or production.

(10) A pharmacy utilizing remote order entry processing services shall maintain a policy and procedure manual. A remote pharmacy/order processing company shall maintain a copy of those portions of the policy and procedure manual that relate to that pharmacy's operations. Each manual shall:

(a) outline the responsibilities of the pharmacy and the remote pharmacy/order processing company;

(b) include a list of the names, addresses, telephone numbers, and all license numbers of the pharmacies/pharmacists involved in remote order entry processing; and

(c) include policies and procedures for:

(i) protecting the confidentiality and integrity of patient information;

(ii) maintaining appropriate records of each pharmacist involved in order processing;

(iii) complying with federal and state statutes and regulations;

(iv) annually reviewing the written policies and procedures and documentation of the annual review; and

(v) annually reviewing the competencies of pharmacists providing remote order entry processing services.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is proposing New Rule II to address advances in pharmaceutical care for hospital inpatients. The board notes that while it is impractical for many of the hospitals in Montana to have a pharmacist present at all times, technological advances allow a pharmacist at a remote location to prospectively review all drug orders. The board determined that the remote

medication order procedures in this new rule will enhance pharmaceutical care of hospital inpatients and promote the delivery of appropriate drug therapy.

6. REASONABLE NECESSITY FOR NEW RULES III THROUGH VII: The board is proposing New Rules III through VII to implement 50-32-103, MCA, and address concerns raised by the Crime Lab of the Montana Forensic Science Division regarding the state's inability to prosecute drug offenses with newly synthesized drugs not currently found in the drug schedules. The new rules harmonize Montana and federal law by clearly setting forth the newly synthesized drugs and provide both law enforcement and the general public with a current list of controlled substances.

NEW RULE III SCHEDULE I DANGEROUS DRUGS (1) Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl, also known as N-(1-(1-Methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide;

(b) acetylmethadol, also known as 4-(dimethylamino)-1-ethyl-2,2-diphenylpentyl acetate or methadyl acetate;

(c) allylprodine, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl)piperidin-4-yl propanoate;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;
(w) dimethylthiambutene;
(x) dioxaphetyl butyrate;
(y) dipipanone;
(z) ethylmethylthiambutene;
(aa) etonitazene;
(ab) etoxeridine;
(ac) furethidine;
(ad) hydroxypethidine;
(ae) ketobemidone;
(af) levomoramide;
(ag) levophenacylmorphan;
(ah) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;
(i) for the purposes of (2)(ah), the term "isomer" includes the optical, position, and geometric isomers;
(ai) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;
(aj) morpheridine;
(ak) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(al) noracymethadol;
(am) norlevorphanol;
(an) normethadone;
(ao) norpipanone;
(ap) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;
(aq) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(ar) phenadoxone;
(as) phenampromide;
(at) phenomorphan;
(au) phenoperidine;
(av) piritramide;
(aw) proheptazine;
(ax) properidine;
(ay) propiram;
(az) racemoramide;
(ba) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;
(bb) tilidine; and
(bc) trimeperidine.
(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(a) acetorphine;
(b) acetyldihydrocodeine;
(c) benzylmorphine;

(d) codeine methylbromide;
(e) codeine-N-oxide;
(f) cyprenorphine;
(g) desomorphine;
(h) dihydromorphine;
(i) drotebanol;
(j) etorphine, except hydrochloride salt;
(k) heroin;
(l) hydromorphinol;
(m) methyldesorphine;
(n) methyldihydromorphine;
(o) morphine methylbromide;
(p) morphine methylsulfonate;
(q) morphine-N-oxide;
(r) myrophine;
(s) nicocodeine;
(t) nicomorphine;
(u) normorphine;
(v) pholcodine;
(w) thebacon; and
(x) for the purposes of (3), the term "isomer" includes the optical, position, and geometric isomers.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine. Trade or other names include etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET;
(b) alpha-methyltryptamine, also known as AMT;
(c) 4-bromo-2,5-dimethoxy-amphetamine. Trade or other names include 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine, and 4-bromo-2,5-DMA;
(d) 4-bromo-2,5-dimethoxyphenethylamine. Trade or other names include 2-(4-bromo-2, 5-dimethoxyphenyl)-1-aminoethane, alpha-desmethyl DOB, and 2C-B, Nexus;
(e) 2,5-dimethoxyamphetamine. Trade or other names include 2,5-dimethoxy-alpha-methylphenothylamine and 2,5-DMA;
(f) 2,5-dimethoxy-4-(N)-propylthiopenenthylamine, also known as 2C-T-7;
(g) 3,4-methylenedioxy amphetamine;
(h) 2,5-dimethoxy-4-ethylamphetamine. A trade or other name is DOET;
(i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;
(j) 5-methoxy-N,N-dimethyltriptamine, also known as 5-MeO-DMT;
(k) 4-methoxyamphetamine. A trade or other name is 4-methoxy-alpha-methylphenethylamine;
(l) 5-methoxy-3,4-methylenedioxy amphetamine;

(m) 4-methyl-2,5-dimethoxy-amphetamine. Trade or other names include 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP;

(n) 3,4-methylenedioxy amphetamine;

(o) 3,4-methylenedioxymethamphetamine (MDMA);

(p) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(q) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

(r) 3,4,5-trimethoxy amphetamine;

(s) bufotenine. Trade and other names include 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine;

(t) diethyltryptamine. Trade and other names include N,N-diethyltryptamine and DET;

(u) dimethyltryptamine. A trade or other name is DMT;

(v) ibogaine. Trade or other names include 7-ethyl-6,6-beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;

(w) lysergic acid diethylamide;

(x) marijuana;

(y) mephedrone;

(z) mescaline;

(aa) methylenedioxypyrovalerone (MDPV);

(ab) methylone;

(ac) parahexyl. Trade or other names include 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl;

(ad) peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salts, derivatives, mixture, or preparation of the plant, its seed, or extracts;

(ae) N-ethyl-3-piperidyl benzilate;

(af) N-methyl-3-piperidyl benzilate;

(ag) psilocybin;

(ah) psilocyn;

(ai) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in (4)(ai)(i) through (4)(ai)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers;

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers; and

(iv) section (4)(ai) does not apply to synthetic cannabinoids approved by the U.S. Food and Drug Administration and obtained by a lawful prescription through a licensed pharmacy. The Department of Public Health and Human Services shall

adopt a rule listing the approved cannabinoids and shall update the rule as necessary to keep the list current.

(aj) ethylamine analog of phencyclidine. Trade or others names include N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE;

(ak) pyrrolidine analog of phencyclidine. Trade or other names include 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP;

(al) thiophene analog of phencyclidine. Trade or other names include 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, and TCP;

(am) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. A trade or other name is TCPy;

(an) synthetic cannabinoids:

(i) 1-pentyl-3-(1-naphthoyl)indole, also known as JWH-018;

(ii) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol;

(iii) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol, also known as CP-47,497, and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

(iv) 1-butyl-3-(1-naphthoyl)indole, also known as JWH-073;

(v) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole, also known as JWH-200;

(vi) 1-pentyl-3-(2-methoxyphenylacetyl)indole, also known as JWH-250;

(vii) 1-hexyl-3-(1-naphthoyl)indole, also known as JWH-019;

(viii) 1-pentyl-3-(4-chloro-1-naphthoyl)indole, also known as JWH-398;

(ix) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl- (1-pentylindol-3-yl)methanone;

(x) the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone, also known as WIN-55,212-2;

(B) dimethylheptyl-11-hydroxyhexahydrocannabinol, also known as HU-243; or

(C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a octahydrophenanthridin-1-yl]acetate;

(xi) any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(xii) any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(xiii) any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl,

cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(xiv) any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; or

(xv) any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent;

(ao) Salvia divinorum: Salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodechydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho[2,1-c] pyran-7-carboxylic acid methyl ester;

(ap) any compound (not being bupropion, nor any compound listed in another Administrative Rule regulating controlled substances, the Montana Code Annotated, or approved for use by the U.S. Food and Drug Administration) structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not;

(aq) any compound (not being already listed in another Administrative Rule regulating controlled substances, the Montana Code Annotated, or approved for use by the U.S. Food and Drug Administration) structurally derived from 2-amino-1-phenyl-1-propane by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not.

(5) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;

(b) mecloqualone; and

(c) methaqualone.

(6) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex. Trade or other names include aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine;

(b) cathinone. Trade or other names include 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(c) fenethylline;

(d) methcathinone. Trade or other names include 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers;

(e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;

(f) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;

(h) N-ethylamphetamine; and

(i) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethamine and N,N-alpha-trimethylphenethylamine.

(7) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).

(8) If prescription or administration is authorized by the Federal Food, Drug, and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in (4) must automatically be rescheduled from Schedule I to Schedule II.

AUTH: 50-32-103, MCA
IMP: 50-32-103, MCA

NEW RULE IV SCHEDULE II DANGEROUS DRUGS (1) Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule.

(2) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin,

independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;

(iii) opium fluid;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

(viii) dihydroetorphine;

(ix) ethylmorphine;

(x) etorphine hydrochloride;

(xi) hydrocodone;

(xii) hydromorphone;

(xiii) metopon;

(xiv) morphine;

(xv) oripavine;

(xvi) oxycodone;

(xvii) oxymorphone; and

(xviii) thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(3) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alfentanil;

(b) alphaprodine;

(c) anileridine;

(d) bezitramide;

(e) bulk dextropropoxyphene (non-dosage forms);

(f) carfentanil;
(g) dihydrocodeine;
(h) diphenoxylate;
(i) fentanyl;
(j) isomethadone;
(k) levo-alphacetylmethadol. Other names include levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
(l) levomethorphan;
(m) levorphanol;
(n) metazocine;
(o) methadone;
(p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(r) pethidine, also known as meperidine;
(s) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(t) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(u) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(v) phenazocine;
(w) piminodine;
(x) racemethorphan;
(y) racemorphan;
(z) remifentanil;
(aa) sufentanil; and
(ab) tapentadol.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system:
(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
(b) phenmetrazine and its salts;
(c) methamphetamine, its salts, isomers, and salts of its isomers;
(d) methylphenidate; and
(e) lisdexamfetamine, its salts, isomers, and salts of its isomers.

(5) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(a) amobarbital;
(b) glutethimide;
(c) pentobarbital;
(d) phencyclidine; and
(e) secobarbital.

(6) Hallucinogenic substances include the following:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration-approved drug product. Other names for dronabinol include (6-alpha-R-trans)-6-alpha,7,8,10-alpha-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol; and

(b) nabilone. Another name for nabilone is (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6-alpha,7,8,10,10-alpha-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b, d] pyran-9-one.

(7) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

(a) 4-Anilino-N-phenethyl-4-piperidine (ANPP);

(b) phenylacetone, an immediate precursor to amphetamine and methamphetamine. Trade or other names for phenylacetone include phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone; and

(c) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP).

AUTH: 50-32-103, MCA
IMP: 50-32-103, MCA

NEW RULE V SCHEDULE III DANGEROUS DRUGS (1) Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule.

(2) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(3) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the U.S. Food and Drug Administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) aprobarbital;

(e) butabarbital, also known as secbutabarbital;
(f) butalbital;
(g) butobarbital, also known as butethal;
(h) chlorhexadol;
(i) embutramide;
(j) gamma hydroxybutyric acid preparations;
(k) ketamine, its salts, isomers, and salts of its isomers, also known as (±)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;
(l) lysergic acid;
(m) lysergic acid amide;
(n) methyprylon;
(o) sulfondiethylmethane;
(p) sulfonethylmethane;
(q) sulfonmethane;
(r) talbutal;
(s) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon;
(t) thiamylal;
(u) thiopental; and
(v) vinbarbital.
(4) Nalorphine.
(5) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:
(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(i) any material, compound, mixture, or preparation containing buprenorphine.

(6) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

(a) androstanedione, also known as 5-alpha-androstan-3,17-dione;

(b) 1-androstenediol, also known as 3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene, or 3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene;

(c) 1-androstenedione, also known as 5-alpha-androst-1-en-3,17-dione;

(d) 3-alpha,17-beta-dihydroxy-5-alpha-androstane;

(e) 3-beta,17-beta-dihydroxy-5-alpha-androstane;

(f) 4-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-4-ene;

(g) 4-androstenedione, also known as androst-4-en-3,17-dione;

(h) 4-dihydrotestosterone, also known as 17-beta-hydroxyandrostan-3-one;

(i) 4-hydroxy-19-nortestosterone, also known as 4,17-beta-dihydroxy-estr-4-en-3-one;

(j) 4-hydroxytestosterone, 4,17-beta-dihydroxy-androst-4-en-3-one;

(k) 5-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-5-ene;

(l) 5-androstenedione, also known as androst-5-en-3,17-dione;

(m) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;

(n) 17-alpha-methyl-3-alpha, 17-beta-dihydroxy-5-alpha-androstane;

(o) 17-alpha-methyl-3-beta, 17-beta-dihydroxy-5-alpha-androstane;

(p) 17-alpha-methyl-3-beta, 17-beta-dihydroxyandrost-4-ene;

(q) 17-alpha-methyl-4-hydroxynandrolone, also known as 17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one;

(r) 17-alpha-methyl-delta, 1-dihydrotestosterone, also known as 17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one, 17-alpha-methyl-1 testosterone;

(s) 19-nor-4-androstenediol, also known as 3-beta-17-beta-dihydroxyestr-4-ene, or 3-alpha-17-beta-dihydroxyestr-4-ene;

(t) 19-nor-4-androstenedione, also known as estr-4-en-3,17-dione;

(u) 19-nor-5-androstenediol, also known as 3-beta,17-beta-dihydroxyestr-5-ene, or 3-alpha,17-beta-dihydroxyestr-5-ene;

(v) 19-nor-5-androstenedione, also known as estr-5-en-3,17-dione;

(w) calusterone, also known as 7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

(x) 19-Nor-4,9(10)-androstadienedione, also known as estra-4,9(10)-diene-3,17-dione;

(y) bolasterone, also known as (7-alpha-dimethyl)-17-beta-hydroxyandrost-4-ene-3-one;

(z) boldenone, also known as 17-beta-hydroxyandrost-1,4,-diene-3-one;

(aa) boldione, also known as androsta-1,4-diene-3,17-dione;

(ab) chlorotestosterone, also known as 4-chlortestosterone;

(ac) clostebol;

(ad) delta-1-dihydrotestosterone, also known as (17-beta-hydroxy-5-alpha-androst-1-en-3-one), 1-testosterone;

(ae) dehydrochloromethyltestosterone, also known as 4-chloro-17-beta-hydroxy-17-alpha-methylandrost-1,4-dien-3-one;

(af) desoxymethyltestosterone, also known as 17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol;

(ag) dihydrochlormethyltestosterone;

(ah) dihydrotestosterone, also known as 4-dihydrotestosterone;

(ai) drostanolone, also known as 17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one;

(aj) ethylestrenol, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-ene;

(ak) fluoxymesterone, also known as 9-fluoro-17-alpha-methyl-11-beta, 17-beta-dihydroxyandrost-4-en-3-one;

(al) formebulone, also known as 2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one or formebolone;

(am) furazabol, also known as 17-alpha-methyl-17-beta-hydroxyandrostano-[2,3-c]-furazan;

(an) methandienone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-1,4-diene-3-one;

(ao) mestanolone, also known as 17-alpha-methyl-17-beta-hydroxy-5-alpha-androstan-3-one;

(ap) mesterolone, also known as 1-alpha-methyl-17-beta-hydroxy-(5-alpha)-androstan-3-one;

(aq) methandienone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one;

(ar) methandranone;

(as) methandriol, also known as 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-one;

(at) methandrostenolone, also known as (17-beta)-17-hydroxy-17-methylandrosta-1,4-dien-3-one;

(au) methenolone, also known as 1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one;

(av) methyldienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9-(10)-dien-3-one;

(aw) methyltestosterone, also known as 17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one;

(ax) methyltrienolone, also known as 17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one;

(ay) mibolerone, also known as 17-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one;

(az) nandrolone, also known as 17-beta-hydroxyestr-4-en-3-one;

(ba) norbolethone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one;

(bb) norclostebol, also known as 4-chloro-17-beta-hydroxyestr-4-en-3-one;

(bc) norethandrolone, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one;

(bd) normethandrolone, also known as 17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one;

(be) oxandrolone, also known as 17-alpha-methyl-17-beta-hydroxy-2-oxa-(5-alpha)-androstan-3-one;

(bf) oxymestrone, also known as 17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one;

(bg) oxymetholone, also known as 17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-(5-alpha)-androstan-3-one;

(bh) stanolone;

(bi) stanozolol, also known as 17-alpha-methyl-17-beta-hydroxy-(5-alpha)-androst-2-eno-(3,2-c)-pyrazole;

(bj) stenbolone, also known as 17-beta-hydroxy-2-methyl-5-alpha-androst-1-en-3-one;

(bk) talbutal, also known as 5-(1-methylpropyl)-5-(2-propenyl)-2,4,6(1*H*,3*H*,5*H*)-pyrimidinetrione;

(bl) testolactone, also known as 13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone;

(bm) testosterone, also known as 17-beta-hydroxyandrost-4-en-3-one;

(bn) trenbolone, also known as 17-beta-hydroxyestr-4,9,11-trien-3-one; and

(bo) tetrahydrogestrinone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one.

AUTH: 50-32-103, MCA
IMP: 50-32-103, MCA

NEW RULE VI SCHEDULE IV DANGEROUS DRUGS (1) Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule.

(2) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotics is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);

(c) butorphanol;

(d) difenoxin 1mg/25ug $AtSO_4$/du; and

(e) pentazocine.

(3) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;
(b) barbital;
(c) bromazepam;
(d) camazepam;
(e) chloral betaine;
(f) chloral hydrate;
(g) chlordiazepoxide;
(h) clobazam;
(i) clonazepam;
(j) clorazepate;
(k) clotiazepam;
(l) cloxazolam;
(m) delorazepam;
(n) diazepam;
(o) dichloralphenazone;
(p) estazolam;
(q) ethchlorvynol;
(r) ethinamate;
(s) ethyl loflazepate;
(t) fludiazepam;
(u) flunitrazepam;
(v) flurazepam;
(w) fospropofol, also known as lusedra;
(x) halazepam;
(y) haloxazolam;
(z) ketazolam;
(aa) loprazolam;
(ab) lorazepam;
(ac) lormetazepam;
(ad) mebutamate;
(ae) medazepam;
(af) meprobamate;
(ag) methohexital;
(ah) methylphenobarbital, also known as mephobarbital;
(ai) midazolam;
(aj) nimetazepam;
(ak) nitrazepam;
(al) nordiazepam;
(am) oxazepam;
(an) oxazolam;
(ao) paraldehyde;
(ap) petrichloral;

(aq) phenobarbital;
(ar) pinazepam;
(as) prazepam;
(at) quazepam;
(au) temazepam;
(av) tetrazepam;
(aw) triazolam;
(ax) zaleplon;
(ay) zolpidem; and
(az) zopiclone.

(4) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(5) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine, also known as (+)-norpseudoephedrine;
(b) diethylpropion;
(c) fencamfamin;
(d) fenproporex;
(e) mazindol;
(f) mefenorex;
(g) modanfinil;
(h) pemoline, including organometallic complexes and chelates thereof;
(i) phentermine;
(j) pipradrol;
(k) sibutramine; and
(l) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(6) Ephedrine.

(a) Except as provided in (6)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(7) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pentazocine or butorphanol, including its salts, isomers, and salts of its isomers.

AUTH: 50-32-103, MCA
IMP: 50-32-103, MCA

NEW RULE VII SCHEDULE V DANGEROUS DRUGS (1) Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule.

(2) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in (2)(a) through (2)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities, other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

(4) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers.

(a) lacosamide, also known as (R)-2-acetoamido-N-benzyl-3-methoxy-propionamide or vimpat; and

(b) pregabalin, also known as (S)-3-(aminomethyl)-5-methylhexanoic acid or lyrica.

AUTH: 50-32-103, MCA
IMP: 50-32-103, MCA

7. REASONABLE NECESSITY FOR NEW RULES VIII THROUGH XVI: The 2011 Montana Legislature enacted Chapter 122, Laws of 2011 (House Bill 25), an act that revised laws relating to certain licensing boards' medical assistance programs. The bill was signed by the Governor on April 7, 2011, and became effective on October 1, 2011, authorizing the board to establish a medical assistance program to assist and rehabilitate licensees. The board determined it is reasonably

necessary to adopt New Rules VIII through XVI to align with and implement the recent legislation.

NEW RULE VIII MEDICAL ASSISTANCE PROGRAM PURPOSE

(1) The Montana Board of Pharmacy has established a medical assistance program which provides assistance, rehabilitation, and aftercare monitoring to pharmacists, pharmacist interns, certified pharmacy technicians, and pharmacy technicians-in-training under the jurisdiction of the board, who are suspected and/or found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance, or by mental or chronic physical illness.

(2) The board encourages and shall permit the rehabilitation of licensees if, in the board's opinion, public health, safety, and welfare can be assured. Early intervention and referral are paramount to promoting public health, safety, and welfare.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE IX REPORTING OF SUSPECTED IMPAIRMENT

(1) Individuals, entities, or associations may report information to the board of suspected impairment of a licensee or license applicant, as provided in 37-7-201, MCA.

(2) Individuals, entities, or associations may report information of suspected impairment of a licensee or license applicant to the appropriate personnel of the medical assistance program established by the board, in lieu of reporting to the board, as provided in 37-7-201, MCA.

(3) Reports received by the board of suspected impaired licensees may be referred to the medical assistance program at the board's discretion through the nondisciplinary track, without formal disciplinary action against the licensee.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE X PROTOCOL FOR SELF-REPORTING TO A BOARD-ESTABLISHED MEDICAL ASSISTANCE PROGRAM (1) If a licensee chooses to self-report to the board-established medical assistance program, and the medical assistance program has determined that the licensee needs assistance or supervision, the licensee shall be required to:

(a) enter into a contractual agreement with the medical assistance program for the specified length of time determined by the medical assistance program; and

(b) abide by all the requirements set forth by the medical assistance program.

(2) Self-reporting by a licensee may still result in disciplinary action by the board if:

(a) the medical assistance program determines that the self-reporting licensee poses a danger to themselves or to the public;

(b) the licensee is noncompliant with a contractual agreement with the medical assistance program;

(c) the licensee has not completed evaluation, treatment, or aftercare monitoring as recommended by the medical assistance program; or

(d) the screening panel otherwise determines that disciplinary action is warranted.

(3) The medical assistance program shall notify the board, disclose the identity of the licensee involved, and provide all facts and documentation to the board whenever:

(a) the licensee:

(i) has committed an act described in ARM 24.174.2301;

(ii) is noncompliant with a recommendation of the medical assistance program for evaluation, treatment, or aftercare monitoring contract; or

(iii) is the subject of credible allegations that the licensee has put a patient or the public at risk or harm; or

(b) the screening panel otherwise determines disciplinary action is warranted.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XI RESPONSIBILITIES OF MEDICAL ASSISTANCE PROGRAM (1) The medical assistance program established by the board as set forth in 37-7-201, MCA, shall fulfill the terms of its contract with the board, which will include, but not be limited to, the following:

(a) providing two tracks for assistance of licensees:

(i) a disciplinary track; and

(ii) a nondisciplinary track;

(b) providing recommendations to licensees for appropriate evaluation and treatment facilities;

(c) recommending to the board terms and conditions of treatment, rehabilitation, and monitoring of licensees known to the board; and

(d) monitoring all aftercare of participants under contract to ensure public safety and compliance with agreed treatment recommendations propounded by one or more of the following:

(i) the board, through stipulations and/or final orders;

(ii) treatment centers; or

(iii) the medical assistance program established by the board.

(2) The medical assistance program shall consult with the board regarding medical assistance program processes and procedures to ensure program responsibilities are met, consistent with board orders, requests, and contract terms.

(3) The medical assistance program shall provide information to and consult with the board upon the board's request.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XII PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees who participate in the medical assistance program under the disciplinary track shall be reported to the board by name.

(2) A licensee is placed in the disciplinary track by one or more of the following:

(a) as a condition of licensure imposed by a board final order;

(b) as a result of a sanction imposed by a board final order;

(c) as a result of noncompliance with the licensee's contractual agreement with the program; or

(d) pursuant to an agreement between the licensee and the screening panel or the full board upon licensure.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XIII PROTOCOL FOR NONDISCIPLINARY TRACK

(1) A licensee who participates in the medical assistance program under the nondisciplinary track shall be reported to the board by participant number.

(2) The identity of the participant who is noncompliant or refuses a reasonable request by the medical assistance program shall be reported to the board.

(3) If the board determines that a participant does not abide by all terms and conditions of the medical assistance program, the participant will be referred to the screening panel of the board for appropriate action under the disciplinary track.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XIV REPORTING TO THE BOARD (1) The screening panel of the board must receive a written compliance status report from the medical assistance program at intervals established by the contract between the program and the board regarding each program participant:

(a) under a monitoring agreement;

(b) referred to the program; or

(c) in the process of evaluation or treatment.

(2) The full board shall receive a written compliance status report from the medical assistance program at intervals established by contract between the program and the board regarding each participant:

(a) under a monitoring agreement;

(b) referred to the program; or

(c) in the process of evaluation or treatment.

(3) The identity of a participant in the nondisciplinary track must be reported to the full board by participant number except as required by [NEW RULE X and XIII].

(4) The identity of a participant in the disciplinary track must be reported to the full board by name.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XV PARTICIPANT DISCHARGE REQUIREMENTS (1) The medical assistance program shall facilitate participant discharge from the program.

(2) The discharge criteria must be determined by the board in conjunction with the recommendations of the medical assistance program.

(3) The following are required upon discharge of a participant from the endorsed medical assistance program:

(a) report of the discharge of the participant to the board:

(i) verification of satisfactory completion of monitoring, program requirements, and appropriate assurance of public safety;

(ii) completion of board final order terms and conditions with medical assistance program recommendation for discharge and release; and

(iii) request by a participant to transfer assistance into an appropriate endorsed medical assistance program in another jurisdiction; such transfer to be confirmed by the program.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XVI RELAPSE REPORTING (1) The medical assistance program shall define what constitutes "relapse" for each particular participant and determine if and when relapse has occurred.

(a) A participant who has a single episode of relapse and/or early detection of relapse with nominal substance abuse may be reported to the board by the medical assistance program.

(b) A participant who has a second or severe relapse must be reported by the medical assistance program to the board screening panel for review.

(c) The board shall take disciplinary action against the license of a person in a medical assistance program if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance.

(2) Any of the following may be required by the board upon the recommendation of the medical assistance program when a participant suffers a relapse:

(a) the participant may be required to withdraw from practice;

(b) the participant may undergo further recommended evaluation and/or treatment as determined by the medical assistance program;

(c) the participant's monitoring agreement required by the medical assistance program must be reassessed and may be modified;

(d) the participant may be required to comply with other recommendations of the medical assistance program; or

(e) the participant may be subject to discipline as imposed by a board final order.

AUTH: 37-1-131, 37-7-201, MCA

IMP: 37-1-131, 37-7-201, MCA

8. REASONABLE NECESSITY FOR NEW RULES XVII THROUGH XXII: The board determined it is reasonably necessary to propose New Rules XVII through XXII to implement recent trends in pharmaceutical practice and regulations recognizing that internal controls improve the quality of pharmaceutical care and patient safety. The board concluded that requiring these quality controls is a proactive measure that will enhance the practice of pharmacy care.

NEW RULE XVII QUALITY IMPROVEMENT PROGRAM DEFINITIONS

(1) "Continuous Quality Improvement Program" or CQI program means a system of standards and procedures to identify and evaluate quality-related events and improve patient care.

(2) "Quality-related event" or QRE means the incorrect dispensing of a prescribed medication that is received by a patient including:

(a) a variation from the prescriber's prescription order including, but not limited to:

(i) dispensing an incorrect drug;

(ii) dispensing an incorrect drug strength;

(iii) dispensing an incorrect dosage form;

(iv) dispensing a drug to the wrong patient; or

(v) providing inadequate or incorrect packaging, labeling, or directions;

(b) failure to identify and manage:

(i) overutilization;

(ii) therapeutic duplication;

(iii) drug-disease contraindications;

(iv) drug-drug interactions;

(v) incorrect drug dosage or duration of drug treatment;

(vi) drug allergy interactions; or

(vii) clinical abuse or misuse.

(3) "Near-miss QRE" means that an error occurred at some point in the dispensing process, but it was caught and corrected before being given to a patient.

(4) "Pharmacy" means a pharmacy or a group of pharmacies under common ownership and control of one entity licensed by the board.

(5) "Pharmacy personnel" mean pharmacist, pharmacist intern, and pharmacy technician.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XVIII CONTINUOUS QUALITY IMPROVEMENT PROGRAM

(1) Each pharmacy shall establish a Continuous Quality Improvement (CQI) program for the purpose of detecting, documenting, assessing, and preventing quality-related events (QREs). At a minimum, a CQI program shall include provisions to:

(a) identify and document QREs;

(b) minimize impact of QREs on patients;

(c) analyze data collected in response to QREs to assess causes and any contributing factors;

(d) use the findings of the analysis to formulate an appropriate response and develop pharmacy systems and workflow processes designed to prevent QREs; and

(e) provide ongoing education and feedback to pharmacy personnel in the area of CQI, and specific findings from the CQI program.

(2) The pharmacist-in-charge (PIC) is responsible for monitoring CQI program compliance.

(3) CQI program requirements shall be implemented by each pharmacy within six months of the effective date of this rule.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XIX QUALITY-RELATED EVENT DISCOVERY, NOTIFICATION, AND DOCUMENTATION (1) All pharmacy personnel shall be trained to bring any quality-related event (QRE) to the attention of the pharmacist on duty or the pharmacist-in-charge (PIC) immediately upon discovery. The pharmacist who has discovered or been informed of a QRE shall immediately provide:

(a) notification to the patient or patient's representative;

(b) notification of the prescriber and other members of the healthcare team if indicated in the professional judgment of the pharmacist;

(c) directions for correcting the error; and

(d) instructions for minimizing the negative impact on the patient.

(2) A QRE shall be initially documented by the pharmacist who has discovered or been informed of the QRE on the same day the QRE is discovered by or described to the pharmacist.

(3) QRE documentation shall include a description of the event that is sufficient to permit categorization and analysis of the event. QRE documentation shall include:

(a) the date when the pharmacist discovered or received notification of the QRE and the names of the persons who notified the pharmacy;

(b) the names and titles of the persons recording the QRE information and performing the QRE analysis;

(c) a description of the QRE reviewed; and

(d) documentation of the contact with the patient or patient's representative and the prescribing practitioner and other members of the healthcare team (if indicated in the professional judgment of the pharmacist).

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XX QUALITY-RELATED EVENT ANALYSIS AND RESPONSE

(1) The investigative and other pertinent data collected in response to a quality-related event (QRE) shall be analyzed individually and collectively to assess the cause and any contributing factors such as system or process failures. The QRE analysis and assessment shall include:

(a) consideration of the effects on quality assurance related to workflow processes, technological support, personnel training, and staffing levels; and

(b) any recommended remedial changes to pharmacy policies, procedures, systems, or processes.

(2) Each pharmacy shall inform pharmacy personnel of changes to pharmacy policies, procedures, systems, or processes resulting from recommendations generated by the Continuous Quality Improvement Program.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XXI DUTY TO REPORT (1) A pharmacy licensed by the board is required to report any quality-related event (QRE) to the Institute for Safe Medication Practices (ISMP). Near-miss QREs are encouraged to be treated as a QRE and reported to the ISMP.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XXII RECORDS (1) Each pharmacy shall maintain a copy of its Continuous Quality Improvement Program (CQI) description on the pharmacy premises. The CQI program description shall be readily available to all pharmacy personnel.

(2) Each pharmacy shall maintain a record of all quality-related event (QRE) documentation for a minimum period of two years from the date of the QRE report.

(3) QRE records shall be maintained in an orderly manner and accessible for the pharmacy compliance officer.

(4) The date and name of the person filing the Institute for Safe Medication Practices report will be kept as part of the QRE record.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

NEW RULE XXIII LIMITED SERVICE PHARMACY (1) A limited service pharmacy is defined as a family planning clinic:

(a) operating under contract with the Department of Public Health and Human Services (DPHHS); or

(b) providing pharmaceutical care under the review of a consulting pharmacist and dispensing legend drugs, but which is not under contract with DPHHS.

(2) Each limited service pharmacy must apply for a license from the board and submit the required fee.

(3) The board shall grant a license to operate a limited service pharmacy to qualified applicants. A licensed family planning clinic may operate satellite locations under the same license if identified on the application.

(4) A limited service pharmacy must display its license in a conspicuous place at the facility.

(5) A limited service pharmacy is not required to employ a licensed pharmacist.

(6) A limited service pharmacy dispensing legend drugs other than factory, prepackaged contraceptives must disclose the name, address, telephone number, and title of the designated person in charge of the limited service pharmacy. The person in charge is responsible for the limited service pharmacy's compliance with all applicable state and federal statutes and rules. A person in charge may be responsible for multiple sites.

(7) The board may annually inspect limited service pharmacies, including any satellite locations. The board may inspect more often for cause. Such inspections must include assurance that the limited service pharmacy provides adequate:

(a) drug labeling;

(b) counseling materials to all patients, including the name of the limited service pharmacy's consulting pharmacist, where required;

(c) contact information of a knowledgeable individual at the clinic in the event of an adverse reaction;

(d) records maintenance and retention; and

(e) drug storage and security.

(8) Nothing in this rule is meant to limit or restrict the authority of a registered nurse employed by a family planning clinic, operating under contract with DPHHS, from dispensing factory, prepackaged contraceptives as authorized by 37-2-104, 37-7-103, or 50-31-307, MCA.

(9) A registered nurse or provider with prescriptive authority, employed by a family planning clinic operating under contract with DPHHS, may dispense oral antibiotics used to treat Chlamydia to a patient diagnosed with Chlamydia and to a sexual contact or partner of a patient diagnosed with Chlamydia. All appropriate records shall be maintained on-site. The antibiotics dispensed must:

(a) be prepackaged and properly labeled in accordance with state law;

(b) include appropriate counseling materials informing the patient of the potential risks involved in taking the drug; and

(c) contain contact information for the healthcare provider or a consulting pharmacist to provide advice or answer questions.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule XXIII to reflect current medical and pharmacy practice standards through the registration of family planning clinics dispensing legend prescription drugs and the board's inspection of these facilities. The board concluded that inspection is necessary to ensure the public's safety as these facilities maintain legend drug stocks and may be located in remote areas of the state.

This new rule addresses additional medical practitioners with prescriptive authority as defined at 37-2-101, MCA, and provides for the dispensing of oral antibiotic medication to timely treat patients with certain sexually transmitted diseases. Montana's chief medical officer requested the board adopt rules to

address this serious public health concern. New Rule XXIII will replace ARM 24.174.813, which is proposed for repeal in this notice.

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

24.174.813 CLASS IV FACILITY found at ARM page 24-19669.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: The board is repealing ARM 24.174.813 Class IV Facility, and replacing it with proposed New Rule XXIII. Previous rule amendments repealed Class I, II, and III facilities, leaving only Class IV. This rule also references a contraceptive drug or device law which was repealed in 1989.

10. 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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or by e-mail to dlibsdpha@mt.gov, and must be received no later than 5:00 p.m., January 31, 2012.

11. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.pharmacy.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.

12. 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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2344; e-mailed to dlibsdpha@mt.gov; or made by completing a request form at any rules hearing held by the agency.

13. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on September 20, 2011, by regular mail.

14. Mike Fanning, attorney, has been designated to preside over and conduct this hearing.

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 12, 2011

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to Business Services Division requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 12, 2012, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206 of the State Capitol Building, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on January 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I FORM OF ANNUAL REPORT (1) An annual report filed pursuant to 35-1-1104, 35-2-904, and 35-8-208, MCA, must be on a form prescribed and furnished by the secretary of state if it is not filed on-line.

AUTH: 35-1-1307, 35-1-1308, MCA
IMP: 35-1-217, 35-8-208, MCA

REASON: The adoption of this rule is reasonably necessary to reduce the processing time for annual reports not filed on-line and to decrease the number of rejections. Over 15,000 paper annual reports are filed with the Secretary of State each year with the amount received increasing each year. Due to the availability of on-line filing of annual reports, the Secretary of State was able to reduce staff for the annual report unit from 15 to 20 employees to only two full-time employees. Requiring customers to utilize the Secretary of State's form will reduce the potential for filing errors as well as the potential for missed crucial deadlines thereby reducing the possibility that an entity will be dissolved or revoked unnecessarily. Requiring the use of the Secretary of State's form will also help streamline the workflow resulting in the necessity for less staff and allowing a faster turnaround of documents.

NEW RULE II CERTIFICATE OF EXISTENCE FOR FOREIGN ENTITIES (1) A certificate of existence for foreign entities must be dated within six

months of the receipt of the application by the secretary of state for authority to transact business in this state.

AUTH: 35-1-1307, MCA
IMP: 35-1-1028, 35-2-822, 35-8-1003, MCA

REASON: The adoption of this rule is reasonably necessary to confirm that the foreign entity is in existence, is authorized to transact business in their state of jurisdiction, and has complied with that state's required formalities prior to qualifying to transact business in Montana.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., January 19, 2012.

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

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

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

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 12th day of December, 2011.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3502 pertaining to the investment policy statement for the Defined Contribution Retirement Plan and ARM 2.43.5102 pertaining to the investment policy statement for the 457 Deferred Compensation Plan	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 10, 2011, the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-466 pertaining to the proposed amendment of the above-stated rules at page 2332 of the 2011 Montana Administrative Register, Issue Number 21.

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

3. No comments were received.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

Certified to the Secretary of State December 12, 2011.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.1306 pertaining to actuarial rates, assumptions, and methods for valuation purposes and actuarial equivalence for the Board-administered defined benefit retirement systems	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-467 pertaining to the proposed amendment of the above-stated rule at page 2196 of the 2011 Montana Administrative Register, Issue Number 20.

2. The PER Board has amended the above-stated rule as proposed.

3. No comments were received.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

Certified to the Secretary of State December 12, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IX pertaining to bank debt cancellation contracts and debt suspension agreements	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 11, 2011, the Department of Administration published MAR Notice No. 2-59-452 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1430 of the 2011 Montana Administrative Register, Issue Number 15.

2. The department has adopted the following rules as proposed: NEW RULE IV (2.59.119), NEW RULE V (2.59.120), NEW RULE VI (2.59.121), and NEW RULE VIII (2.59.123).

3. The department has adopted the following proposed rules with changes, new material underlined, deleted material interlined:

NEW RULE I (2.59.116) DEFINITIONS (1) through (3) remain as proposed.

(4) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a bank agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit to which it pertains may be a direct loan made by the bank or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the bank. In the case of an indirect loan in the form of a retail installment sales contract, the debt cancellation contract may be offered by the bank through a nonexclusive, unaffiliated agent contingent upon the bank purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. A debt cancellation contract may be offered and purchased either contemporaneously with the other terms of the loan agreement or subsequently.

(5) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a bank agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit may be a direct loan made by the bank or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the bank. In the case of an indirect loan in the form of a retail installment sales contract, the debt suspension agreement may be offered by the bank through a nonexclusive, unaffiliated agent contingent upon the bank purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. The term "debt suspension

agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the bank's unilateral decision to allow a deferral of repayment.

(6) "Guaranteed asset protection (GAP) waiver or agreement" means a term of an extension of credit or contractual arrangement modifying terms of an extension of credit for the purchase of titled personal property under which a bank agrees to cancel the customer's obligation to repay the portion of the extension of credit that exceeds the amount paid by the primary insurer of the titled personal property upon the insurer's declaration that the titled personal property is a total loss or determination that the titled personal property is stolen and not recoverable.

(7) "Loan" or "extension of credit" means a direct or indirect advance of funds to a customer made on the basis of any obligation of that customer to repay the funds or that is repayable from specific property pledged by or on the customer's behalf. The term also includes any liability of a bank to advance funds to or on behalf of a customer pursuant to a contractual commitment.

(8) remains as proposed.

NEW RULE II (2.59.117) DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS (1) through (1)(a)(iii) remain as proposed.

(b) obtain and maintain in effect insurance ~~approved by the~~ from an insurer authorized or otherwise registered with the State Auditor and Commissioner of Insurance (State Auditor) ~~to cover all of the bank's risk associated with its debt cancellation contracts and debt suspension agreements~~ to do business in Montana, except as provided in (2). The insurance must cover 100% of the at-risk loan balances to which the bank's debt cancellation contracts pertain.

(2) An insurer authorized by the insurance regulator in an out-of-state bank's home state that has issued a policy to the out-of-state bank covering all of its debt cancellation contractual liabilities need not be authorized or otherwise registered with the State Auditor.

NEW RULE III (2.59.118) REQUIRED DISCLOSURES (1) A bank shall provide the following disclosures to the bank's customer ~~at the time of offering the customer a debt cancellation contract or debt suspension agreement~~:

(a) and (b) remain as proposed.

(c) ~~any~~ the refund policy ~~if the fee is paid in a single payment and added to the amount borrowed~~;

(d) through (g) remain as proposed.

(2) The requirements for the timing and method of disclosure are:

(a) the bank shall make the disclosures in (1) and the short-form disclosures under ARM 2.59.123 orally at the time the bank first solicits the purchase of a contract;

(b) the bank shall make the long-form disclosures under ARM 2.59.123 in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the bank shall provide the long-form disclosure in writing at that time;

(c) if the contract is solicited by telephone, the bank shall provide the disclosures in (1) and the short-form disclosures under ARM 2.59.123 orally and

shall mail the long-form disclosures, and, if appropriate, a copy of the contract to the customer within three business days beginning on the first business day after the telephone solicitation; and

(d) if the contract is solicited through written materials such as mail inserts or "take one" applications, the bank may provide only the disclosures in (1) and the short-form disclosure under ARM 2.59.123 to the customer within three business days beginning on the first business day after the customer contacts the bank in response to the solicitation, subject to the requirements of ARM 2.59.122(3)(b).

(3) The disclosures required by these rules must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. The methods may include use of plain language headings, easily readable typeface and size, wide margins and ample line spacing, boldface or italics for key words, and/or distinctive type style or graphic devices.

(4) The disclosures in the short-form disclosure under ARM 2.59.123 are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

(5) The disclosures described in these rules may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA.

NEW RULE VII (2.59.122) AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES (1) through (3)(b)(iii) remain as proposed.

(4) The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. ~~and~~ or the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA.

NEW RULE IX (2.59.124) GUARANTEED ASSET PROTECTION (GAP) FEATURE (1) A GAP waiver or agreement is a type of debt cancellation contract. A debt cancellation contract with a GAP feature offered in connection with an extension of credit for the purchase of titled personal property for personal, family, or household use is a single product ~~and does not require a separate agreement related to financing for the GAP feature~~. A bank offering a debt cancellation contract with a GAP feature may do so through nonexclusive, unaffiliated agents such as automobile dealers. The fee arrangement between a bank and a nonexclusive, unaffiliated agent through which the debt cancellation product is offered does not create a separate contract that violates the anti-tying provision of ARM 2.59.119(1)(a).

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

COMMENT #1: A comment was received from a guaranteed asset protection (GAP) membership organization whose members include insurance companies, creditors, and administrative services companies that bring GAP products to market. The commenter's stated mission is to promote equitable legislation and regulation of its members and their products so that meaningful options are available to consumers. The organization had two comments concerning proposed NEW RULE IX: 1) that the proposed rule creates an ambiguity by referring to GAP as a feature of a debt cancellation contract rather than as a stand-alone product, i.e., as a type of debt cancellation contract; and 2) the proposed rule is too limited in its scope and the department should authorize automobile dealers to offer debt cancellation products in conjunction with retail installment sales contracts that the dealers will in turn sell or assign to non-bank entities. The commenter acknowledged that HB 432 might not empower the department to address the second issue in its rulemaking. A copy of the commenting association's own model legislation document was provided to the department.

RESPONSE #1: The department agrees that a GAP contract is a type of debt cancellation product. A sentence has been added to NEW RULE IX to make that clear.

The department agrees that if it adopted a rule purporting to authorize automobile dealers to offer debt cancellation products in conjunction with retail installment sales contracts intended to be sold or assigned in the indirect lending market to entities that are not banks, the department would be acting in excess of its legislative authority. Authorization to that effect would have to come from the Legislature. HB 432 sought only to put state-chartered banks and state-chartered credit unions in parity with national banks and federal credit unions that have been authorized by federal regulators for years to offer debt cancellation products in connection with loans or extensions of credit made to their customers or members.

COMMENT #2: A comment was received from legal counsel for a debt cancellation service provider for the lending industry. The commenter states generally that it supports the department's proposed rules to the extent that they track the Office of the Comptroller of the Currency (OCC) regulation at 12 CFR Part 37 which is considered to represent best practices in the industry. The commenter states the OCC regulation provides consumers with sufficient information to make informed decisions and contains appropriate consumer protections. To the extent that the department's rules deviate from the OCC regulation as do NEW RULE II(1)(b) and NEW RULE III(1)(a) and (g), the commenter opposes them and requests that they be removed. More detailed comments made by the commenter about specific proposed rules are included below.

With regard to NEW RULE II(1)(b), the commenter states the requirement that banks obtain insurance to manage the risk associated with offering debt cancellation contracts is unnecessary and unfair because national banks are permitted, but not required, to manage the risk by obtaining insurance.

The commenter objects to the requirement under NEW RULE III(1)(a) that a bank disclose the prohibited practices under NEW RULE IV because the additional information will lengthen the disclosure form making it less likely that consumers will

be able to focus on important provisions of the form concerning the terms of the debt cancellation contract.

The commenter objects to the requirement under NEW RULE III(1)(g) that a bank notify the consumer that activation of a debt cancellation contract may result in a tax liability to the consumer. The commenter states that the tax-related disclosure will lengthen the disclosure form and obscure the importance of other key terms that it contains. In addition, the commenter states that a bank is not in a position to give consumers tax advice in response to questions that may arise from the disclosure of a possible tax consequence.

The commenter objects to proposed NEW RULE VIII's adoption of the "OCC short form" disclosures with the Montana modifications because the modifications lengthen the disclosure form, drive up costs for a bank that operates in a multistate environment, and destroy the efficiencies of a uniform system. A bank's increased administrative costs ultimately drive up costs to the consumer.

RESPONSE #2: The department thanks the commenter for submitting a comment.

The department believes the insurance requirement will help to ensure that a bank's debt cancellation program does not impair the institution's safety and soundness and it indirectly provides a measure of consumer protection as well. The department is aware that national banks are permitted, but not required, to manage the associated risk by obtaining insurance. However, the department deems parity between national banks and state-chartered banks on the issue of debt cancellation contracts and debt suspension agreements to be substantially and satisfactorily achieved by HB 432 and these rules. HB 432 expressly authorized the department to adopt rules that are more stringent than the OCC regulations governing national banks' debt cancellation contracts and debt suspension agreements. The department believes that most, if not all, state-chartered banks choosing to offer debt cancellation contracts or debt suspension agreements will engage the services of a program administrator and that contractual liability insurance will or can be a part of the package of program services available to the banks.

The department believes that disclosure of the practices that are prohibited under NEW RULE IV provides valuable information to bank customers about the protections afforded them under the law so that they are in a position to assert those protections if necessary. Although the disclosure of prohibited practices will slightly lengthen the disclosure forms, the department believes that bank customers obtaining loans or modifications of loans are accustomed to the need to review and digest a substantial amount of important information.

The department believes that disclosing to a bank's customer the possibility that activation of a debt cancellation contract could result in a tax liability to the customer is not onerous and that the benefit to the customer of being well-informed at the outset far outweighs the bank's burden to disclose the information. Both parties to the debt cancellation contract are harmed if a tax liability arises later to the surprise of the consumer who then asserts a claim against the bank for negligent or willful misrepresentation. The department believes that it is a good thing if disclosure of a potential tax liability causes the customer to ask questions even if the bank cannot and should not answer them. The bank can inform the customer that the customer may wish to consult with their personal tax advisor before making a

decision to purchase a debt cancellation contract. No commenter objected to the disclosure of the potential tax liability on the grounds that the activation of a debt cancellation contract is not a taxable event or provided any legal authority to that effect.

The department believes that the cost would not be great to attach a Montana addendum to a bank's disclosure forms used in a multistate environment (assuming the multistate disclosure form does not conflict with Montana laws or rules). This rule does not require use of the OCC's short-form and long-form disclosures that are available at 12 CFR Part 37, Appendices A and B. Rather, those forms are adopted as models. Banks will have to adapt the model forms to include Montana-specific requirements and to match the scope of the bank's own debt cancellation and debt suspension program.

COMMENT #3: A comment was received by an association that represents both state-chartered and federally chartered banks in Montana. The commenter asks that the department consider the necessity of parity among state and national banks. The commenter stated that NEW RULE IX appears to address only one type of debt cancellation contract offered and sold in the indirect lending market, specifically, a GAP waiver/agreement that is offered and sold by a bank through a nonexclusive, unaffiliated agent such as an automobile dealer that in turn sells its retail installment sales contract to the bank. The commenter noted that debt cancellation contracts that have any number of triggering events besides the triggering events for a GAP waiver/agreement are offered and sold in the indirect lending market by national banks. The commenter requests that the department add a NEW RULE X that otherwise mirrors NEW RULE IX but authorizes a bank to offer and sell debt cancellation contracts, other than GAP waivers/agreements, through nonexclusive, unaffiliated agents that will in turn sell their retail installment sales contracts to the bank.

RESPONSE #3: The department thanks the commenter for its comment, which is well-taken. The definitions of "debt cancellation contract" and "debt suspension agreement" in NEW RULE I have been amended to clarify that those products may be offered by a bank in conjunction with both its direct loans and indirect loans, consistent with the definition of loan or extension of credit in NEW RULE I. In short, the department agrees that any debt cancellation product may be offered and sold by a bank in the indirect lending market through a nonexclusive, unaffiliated agent that will in turn sell or assign the agent's retail installment sales contract to the bank. The department notes that OCC Interpretive Letters #1093 and #1095 make clear, in dicta, that a retail installment sales contract sold or assigned to a bank is treated the same as a loan that is originated by a bank for purposes of offering debt cancellation products. A bank's debt cancellation contract or debt suspension agreement offered through a nonexclusive, unaffiliated agent becomes effective only when the bank purchases or takes assignment of the agent's retail installment sales contract. A bank is only authorized to offer those products in relation to specific loans made to its customers (directly or indirectly).

Amendment of the definitions of "debt cancellation contract" and "debt suspension agreement" in NEW RULE I, consistent with the definition of "loan or

extension of credit" in the same rule, is necessary for clarification purposes and to achieve substantial and satisfactory parity between state-chartered banks and national banks consistent with the legislative intent of HB 432. It is the department's intent that a bank's indirect lending program be treated the same as its direct lending program for purposes of debt cancellation contracts and debt suspension agreements authorized under HB 432 and these rules.

COMMENT #4: A comment was submitted by a Washington, D.C. law firm written on its own behalf or on behalf of an unknown client. The commenter stated that the Legislature's statement of intent for Montana's parity statute [32-1-362, MCA] in 1993 provided that the department "should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks." The commenter objects to the requirement that the prohibited acts included in NEW RULE IV be disclosed as provided in NEW RULE II(1)(a) and NEW RULE VIII. The commenter states that the disclosure, which has no equivalent or counterpart in 12 CFR Part 37, adds no additional protection to consumers and additional consumer protection is generally the Legislature's rationale when it authorizes rules to be adopted that are more stringent than federal laws. The commenter states the federal law disclosures applicable to national banks are sufficient and there is no reasonable necessity to require disclosure of prohibited acts under NEW RULE IV. The commenter stated there is no reasonable necessity for a consumer to know what is prohibited if the bank cannot do the prohibited act anyway. The commenter urges that if the department deems it necessary to disclose the prohibited acts, that disclosure only be required in the long-form disclosure under NEW RULE VIII(2).

The commenter also objects to the department not including all debt cancellation products offered through nonexclusive agents within its rule, but instead limiting the scope of NEW RULE IX to a debt cancellation product with a GAP feature.

The commenter referred the department to 68 Fed. Reg. 35283 (June 13, 2003) wherein the OCC elected to delay indefinitely the mandatory date for compliance by national banks with certain requirements under 12 CFR 37.4 regarding debt cancellation products offered and sold through nonexclusive, unaffiliated agents in the indirect lending market. The commenter requested that the department delay mandatory compliance by state-chartered banks in the indirect lending context as well.

RESPONSE #4: HB 432 directed the department to adopt rules at least as stringent as the OCC regulations governing national banks' debt cancellation programs. The department believes that consumers who are aware of what acts or practices of a bank are prohibited are in a better position to assert the protections that the law affords them than are consumers who are not aware of the prohibitions. Although the acts and practices in NEW RULE IV are prohibited, that is no assurance that a bank will not run afoul of the rule and engage in a prohibited act or practice in connection with its debt cancellation contracts and debt suspension agreements. A consumer who is well-educated about the parameters of a bank's authority relative to the debt cancellation product is better protected than one who is not.

Regarding the comment concerning the limited scope of NEW RULE IX, the department believes the comment is well-taken and has amended the definitions of "debt cancellation contract" and "debt suspension agreement" to clarify that such products may be offered in conjunction with the bank's direct lending as well as its indirect lending programs, and the type of debt cancellation product is not restricted to GAP waivers.

The department declines to delay the date by which banks must comply with all of the debt cancellation/suspension rules whether the product is offered by the bank in conjunction with an extension of credit made directly by the bank or whether in conjunction with extensions of credit in the form of retail installments sales contracts acquired by the bank on the indirect lending market. Debt protection products are only offered by banks. In the indirect lending context, a bank makes the offer through a nonexclusive, unaffiliated agent. The department is unwilling to have different standards relating to periodic payment options, refund options, disclosure requirements, and acknowledgments of receipt for customers who purchase the product directly from the bank and those who purchase the product through the bank's nonexclusive, unaffiliated agent. The department does not regulate and has no authority over automobile dealers or other nonexclusive, unaffiliated agents of banks to assure that customers dealing with agents are afforded the protections and options that these rules provide. Banks must comply with all rules pertaining to the products they offer. A bank can address and resolve unique problems associated with the distribution channels and fee arrangements in the indirect lending context by carefully crafting the terms of a sale/purchase agreement by which the bank indirectly acquires the loan. A bank may delay offering debt protection products in its indirect lending program, but it may not implement such a program and then fail to comply with the rules upon the date that the rules become effective.

COMMENT #5: A comment was submitted to the department by legal counsel for a risk retention trade association representing the risk retention, alternative risk, and risk purchasing group industry. The commenter objects to proposed NEW RULE II(1)(b) because it effectively prohibits state-chartered banks from obtaining insurance coverage from nondomiciliary risk retention groups. The commenter draws the department's attention to the Liability Risk Retention Act (LRRA) at 15 USC 3901 et seq. Under federal law, a risk retention group (RRG) obtains authorization to do business in the state where it is domiciled and the domiciliary state regulates the RRG. The RRG need only register with the insurance commissioner in the other states where it does business. The commenter notes that NEW RULE II(1)(b) would require nondomiciliary RRGs to be approved by the State Auditor and Commissioner of Insurance (State Auditor) to do business in Montana before they could insure a state-chartered bank for the at-risk loan balances associated with the bank's debt cancellation contracts.

RESPONSE #5: The department thanks the commenter for bringing the error in proposed NEW RULE II(1)(b) to the department's attention. NEW RULE II(1)(b) is being amended by the department to conform to the LRRA and to clarify that RRGs

do not need to be approved by, but need only register with the office of the State Auditor.

COMMENT #6: A comment was submitted to the department by an RRG domiciled in another state. The RRG's comment was substantially similar to Comment #5 above. The commenter suggested proposed alternative language for inclusion in NEW RULE II(1)(b).

RESPONSE #6: The department thanks the commenter for submitting the comment. The department believes the alternative language that the commenter proposed is appropriate and has amended proposed NEW RULE II(1)(b) accordingly.

COMMENT #7: A comment was received from a membership organization of bank management companies. The organization serves as an administrator of the debt protection programs of numerous national and state banks. The commenter's sister company provides contractual liability insurance policies (CLIPS) covering the risks associated with the programs. The commenter is also a member of the organization that submitted Comment #8 summarized below and concurs with the recommended amendments to the proposed rules that are included in Comment #8. The commenter believes those recommended amendments relating to disclosures and related requirements will assure that consumers are well informed, but will not place unreasonable and unfair burdens on state banks as they compete with national banks offering similar debt cancellation programs.

More specifically, the commenter states that for some state banks, NEW RULE II(1)(b) imposes unnecessary and overly burdensome insurance requirements for the management of risks associated with debt protection programs. The commenter states the insurance must cover a bank's entire debt cancellation program both in and outside of Montana and that many banks desiring to offer debt protection in Montana are not Montana banks. In lieu of the insurance requirement, the commenter asks the department to allow an out-of-state bank to utilize a policy filed and approved with the appropriate state for the policy's issuance.

The commenter states that most, if not all, large state banks have stopped using CLIPs as a method of managing their risk and have instead retained experienced actuaries (either as full time, permanent employees or not) and have established reserves appropriate for the debt protection program risks. The commenter requests that the department allow a bank to post reserves in lieu of insurance.

The commenter also states the language and methodology in the OCC's Part 37 constitute a clear and easily understood process for disclosing information to consumers and should be incorporated into Montana's rules. It states that any additional disclosures should be included in the long form but not in the short form because the long form is the form the consumer will take with them and examine further.

RESPONSE #7: The department thanks the commenter for submitting the comment. The department believes that its rule requirements that have no

equivalent or counterpart in the OCC's rules neither place unreasonable or unfair burdens on state banks nor put them at a competitive disadvantage vis-à-vis national banks. The department believes its variances from OCC's rules are minimal and are not onerous; therefore, the variances do not create a competitive disadvantage for state-chartered banks. The department also believes that the variances provide added consumer protection and that they better assure that a bank's safety and soundness is not adversely impacted by its debt cancellation program. HB 432 specifically authorized the department to adopt rules substantially equivalent to or more stringent than federal regulations governing national banks and the department believes it has done so.

A bank may only offer and sell debt cancellation products to Montana customers in relation to specific loans made to those customers either directly or indirectly by the bank. Banks must obtain insurance to cover the at-risk loan balances to which a debt cancellation contract pertains. The commenter raises a point similar to that expressed in Comment #9 relating to out-of-state banks whose at-risk loan balances pertaining to its debt cancellation contracts are insured by an insurer authorized in the bank's home state. The department has amended NEW RULE II to clarify that because the policy holder will be the out-of-state bank and not the Montana consumer, an insurer authorized to issue the policy to the out-of-state bank in the bank's home state would not have to be authorized or otherwise registered with the State Auditor.

Most state-chartered banks in Montana are not large and, to the department's knowledge, none have actuaries on staff. The department believes a bank could lose sight of the extent of its risk associated with debt cancellation contracts. That would pose a risk to the bank's safety and soundness. No state-chartered bank commented that it wanted the option of posting reserves in lieu of maintaining insurance to cover the at-risk loan balances associated with the bank's debt cancellation contracts. The department declines to amend the rule in the manner requested by the commenter because it believes that best practice, consistent with bank safety and soundness principles, is to require insurance coverage. In addition, if no insurance was required, safety and soundness examinations of banks would take longer and would require that the department obtain specialized training for its examiners who are already taxed with a heavy workload. In the department's opinion, those circumstances dictate against allowing the posting of reserves in lieu of maintaining insurance.

The department believes that the Montana-specific disclosures required under NEW RULE III(1)(a) and (1)(g) that have no equivalent or counterpart under the 12 CFR Part 37 provide additional consumer protection, are not onerous, and should be adopted as proposed because they will not appreciably lengthen either the model short-form or long-form disclosures under NEW RULE VIII.

COMMENT #8: A comment was received from an administrator that assists in program development relating to debt cancellation products offered through regional and community banks as part of their direct and indirect lending programs.

The commenter stated that although the proposed rules plainly authorize state-chartered banks to offer GAP waivers through nonexclusive, unaffiliated agents such as automobile dealers, the rules do not explicitly authorize banks to

offer other types of debt cancellation products through nonexclusive, unaffiliated agents in connection with the banks' overall indirect lending programs. The commenter stated that the OCC's Interpretive Letters #1093 and #1095 authorize national banks to do so. The commenter asks that the proposed rules be amended in order to clarify that state-chartered banks have the same authority that national banks have to offer debt cancellation products, including but not limited to GAP waivers, through nonexclusive, unaffiliated agents in connection with their overall indirect lending program.

The commenter requests that in NEW RULE I: 1) the definition of guaranteed asset protection (GAP) waiver or agreement be clarified to reflect that it is a type of debt cancellation contract; 2) the definitions of debt cancellation contract and debt suspension agreement be amended to reflect that a debt cancellation product may be offered in conjunction with either direct or indirect extensions of credit; and 3) the defined term "loan or extension of credit" be broken into two terms, "loan" or "extension of credit."

The commenter recommends that NEW RULE IX be amended to include a statement that the financing arrangement for the GAP fee does not create a separate product that violates the anti-tying prohibition in NEW RULE IV(1)(a).

The commenter asks the department to follow the OCC's lead and indefinitely delay the date for mandatory compliance with certain requirements when a debt cancellation product is offered through a nonexclusive, unaffiliated agent in the indirect lending market. See, 68 FR 35283 (June 13, 2003). Specifically, the commenter requests that the department delay requiring state-chartered banks to comply with the following rules as applied to the bank's indirect lending program: 1) the periodic payment option requirement contained in NEW RULE VI(1); 2) the requirement in NEW RULE V(2) that a bank offering a debt cancellation contract without a refund provision also offer a bona fide option to purchase a comparable contract that provides for a refund; 3) use under NEW RULE VIII of the OCC's long-form disclosure in its entirety and the second, third, and fifth provisions in the OCC's short-form disclosure; and 4) the requirement in NEW RULE VII for obtaining a customer's written acknowledgment of receipt of the disclosures. The commenter notes that there are unique problems that these provisions pose in the indirect lending distribution channel.

The commenter objects to the requirement in NEW RULE III(1)(a) that a bank disclose to its customer at the time of offering a debt cancellation product, notice of the prohibited acts and practices contained in NEW RULE IV(1)(b) and (1)(c)(ii). The basis for the objection is that disclosure would be counterproductive, confusing, and would lengthen the disclosure making it less likely that the consumer will read it. As examples, the commenter states disclosure of the prohibition against charging a single lump sum payment for a debt cancellation contract pertaining to a residential mortgage loan would be confusing if the customer's loan is not a residential mortgage loan and disclosing that the bank is prohibited from using misleading advertising goes without saying and serves no purpose. The commenter requests that the disclosure requirement in NEW RULE III(1)(a) be eliminated or limited to requiring disclosure of the prohibited acts contained in NEW RULE IV(1)(a) and (1)(c)(i).

The commenter states that it agrees with another commenter (Comment #9) that NEW RULE III should be amended to more closely mirror 12 CFR 37.6 to provide more clarity and parity within the industry regarding the content and timing of short- and long-form disclosures under varied channels of delivery of debt cancellation products.

RESPONSE # 8: The department agrees with the comment concerning the need for clarification relating to banks offering debt cancellation products in both their direct lending and indirect lending programs. The department has amended the definitions of "debt cancellation contract" and "debt suspension agreement" in NEW RULE I consistent with the definition of "loan or extension of credit" in that same rule. (Also see, response to Comment #3.)

The department has amended NEW RULE IX to state that a GAP waiver or agreement is a type of debt cancellation contract and to clarify that the financing arrangement relating to the fee for a GAP waiver or agreement does not create a separate product that violates the anti-tying prohibition of NEW RULE IV(1)(a). The department has amended NEW RULE I(7) to separately enclose the terms "loan" and "extension of credit" in quotation marks as recommended by the commenter because the terms are used separately rather than as a phrase in the OCC regulation. The amendment is not intended to be substantive but only editorial.

The department declines to delay mandatory compliance by state-chartered banks with the debt cancellation and debt suspension rules in the context of the bank's indirect lending program. The alternative to the department's decision not to delay mandatory compliance by banks with certain rules in the indirect lending context would have been to delay allowing banks to offer debt cancellation products in the indirect lending market at all. The department believes that not allowing banks to offer debt cancellation products through nonexclusive, unaffiliated agents in the indirect lending market at this time would create less parity between state-chartered banks and federal banks than requiring state-chartered banks to comply with all rules in conjunction with both their direct and indirect lending programs. The department believes that since a bank is authorized to offer a debt protection product through a nonexclusive, unaffiliated agent in the indirect lending market, it is not unreasonable to expect it to ensure that the agent delivers the appropriate disclosures and obtains the appropriate acknowledgement of receipt. The department believes that NEW RULE VII, which provides some leeway where a bank has made its best efforts and maintained sufficient documentation of having delivered the mandatory disclosures, adequately addresses the commenter's concerns.

Banks can choose whether to implement their debt protection program in connection with indirect lending at this time or not.

The department declines to delete from NEW RULE III(1)(a) or to modify it to state that the only prohibitions in NEW RULE IV that must be disclosed are the prohibitions against conditioning the extension of credit on the purchase of debt protection products and against unilateral modification of a debt cancellation contract or debt suspension agreement by the bank except in certain limited circumstances. The department believes that purchasers of debt protection products who are aware of all of the prohibitions in NEW RULE IV are in a better position to assert the

protections that NEW RULE IV affords. The department sees no reason why some, but not all, of the prohibitions should be disclosed.

The commenter's recommendation that NEW RULE III be amended to more closely mirror 12 CFR 37.6 was echoed by several commenters. Although there is information contained in NEW RULE VII (which is patterned after 12 CFR 37.7) that is to some degree duplicated in 12 CFR 37.6, and 12 CFR 37.6 also includes what is arguably minutiae, the department has no good reason for not complying with the commenter's recommendation, which will facilitate uniformity for administrators of banks' debt protection programs operating in multiple states. NEW RULE III has been amended to more closely mirror 12 CFR 37.6.

The department believes that since a bank is authorized to offer a debt protection product through a nonexclusive, unaffiliated agent in the indirect lending market, it is not unreasonable to expect the bank to ensure that the agent delivers the appropriate disclosures and obtains the appropriate acknowledgement of receipt. The department believes that NEW RULE VII, which provides some leeway where a bank has made its best efforts and maintained sufficient documentation of having delivered the mandatory disclosures, adequately addresses the commenter's concerns.

COMMENT # 9: A comment was submitted by a national trade association of insurance companies and other financial service providers selling or servicing credit protection products typically provided in connection with consumer credit transactions.

The commenter objects to the enhanced disclosure requirements [in NEW RULE III(1)(a) and (1)(g)] because they are more onerous than the OCC regulation governing national banks' debt cancellation and debt suspension programs and therefore they may create an uneven playing field for state-chartered banks. The commenter states that the industry has been working within the framework of the OCC disclosure requirements under 12 CFR Part 37 for years and that not varying from the OCC disclosure requirements in 12 CFR 37.6 will enable the industry to timely and consistently provide meaningful disclosures to consumers. The commenter recommends that NEW RULE II be amended to more closely mirror 12 CFR 37.6. The commenter states that the department has not identified any flaw or failure in the OCC's debt cancellation/debt suspension regulation at 12 CFR Part 37 warranting variance from that regulation. The commenter states that variance from the OCC regulation will affect the precedential value to the department of the OCC's experience in interpreting and enforcing 12 CFR Part 37. The commenter recommends that NEW RULE VIII not be adopted and that the text of NEW RULE III concerning disclosures be replaced with a single rule containing the required content of short- and long-form disclosures (not identical to Appendices A and B of 12 CFR Part 37); the "applicable" disclosures contained in NEW RULE IV(1)(a) and (1)(c)(i); disclosures containing content similar to that in NEW RULE VII; and list the rules for which mandatory compliance is delayed if a bank offers a debt cancellation contract or debt suspension agreement to a customer through a nonexclusive, unaffiliated agent in connection with closed-end consumer credit.

The commenter states that in order to be consistent with OCC guidelines and to maintain parity between state-chartered banks and national banks, the

department should authorize banks to offer debt cancellation products as part of their indirect lending programs. The commenter asks that the department clarify that its rules apply to extensions of credit originated by another and assigned to or purchased by a bank.

The commenter requests that, like the OCC, the department delay the banks' mandatory date for compliance with certain rules as they would otherwise apply to offers/sales of debt cancellation contracts/debt suspension agreements in connection with a bank's indirect lending program, specifically compliance with NEW RULE V(2), NEW RULE VI(1), NEW RULE VII(1) related, respectively, to refunds, periodic installment payments, and obtaining the customer's written affirmative election to purchase and written acknowledgment of receipt of disclosures before entering into a debt cancellation contract or debt suspension agreement.

The commenter requests that the department clarify that a stand-alone GAP product is a type of debt cancellation contract and include a statement to that effect in the definition of "guaranteed asset protection (GAP) waiver or agreement" in NEW RULE I.

The commenter states that the department inadvertently used language in NEW RULE II(1)(b) that will impose an unintended requirement on out-of-state banks. Specifically, the commenter states that if an out-of-state bank has been issued an insurance policy to cover its risks associated with its debt cancellation/debt suspension program, the insurance company should not be subject to having the policy approved by the State Auditor.

The commenter states that if a bank is sufficiently large to evaluate its risk and establish a reserve, the current rule language would not allow the bank to do so. Therefore, the commenter requests that the department amend NEW RULE II(1)(b) to authorize banks to establish a reserve in lieu of obtaining insurance covering its risks associated with the bank's debt protection program.

RESPONSE #9: The department does not believe that the additional disclosures required under NEW RULE III(1)(a) and (1)(g) are onerous or that they create a perceptively uneven playing field between Montana banks and national banks. For example, no comments or materials were provided to show that activation of a debt cancellation contract is not a taxable event and only one commenter objected to that particular disclosure. Those circumstances reinforce the department's belief that disclosure of the potential tax liability is not onerous or unfair to state-chartered banks. The precedential value to the department of the OCC's experience in interpreting and enforcing 12 CFR Part 37 will not be affected by the additional disclosures required under NEW RULE III(1)(a) and (1)(g). Any OCC precedent regarding a national bank's management of risks associated with debt cancellation products through insurance would have precedential value to the department. Any OCC experience with a national bank whose safety and soundness are negatively impacted by the bank's management of its risks without insurance would also be valuable to the department. In response to this commenter's recommendation echoed by others, the department has amended NEW RULE III to more closely mirror 12 CFR 37.6. NEW RULE VIII states that the OCC disclosure forms adapted to include Montana-specific disclosures are adopted as models and not as requirements. Therefore, a bank's adapted disclosure forms that are substantially

similar to the model forms will satisfy the disclosure requirements. The department does not believe that the disclosure requirements of these rules will adversely affect either the timeliness or meaningfulness of disclosures made to bank customers in Montana pursuant to these rules.

The department agrees with the comment expressed by numerous commenters that there is a need for the department to clarify the ability of banks to offer debt protection products other than GAP waivers in conjunction with the banks' indirect lending programs. The department has amended the definitions of "debt cancellation contract" and "debt suspension agreements" in NEW RULE I to clarify the issue. A loan or extension of credit is defined in NEW RULE I as the *direct or indirect* advance of funds to a customer made on the basis of an obligation to repay the funds. The amended definitions will make clear that a bank may offer debt protection products other than GAP waivers pertaining to retail installment sales contracts purchased by or assigned to the bank on the indirect lending market.

The department declines to follow the OCC's decision in 2003 to indefinitely delay mandatory compliance by national banks with certain debt cancellation/suspension rules in 12 CFR 37 in the context of indirect lending. The Notice of Public Hearing on Proposed Adoption for MAR 2-49-452 was published August 11, 2011. The department believes there has been ample time for banks and industry interests to prepare for full compliance but if additional time is needed, implementation of a bank's debt cancellation/debt suspension program as applied to indirect lending should be postponed until full compliance can be achieved.

The department agrees with the comment concerning a GAP waiver being a type of debt cancellation contract and has amended NEW RULE IX accordingly. The comment relating to the requirement that the insurer of an out-of-state bank's contractual liability associated with its debt cancellation contracts be authorized by or otherwise registered with Montana's State Auditor is well-taken. The department has amended NEW RULE II to clarify that the out-of-state bank must obtain and maintain in effect in the bank's home state insurance covering the at-risk loan balances on Montanans' loans to which the bank's debt cancellation contracts pertain, but the insurer need not be authorized by or registered with the State Auditor in Montana. The department consulted with the office of the State Auditor concerning the comment. Because the policy holder would be the out-of-state bank and not the Montana consumer, the insurer of the out-of-state bank's debt protection program need not be authorized by or registered with the State Auditor in Montana.

The department declines to allow a bank to post reserves in lieu of obtaining insurance to cover the at-risk loan balances associated with its debt cancellation contracts. The department deems the insurance requirement to indirectly be a consumer protection tool in addition to being a "best practice" consistent with bank safety and soundness principles.

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 12, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IX pertaining to credit union debt cancellation contracts and debt suspension agreements	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 22, 2011, the Department of Administration published MAR Notice No. 2-59-459 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1842 of the 2011 Montana Administrative Register, Issue Number 18.

2. The department has adopted the following rules as proposed: New Rule IV (2.59.409), New Rule V (2.59.410), New Rule VI (2.59.411), and New Rule VIII (2.59.413).

3. The department has adopted the following proposed rules with changes, new material underlined, deleted material interlined:

NEW RULE I (2.59.406) DEFINITIONS (1) and (2) remain as proposed.

(3) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a credit union agrees, for a fee, to cancel all or part of a member's obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The agreement may be separate from or a part of other loan documents. A debt cancellation contract may be offered and purchased either contemporaneously with the other terms of the loan agreement or subsequently. The extension of credit to which it pertains may be a direct loan made by the credit union or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the credit union. In the case of an indirect loan in the form of a retail installment sales contract, the debt cancellation contract may be offered by the credit union through a nonexclusive, unaffiliated agent contingent upon the credit union purchasing or taking assignment of the indirect loan.

(4) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a credit union agrees, for a fee, to suspend all or part of a member's obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The agreement may be separate from or a part of other loan documents. The term "debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the member's unilateral election to defer repayment or the credit union's unilateral decision to allow a deferral of repayment. The extension of credit may be a direct loan made by the credit union or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the credit union. In the case of an

indirect loan in the form of a retail installment sales contract, the debt suspension agreement may be offered by the credit union through a nonexclusive, unaffiliated agent contingent upon the credit union purchasing or taking assignment of the indirect loan.

(5) through (8) remain as proposed.

NEW RULE II (2.59.407) DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS

(1) through (1)(a)(iii) remain as proposed.

(b) obtain and maintain in effect~~,~~ insurance from an insurer authorized or otherwise registered with the State Auditor and Commissioner of Insurance (State Auditor) to do business in Montana~~.~~, except as provided in (2). The insurance must cover 100% of the at-risk loan balances to which the credit union's debt cancellation contracts pertain.

(2) An insurer authorized by the insurance regulator in an out-of-state bank's home state that has issued a policy to the out-of-state bank covering all of its debt cancellation contractual liabilities need not be authorized or otherwise registered with the State Auditor.

NEW RULE III (2.59.408) REQUIRED DISCLOSURES (1) A credit union shall provide the following disclosures to the credit union's member ~~at the time of offering the member a debt cancellation contract or debt suspension agreement~~:

(a) and (b) remain as proposed.

(c) ~~any~~ the refund policy ~~if the fee is paid in a single payment and added to the amount borrowed~~;

(d) through (g) remain as proposed.

(2) The requirements for the timing and method of disclosure are:

(a) the credit union shall make the disclosures in (1) and the short-form disclosures under ARM 2.59.413 orally at the time the credit union first solicits the purchase of a contract;

(b) the credit union shall make the long-form disclosures under ARM 2.59.413 in writing before the member completes the purchase of the contract. If the initial solicitation occurs in person, the credit union shall provide the long-form disclosure in writing at that time;

(c) if the contract is solicited by telephone, the credit union shall provide the disclosures in (1) and the short-form disclosures under ARM 2.59.413 orally and shall mail the long-form disclosures, and if appropriate, a copy of the contract, to the member within three business days beginning on the first business day after the telephone solicitation; and

(d) if the contract is solicited through written materials such as mail inserts or "take one" applications, the credit union may provide only the disclosures in (1) and the short-form disclosure under ARM 2.59.413 to the member within three business days beginning on the first business day after the member contacts the credit union in response to the solicitation, subject to the requirements of ARM 2.59.412(3)(b).

(3) The disclosures required by these rules must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. The methods may include use of plain

language headings, easily readable typeface and size, wide margins and ample line spacing, boldface or italics for key words, and/or distinctive type style or graphic devices.

(4) The disclosures in the short-form disclosure under ARM 2.59.413 are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the credit union.

(5) The disclosures described in these rules may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. or the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA.

NEW RULE VII (2.59.412) AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES

(1) through (3)(b)(iii) remain as proposed.

(4) The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. ~~and~~ or the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA.

NEW RULE IX (2.59.414) GUARANTEED ASSET PROTECTION (GAP) FEATURE (1) A GAP waiver or agreement is a type of debt cancellation contract. A debt cancellation contract with a GAP feature offered in connection with an extension of credit for the purchase of titled personal property for personal, family, or household use is a single product ~~and does not require a separate agreement related to financing for the GAP feature~~. A credit union offering a debt cancellation contract with a GAP feature may do so through nonexclusive, unaffiliated agents such as automobile dealers. The fee arrangement between a credit union and a nonexclusive, unaffiliated agent through which the debt cancellation product is offered does not create a separate contract that violates the anti-tying provision of ARM 2.59.409(1)(a).

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

COMMENT #1: One commenter, a member association of credit unions, questioned whether it was necessary that NEW RULE VII(4) require compliance with both the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq. and the Uniform Electronic Transaction Act, Title 30, chapter 18, part 1, MCA, or whether compliance with either would be sufficient.

The commenter also requested that the debt cancellation rules governing banks (MAR Notice No. 2-59-452) and these companion rules governing credit unions (MAR Notice No.2-59-459) be adopted at the same time.

The commenter also expressed support for the comments submitted by Commenter #2 and Commenter #3.

RESPONSE #1: The department does not believe that compliance with both state and federal laws governing electronic signatures and electronic transactions is necessary for purposes relating to the sale and purchase of debt cancellation contracts and debt suspension agreements. Accordingly, the department changed "and" to "or" in NEW RULE VII(4). The department's intent was to authorize and facilitate electronic transactions, not to create burdensome redundancy.

The department intends to publish the notices of adoption for the bank debt cancellation rules (MAR 2-59-452) and for these credit union debt cancellation rules (MAR 2-59-459) at the same time so that neither type of institution gains an unfair competitive advantage over the other.

COMMENT #2: The commenter is an administrator of debt cancellation programs and assists in the development of debt cancellation products offered through regional and community credit unions as part of the credit unions' direct and indirect lending programs. The commenter recommended that:

1) the rules clarify that debt cancellation products may be offered by a credit union in conjunction with its direct lending program and by a credit union acting through a nonexclusive, unaffiliated agent in conjunction with the credit union's indirect lending program;

2) the department delay mandatory compliance by credits unions with certain rules governing the offer of debt cancellation contracts and debt suspension agreements in the credit unions' indirect lending programs only. The basis for the recommendation was that indirect lending presents unique problems relating to the distribution channel involved in indirect lending where debt protection products are offered by the credit unions through nonexclusive, unaffiliated agents whose installment sales contracts are purchased by or assigned to the credit unions. The rules with which delayed mandatory compliance was requested were: the periodic payment option requirement under NEW RULE VI; the refund option requirement under NEW RULE V; the requirement under NEW RULE VIII that an adapted long-form disclosure modeled on 12 CFR 37 Appendix B be provided to the borrower and that the second, third, and fifth disclosures in an adapted short-form disclosure modeled on 12 CFR 37 Appendix A be provided to the borrower; and the requirement in NEW RULE VII for obtaining a member's written acknowledgment of receipt of disclosures;

3) in the indirect lending context, the only disclosures required under NEW RULE III be the optional nature of the product; the refund policy; and the eligibility requirements, conditions, and exclusions;

4) NEW RULE III more closely mirror the Office of the Comptroller of the Currency (OCC)'s requirements in 12 CFR 37.6; and

5) the department clarify NEW RULE IX to reflect that a GAP waiver/agreement is a type of debt cancellation product, that a GAP waiver or any other debt cancellation product offered by a credit union through a nonexclusive unaffiliated agent is a single product, and the financing arrangement between the credit union and the agent does not create a separate product that violates the anti-tying prohibition under NEW RULE IV.

RESPONSE #2: The department thanks the commenter for its comment.

Consistent with the definition of a loan or extension of credit in NEW RULE I, the definitions of "debt cancellation contract" and "debt suspension agreement" have been amended to clarify that those products may be offered by credit unions in conjunction with both their direct lending and their indirect lending programs. In the latter instance, credit unions may offer the products through nonexclusive, unaffiliated agents such as automobile dealers or other sellers whose installment sales contracts the credit union acquires on the indirect lending market.

The department declines to delay mandatory compliance with any of the rules when the debt cancellation product is offered in conjunction with the credit union's indirect lending program. It is the credit union that offers the debt cancellation product in both the direct and indirect lending contexts. The department does not believe that the unique challenges posed by the distribution channel in the indirect lending context justify delaying compliance with the consumer protections afforded by the rules. In both the direct and indirect lending contexts, it is the credit union rather than the nonexclusive, unaffiliated agent that is offering the product. The consumer protections should not vary depending on whether the offer is conveyed by the credit union or through an agent. Credit unions may choose to delay offering debt cancellation products in conjunction with their indirect lending programs until they are prepared to fully comply with all of the rules.

The department has amended NEW RULE III to more closely mirror 12 CFR 37.6 as requested by this commenter, by commenter #3, and others in the companion rulemaking related to debt cancellation products offered by banks (MAR 2-59-452).

The department agrees with the commenter and has amended NEW RULE IX to clarify ambiguities in the rule, i.e., that a GAP waiver is a type of debt cancellation product and that the financing arrangement between a credit union and a nonexclusive, unaffiliated agent through whom the product is offered does not create a separate product that violates the anti-tying prohibition under NEW RULE IV.

COMMENT #3: The commenter is a national trade association of insurance companies and other financial service providers selling or servicing credit protection products. The commenter states that its members administer approximately 85% of the debt cancellation programs in the United States. It offered the following comments:

In order for there to be parity between state-chartered and federally chartered credit unions, the department's rules should not vary from the OCC's regulation at 12 CFR Part 37 governing offers/sales of debt protection products by national banks. Consistency between the sets of rules will enable the department to rely on OCC precedent in interpreting and enforcing the rules.

New Rule III should more closely mirror the disclosure requirements under 12 CFR 37.6.

The department should clarify that debt protection products may be offered by credit unions in conjunction with their direct lending as well as their indirect lending programs.

An insurer authorized by the insurance regulator in an out-of-state credit union's home state that has issued a contractual liability or other policy to that credit union covering its at-risk loan balances associated with the credit union's debt

cancellation contracts, should not have to be authorized by the State Auditor and Commissioner of Insurance (State Auditor) to do business in Montana as required under NEW RULE II(1)(b). In addition, if a credit union is large enough to assess its risk reserve for it, the department should allow the credit union to do so in lieu of obtaining insurance.

The department should indefinitely delay mandatory compliance by credit unions with certain rules in conjunction with their indirect lending programs as did the OCC respecting national banks' indirect lending programs. The applicable rules for which delayed compliance is sought are listed in Comment #2.

RESPONSE #3: The department thanks the commenter for its comment and responds to each comment as follows:

HB 432 mandated that the department adopt rules that are substantially equivalent to or more stringent than rules and guidance relating to debt cancellation contracts and debt suspension agreements offered by federal credit unions. The National Credit Union Administration has referred federal credit unions to 12 CFR Part 37 for guidance as to best practices. The department's rules are substantially equivalent to or slightly more stringent than the OCC's rules and the department believes its rules create substantial parity between federal credit unions and state-chartered credit unions relating to offers and sales of debt cancellation contracts and debt suspension agreements. The substantial equivalency will allow the department to rely on OCC precedents interpreting and enforcing 12 CFR Part 37. The department believes that the Montana-specific disclosures required under NEW RULE III(1)(a) and (1)(g) that have no equivalent or counterpart under 12 CFR Part 37 provide additional consumer protection are not onerous, and that they will not appreciably lengthen either the model short-form and long-form disclosures under NEW RULE VIII. The department believes that purchasers of debt protection products who are aware of all of the prohibitions in NEW RULE IV are in a better position to assert the protections that those prohibitions afford. The department sees no reason why some, but not all, of the prohibitions in NEW RULE IV should be disclosed.

The department has amended NEW RULE III to more closely mirror 12 CFR 37.6 as requested by this commenter and other commenters in MAR 2-59-452, which is the department's companion rulemaking applicable to banks that offer debt cancellation contracts and debt suspension agreements to their customers in conjunction with loans or extensions of credit. The department prefers to keep the rules governing credit unions and the rules governing banks relating to the same topic substantially similar for the purpose of parity between state-chartered banks and state-chartered credit unions.

The department has amended the definitions of debt cancellation contract and debt suspension agreement in NEW RULE I to clarify that such products may be offered in conjunction with the credit unions' direct lending and indirect lending programs, consistent with the definition of "loan" or "extension of credit" in the same rule.

The department agrees that if an authorized insurer in an out-of-state credit union's home state has issued an insurance policy to the credit union covering the at-risk loan balances under the credit union's debt cancellation contracts, the insurer

need not become authorized by the State Auditor in order for the out-of-state credit union to offer a debt cancellation product to its Montana members in conjunction with loans or extensions of credit. The policy holder in that circumstance is the out-of-state credit union, not the Montana members. Therefore, the insurer need not be authorized by the State Auditor. The department consulted with the office of the State Auditor concerning the issue and amended NEW RULE II consistent with the commenter's comment and the State Auditor's concurrence that the insurer would not need to be an authorized insurer in Montana in the circumstance described.

The department declines to allow credit unions to post reserves in lieu of maintaining insurance covering the at-risk loan balances associated with their debt cancellation contracts. The department believes that best practice, consistent with credit union safety and soundness principles, is to require insurance coverage. Most state-chartered credit unions in Montana are not large and, to the department's knowledge, none have actuaries on staff. No state-chartered credit union commented that it wanted the option of posting reserves in lieu of maintaining insurance. In addition, if no insurance was required, safety and soundness examinations of credit unions would take longer and would require that the department obtain specialized training for its examiners who are already taxed with a heavy workload. In the department's opinion, those circumstances dictate against allowing the posting of reserves in lieu of maintaining insurance.

The department declines to delay mandatory compliance by state-chartered credit unions with the debt cancellation and debt suspension rules in the context of the credit union's indirect lending program for the reasons given by the department in response to the same issue raised in Comment #2. The alternative to the department's decision not to delay mandatory compliance by credit unions with certain rules in the indirect lending context would have been to delay allowing credit unions to offer debt cancellation products in the indirect lending market at all. The department believes that not allowing credit unions to offer debt cancellation products through nonexclusive, unaffiliated agents in the indirect lending market at this time would create less parity between state-chartered credit unions and federal credit unions than requiring state-chartered credit unions to comply with all rules in conjunction with both their direct and indirect lending programs. The department believes that since a credit union is authorized to offer a debt protection product through a nonexclusive, unaffiliated agent in the indirect lending market, it is not unreasonable to expect it to ensure that the agent delivers the appropriate disclosures and obtains the appropriate acknowledgement of receipt. The department believes that NEW RULE VII, which provides some leeway where a credit union has made its best efforts and maintained sufficient documentation of having delivered the mandatory disclosures, adequately addresses the commenter's concerns.

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 12, 2011

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

In the matter of the amendment of ARM 37.5.304, 37.85.512, and 37.85.513 pertaining to Medicaid credible allegation of fraud	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-561 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2222 of the 2011 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/ Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State December 12, 2011.

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

In the matter of the amendment of ARM 37.86.2207 pertaining to EPSDT services reimbursement	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-562 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2227 of the 2011 Montana Administrative Register, Issue Number 20.

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

3. No comments or testimony were received.

4. The department intends the amendment to this rule to be effective on January 1, 2012.

/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 12, 2011.

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

In the matter of the amendment of ARM 37.86.805, 37.86.1802, and 37.86.1807 pertaining to durable medical equipment and hearing aids	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-563 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2230 of the 2011 Montana Administrative Register, Issue Number 20.

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

3. No comments or testimony were received.

4. The department intends the amendments to these rules to be effective on January 1, 2012.

/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 12, 2011.

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 pertaining to maximum Big Sky Rx premium change	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-565 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2238 of the 2011 Montana Administrative Register, Issue Number 20.

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

3. No comments or testimony were received.

4. The department intends the amendment to this rule to be effective on January 1, 2012.

/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 12, 2011.

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

In the matter of the amendment of ARM 37.78.102, 37.78.430, 37.78.505, and 37.78.812, pertaining to TANF policy revisions	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-567 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2246 of the 2011 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 37.78.102, 37.78.430, and 37.85.505 as proposed.

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

37.78.812 TANF: PARTICIPATION CRITERIA UNDER PARENTS AS SCHOLARS PROGRAM (1) and (2) remain as proposed.

(3) A TANF recipient is eligible to participate in PAS if the recipient:

(a) remains as proposed.

(b) is a full-time ~~vocational training/~~post secondary education student enrolled in an approved education program at least 12 credit hours each semester or 30 credit hours per year, or ~~is in an Adult Basic Education (ABE) program providing full-time enrollment leading to a General Equivalency Diploma (GED)~~ is a full-time high school student, General Equivalency Diploma (GED) student, or vocational training student as defined by the institution in which the participant is enrolled;

(c) through (g) remain as proposed.

(h) has successfully completed 12 months of Short Term Training while on TANF and is in good standing with the educational program, unless enrolled as a full-time student in high school or a GED program; and

(i) remains 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 #1: An employee of the department commented that the requirement to have completed 12 months of Short Term Training (STT) as a condition of eligibility for the Parents As Scholars program should be removed from ARM 37.78.812(3)(h)

because it is not possible for a person who is attending a General Equivalency Diploma (GED) program to have completed any STT.

RESPONSE #1: The department agrees with the commenter. STT is defined in the department's Work Readiness Component (WoRC) Manual as any organized education or training beyond a high school degree, up to and including a bachelor's or advanced degree. Since individuals in GED programs generally are seeking a GED in lieu of a high school diploma, a person attending a GED program cannot participate in STT, which consists of postsecondary education or training. Similarly, a high school student would not be eligible to participate in STT. The department therefore has added language to ARM 37.78.812(3)(h) to specify that the requirement to have completed 12 months of STT does not apply to those attending high school or a GED program.

COMMENT #2: A comment was received from an employee within the department concerning the language in ARM 37.78.812(3)(b) which states that a participant must be a full-time vocational training student enrolled in an approved education program at least 12 credit hours each semester or 30 credit hours per year. The commenter stated that according to Senate Bill 385, passed during the 2011 legislative session, a participant in a vocational training program will be considered full time as defined by the institution in which the participant is enrolled and not by credit hours.

RESPONSE #2: The department agrees with the commenter. If a participant is a high school student, GED student, or vocational training student they must be enrolled full time as defined by the institution in which the participant is enrolled and are not required to be enrolled 12 credit hours each semester or 30 credit hours per year. The department corrected the rule to reflect the language in Senate Bill 385.

5. The department intends to apply the amendments to ARM 37.78.812 retroactively to August 1, 2011, based on the provision of Senate Bill 385 (SB 385), passed by the 62nd Montana Legislature. All other amendments will be effective on January 1, 2012.

/s/ Barbara B. Hoffman
Rule Reviewer

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

Certified to the Secretary of State December 12, 2011

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

In the matter of the amendment of ARM 38.5.1010, pertaining to electric standards for utilities and ARM 38.5.2202 and 38.5.2302, pertaining to pipeline safety	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Service Regulation (PSC) published MAR Notice No. 38-5-212 pertaining to the proposed amendment of the above-stated rules at page 2255 of the 2011 Montana Administrative Register, Issue Number 20.

2. The PSC has amended ARM 38.5.1010, 38.5.2202, and 38.5.2302 as proposed.

3. No comments, testimony, or requests for public hearing were received.

/s/ Travis Kavulla
Travis Kavulla, Chairman
Public Service Commission

/s/ Dennis Lopach
Dennis Lopach
Rule Reviewer

Certified to the Secretary of State, December 12, 2011.

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, 2011. This table includes those rules adopted during the period July 1, 2011, through September 30, 2011, 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, 2011, 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 2011 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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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 2011 appear. Vacancies scheduled to appear from January 1, 2012, through March 31, 2012, 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, 2011.

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 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Private Security (Labor and Industry)			
Captain George Skuletich	Governor	Young	11/4/2011
Butte			8/1/2012
Qualifications (if required): city police department representative			
Board of Regents (Higher Education)			
Mr. Paul Tuss	Governor	Hamilton	11/1/2011
Havre			2/1/2013
Qualifications (if required): resident of District 2			
Butte NRD Restoration Council (Governor)			
Ms. Helen O'Connor	Governor	Schultz	11/29/2011
Butte			0/0/0
Qualifications (if required): public representative			
Family Education Savings Oversight Committee (Governor)			
Mr. John Driscoll	Governor	reappointed	11/29/2011
Helena			7/1/2015
Qualifications (if required): public representative			
Historical Preservation Review Board (Historical Society)			
Ms. Debra Hronek	Governor	Coate	11/18/2011
Red Lodge			10/1/2015
Qualifications (if required): public representative			
Mr. Timothy Urbaniak	Governor	Valach	11/18/2011
Billings			10/1/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Historical Preservation Review Board (Historical Society) cont.			
Ms. Miki Wilde	Governor	reappointed	11/18/2011
East Helena			10/1/2015
Qualifications (if required): public representative			
Horse Racing Business Advisory Council (Governor)			
Sen. Cliff Larsen	Governor	not listed	11/2/2011
Missoula			6/30/2012
Qualifications (if required): public representative			
Mr .Christian Mackay	Governor	not listed	11/2/2011
Helena			6/30/2012
Qualifications (if required): representative of the Department of Livestock			
Director Dore Schwinden	Governor	not listed	11/2/2011
Helena			6/30/2012
Qualifications (if required): representative of the Department of Commerce			
Land Information Advisory Council (Administration)			
Director Dan R. Bucks	Governor	reappointed	11/1/2011
Helena			6/30/2013
Qualifications (if required): agency representative			
Ms. Annette Cabrera	Governor	reappointed	11/1/2011
Billings			6/30/2013
Qualifications (if required): local government representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Land Information Advisory Council (Administration) cont.			
Mr. Rudy Cicon	Governor	reappointed	11/1/2011
Chester			6/30/2013
Qualifications (if required): land surveyor			
James D. Claflin	Governor	reappointed	11/1/2011
Billings			6/30/2013
Qualifications (if required): representative of the U.S. Interior Department			
Mr. Lance Clampitt	Governor	reappointed	11/1/2011
Bozeman			6/30/2013
Qualifications (if required): representative of the U.S. Interior Department			
Mr. Johnny Doney	Governor	Peterson	11/1/2011
Poplar			6/30/2013
Qualifications (if required): tribal government representative			
Mr. Warren Fahner	Governor	Brenneman	11/1/2011
Troy			6/30/2013
Qualifications (if required): local government representative			
Mr. Fred Gifford	Governor	Madej	11/1/2011
Helena			6/30/2013
Qualifications (if required): private sector representative			
Rep. Sue Malek	Governor	reappointed	11/1/2011
Missoula			6/30/2013
Qualifications (if required): agency representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Land Information Advisory Council (Administration) cont.			
Ms. Catherine Maynard Bozeman Qualifications (if required): representative of the U.S. Agriculture Department	Governor	reappointed	11/1/2011 6/30/2013
Mr. Dennis McCarthy Kalispell Qualifications (if required): representative of the U.S. Agriculture Department	Governor	Patterson	11/1/2011 6/30/2013
Director Richard Opper Helena Qualifications (if required): agency representative	Governor	reappointed	11/1/2011 6/30/2013
Mr. Art Pembroke Helena Qualifications (if required): local government representative	Governor	reappointed	11/1/2011 6/30/2013
Mr. Tim Reardon Helena Qualifications (if required): agency representative	Governor	reappointed	11/1/2011 6/30/2013
Ms. Wendy Thingelstad Polson Qualifications (if required): GIS professional	Governor	Geraghty	11/1/2011 6/30/2013

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Land Information Advisory Council (Administration) cont.			
Ms. Linda Vance	Governor	Larson	11/1/2011
Helena			6/30/2013
Qualifications (if required): GIS professional			
Mr. Ken Wall	Governor	Philip	11/18/2011
Missoula			6/30/2013
Qualifications (if required): private sector representative			
Ms. Christiane von Reichert	Governor	reappointed	11/1/2011
Missoula			6/30/2013
Qualifications (if required): university representative			
MSU Northern Local Executive Board (University System)			
Rep. John L. Musgrove	Governor	Hillery	11/23/2011
Havre			4/15/2014
Qualifications (if required): public representative			
Phillips Transit Authority (Phillips Transit Authority)			
Ms. Rita Pray	Governor	Grabofsky	11/18/2011
Malta			0/0/0
Qualifications (if required): public representative			
Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)			
Mr. Drew Arnot	Governor	reappointed	11/18/2011
Missoula			7/1/2011
Qualifications (if required): independent local exchange company representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
UM Western Local Executive Board (University System)			
Commissioner Garth Haugland	Governor	Womack	11/23/2011
Dillon			4/15/2012
Qualifications (if required): public representative			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)		
Dr. Don Woerner	Governor	1/1/2012
Qualifications (if required): Veterinarian		
Mr. Stan Frasier	Governor	1/1/2012
Qualifications (if required): sportsperson		
Mr. James Bouma	Governor	1/1/2012
Qualifications (if required): alternative livestock industry representative		
Board of Architects and Landscape Architects (Labor and Industry)		
Mr. James G. Shepard	Governor	3/27/2012
Qualifications (if required): registered architect with three years continuous practice		
Mr. Dale Nelson	Governor	3/27/2012
Qualifications (if required): registered architect with three years continuous practice		
Board of Chiropractors (Labor and Industry)		
Dr. John Sando	Governor	1/1/2012
Qualifications (if required): practicing chiropractor with at least one year experience		
Ms. Alice Whiteman	Governor	1/1/2012
Qualifications (if required): public representative		
Board of Dentistry (Labor and Industry)		
Rep. James Madison	Governor	3/29/2012
Qualifications (if required): public representative over 55 years of age		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Board of Dentistry (Labor and Industry) cont.		
Mr. Cliff Christenot	Governor	3/29/2012
Qualifications (if required): denturist		
Dr. David Johnson	Governor	3/29/2012
Qualifications (if required): dentist		
Ms. Carol Price	Governor	3/29/2012
Qualifications (if required): dental hygienist		
Board of Horseracing (Livestock)		
Mr. Mike Tatsey	Governor	1/20/2012
Qualifications (if required): resident of district 3		
Mr. Cody Drew	Governor	1/20/2012
Qualifications (if required): resident of district 1		
Board of Personnel Appeals (Labor and Industry)		
Mr. Jack A. Holstrom	Governor	1/1/2012
Qualifications (if required): attorney with labor-management experience		
Board of Public Education (Education)		
Ms. Sharon Carroll	Governor	2/1/2012
Qualifications (if required): resident of District 2 and she identifies herself as an Independent		
Children's Trust Fund (Public Health and Human Services)		
Ms. Lori Brengle	Governor	1/1/2012
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Children's Trust Fund (Public Health and Human Services) cont.		
Mr. Everall Fox	Governor	1/1/2012
Qualifications (if required): public representative		
Ms. Roberta Kipp	Governor	1/1/2012
Qualifications (if required): public representative		
Judicial Nomination Commission (Justice)		
Ms. Mona Charles	Governor	1/1/2012
Qualifications (if required): public representative		
Montana Arts Council (Arts Council)		
Ms. Cynthia Andrus	Governor	2/1/2012
Qualifications (if required): public representative		
Mr. Allen Secher	Governor	2/1/2012
Qualifications (if required): public representative		
Ms. Judy Ulrich	Governor	2/1/2012
Qualifications (if required): public representative		
Mr. Rick Newby	Governor	2/1/2012
Qualifications (if required): public representative		
Ms. Jane Deschner	Governor	2/1/2012
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Montana Council on Developmental Disabilities (Commerce)		
Dr. R. Timm Vogelsberg	Governor	1/1/2012
Qualifications (if required): advocacy program representative		
Sen. Carol Williams	Governor	1/1/2012
Qualifications (if required): legislator		
Ms. Diana Tavary	Governor	1/1/2012
Qualifications (if required): secondary consumer representative		
Mr. Roger Holt	Governor	1/1/2012
Qualifications (if required): advocacy program representative		
Rep. Tim Furey	Governor	1/1/2012
Qualifications (if required): legislator		
Montana Grass Conservation Commission (Natural Resources and Conservation)		
Mr. Leo Solf	Governor	1/1/2012
Qualifications (if required): grazing district director		
Mr. Alvin Windy Boy Sr.	Governor	1/1/2012
Qualifications (if required): public representative		
Montana Pulse Crop Advisory Committee (Agriculture)		
Ms. Kim Murray	Director	2/13/2012
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Montana Pulse Crop Advisory Committee (Agriculture) cont.		
Mr. Michael Ehlers	Director	2/13/2012
Qualifications (if required): none specified		
Mr. Jon Stoner	Director	2/13/2012
Qualifications (if required): none specified		
Small Business Health Insurance Pool Board (State Auditor)		
Ms. Connie Welsh	Governor	1/1/2012
Qualifications (if required): management-level individual with knowledge of state employee health benefit plans		
Mr. John Thomas	Governor	1/1/2012
Qualifications (if required): management-level individual with knowledge of state employee health benefit plans		
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Ms. Julia Hammerquist	Governor	1/1/2012
Qualifications (if required): brain injury survivor		
Ms. Cindi Laukes	Governor	1/1/2012
Qualifications (if required): representative of an injury control or prevention program		
Youth Justice Council (Justice)		
Rep. Rosalie "Rosie" Buzzas	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Judge Pedro Hernandez	Governor	2/9/2012
Qualifications (if required): representative of law enforcement		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Mr. Ted Lechner	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Mr. Richard T. Montgomery	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Ms. Katie Yother Champion	Governor	2/9/2012
Qualifications (if required): youth representative		
Ms. Joy Mariska	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Ms. Jennifer Kistler	Governor	2/9/2012
Qualifications (if required): youth representative		
Mr. Dale Four Bear	Governor	2/9/2012
Qualifications (if required): competency in addressing problems facing youth		
Mayor Pamela B. Kennedy	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Mr. Wayne Stanford	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Ms. Pamela A. Hillery	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2012 THROUGH MARCH 31, 2012

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Ms. Penny Kipp	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Ms. Donna Falls Down	Governor	2/9/2012
Qualifications (if required): representative of law enforcement		
Mr. Glen Granger	Governor	2/9/2012
Qualifications (if required): representative of law enforcement		
Mr. Tim Brurud	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Mr. Larry Dunham	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Mr. Matt Thompson	Governor	2/9/2012
Qualifications (if required): having competency in addressing problems facing youth		
Mr. Donald Cox Jr.	Governor	2/9/2012
Qualifications (if required): youth representative		
Mr. Spencer Love	Governor	2/9/2012
Qualifications (if required): youth representative		