ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of NEW RULES I, II, III, IV, V, and VI pertaining to Securities Restitution Fund	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 8, 2012, at 10:30 a.m., the Office of the Commissioner of Securities and Insurance, Montana State Auditor, will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), 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 CSI no later than 5:00 p.m., May 1, 2012, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

3. The New Rules as proposed to be adopted provide as follows:

NEW RULE I SECURITIES RESTITUTION FUND (1) The purpose of these rules is to set forth:

(a) the procedures for allocating money from the Securities Restitution Fund to the victims of securities fraud in Montana;

(b) the procedures that victims shall use to apply for compensation from the fund;

(c) the composition of a recommendation committee and its operating procedures; and

(d) the method for calculating what percentage of money a victim shall be eligible for when the fund approaches zero.

AUTH: 30-10-1008, MCA
IMP: 30-10-1006, MCA

REASON: The Commissioner of Securities and Insurance, Monica J. Lindeen (commissioner), is the statewide elected official responsible for administering the Montana Securities Department and regulating the securities industry; these duties include implementation of the Securities Restitution Fund. The commissioner is specifically charged with setting forth rules regarding fund allocation. Furthermore,

the commissioner is charged with calculating and distributing proportional payments when the fund is approaching zero.

In order to ensure there is transparency and fairness in the process for applying to the fund, it is necessary to establish a committee to make recommendations to the commissioner.

NEW RULE II DEFINITIONS For purposes of this subchapter:

(1) "Approaching zero" means the fund balance is under $1,000,000.

(2) "Claimant" means a claimant as defined under 30-10-1003(1), MCA.

(3) "Commissioner" means the Commissioner of Securities and Insurance, Montana State Auditor.

(4) "Committee" means the committee defined in [NEW RULE IV].

(5) "Department" means the department as defined in 30-10-1003(2), MCA.

(6) "Eligible persons" means persons eligible for restitution assistance under 30-10-1005, MCA.

(7) "Fund" means the fund as defined in 30-10-1003(4), MCA.

(8) "Investment scheme" means the underlying plan constituting the basis of a final order in a legal action initiated by the commissioner.

(9) "Loss ratio" means the ratio consisting of the victim's total investment loss over the victim's total net worth.

(10) "Total net loss" means a person's total loss in an investment scheme.

(11) "Total net worth" means the difference between the total value of a person's assets and a person's liabilities.

(12) "Victim" means a victim as defined under 30-10-1003(6), MCA.

AUTH: 30-10-1008, MCA
IMP: 30-10-1008, MCA

REASON: It is necessary for the commissioner to define the terms listed in order to give clarity to the meaning of each term as it is used in this rule.

The statutes allow for the commissioner to set up a proportional payment scheme when the fund is approaching zero, but the statutes do not specify what "approaching zero" means. It is necessary to define this term since there is the potential for several victims from one case to deplete the fund. While it is not possible to ensure $1,000,000 will be able to cover every claimant, the review of the history of victims who would have been eligible for assistance had this fund existed in the past five years indicates the amount is sufficient barring extraordinary circumstances.

It is necessary to define "claimant," "department," "eligible persons," "fund," and "victim" in accordance with the Securities Restitution Assistance Fund Act of Montana to ensure the same meaning is given to the terms in these rules as the Legislature promulgated in creating the fund. Furthermore, it is necessary to ensure that the term "committee" is utilized throughout these rules to mean the committee

defined by these rules and not any other committee operating under the authority of the commissioner.

In order to recognize the myriad of investment plans which a person charged with securities fraud may be a part of, it is necessary to define the particular scheme which a Montana administrative or court order addresses. Therefore, only the plan which is particular to a final order is encompassed by these rules; any plan which is not a part of a final order is specifically excluded from determining a claimant's eligibility amount.

The commissioner uses the term "loss ratio" to assist in determining a fair and equitable distribution amount. It is necessary to define such a term as a proportion of net worth and net amount lost under an investment scheme to ensure persons are being compensated relative to their current financial position when the fund is approaching zero. It is further necessary to define "total net loss" and "total net worth" to ensure there is no confusion about how funds are being distributed when the fund approaches zero.

NEW RULE III METHOD FOR CALCULATING PERCENTAGES AS THE FUND APPROACHES ZERO (1) When the fund is approaching zero, the committee shall utilize loss ratio to determine how much money a person is eligible to receive, except as specified in (4).

(2) The committee shall use the following percentages when making recommendations to the commissioner as the fund approaches zero:

(a) eligible persons whose loss ratio is less than 10% are eligible for up to $2,500;

(b) eligible persons whose loss ratio is between 10% and 25% are eligible for up to $7,500;

(c) eligible persons whose loss ratio is between 25% and 50% are eligible for up to $12,500;

(d) eligible persons whose loss ratio is between 50% and 75% are eligible for up to $17,500; and

(e) eligible persons whose loss ratio is greater than 75% are eligible for the full amount under 30-10-1006(3), MCA.

(3) A person's eligibility for restitution does not mean he or she shall receive the amount listed. The committee shall make recommendations which cannot exceed the amount listed. Payments shall be limited to funds available. Not all persons deemed eligible shall receive payment.

(4) The committee may waive the loss ratios in the interest of justice.

AUTH: 30-10-1008, MCA
IMP: 30-10-1008, MCA

REASON: Loss ratios are given to the committee as guidelines to ensure people are treated fairly in their requests for compensation. The fund is finite in nature and money can only be distributed in accordance with the amount actually in the fund.

Therefore, using loss ratio when the fund is approaching zero provides benchmarks to assist the committee in making its determinations.

Furthermore, just because a person is eligible for a certain amount when the fund approaches zero does not mean the person will actually receive that amount. Amounts must be distributed in accordance with what is actually in the fund. Because the contents of the fund may be insufficient to compensate all victims, persons eligible for restitution will not always receive restitution. Alternatively, the committee has the discretion to recommend an amount beyond the loss ratio when there are sufficient funds to do so, or when the committee deems it to be in the interest of justice.

NEW RULE IV COMPOSITION OF THE COMMITTEE (1) The committee shall be composed of three employees of the CSI. Those three persons shall be:

(a) the deputy commissioner of securities, who shall serve as chairperson;
(b) chief legal counsel; and
(c) an attorney to be appointed quarterly by the chief legal counsel.

AUTH: 30-10-1008, MCA
IMP: 30-10-1008, MCA

REASON: It is necessary to involve persons on the committee who have worked on cases where restitution is possible. The deputy securities commissioner and chief legal counsel are intricately involved in every securities action brought forth by the department. The third member of the committee, the attorney, will have worked on securities cases for the department and is therefore in a position to review award allocations as well. Furthermore, these three persons will be able to gauge the amount contained in the fund, the amount that may be coming into the fund, and the number of potential claimants at any given time. This knowledge is necessary for the committee to ensure funds are adequately and justly distributed.

NEW RULE V COMMITTEE PROCEDURES (1) The committee shall meet quarterly to determine award recommendations.

(2) The committee shall review all completed applications received in the preceding quarter prior to making any recommendations.

(3) Within two weeks following the committee meeting, the attorney shall prepare a recommendation for the commissioner.

(4) Applications shall only be considered in two consecutive quarters. After the second quarter review, the application shall be deemed closed and eligible for review solely at the discretion of the committee.

(5) The commissioner may:

(a) adopt the recommendations in full;
(b) reject the recommendations in full; or
(c) request another meeting of the committee to reexamine fund allocation.

AUTH: 30-10-1008, MCA
IMP: 30-10-1008, MCA

REASON: It is necessary to set forth committee procedures so that all claimants understand the parameters under which the committee is working. A quarterly meeting of the committee provides sufficient time for an application to be reviewed speedily and thoroughly. Furthermore, allowing two weeks for the committee to prepare its report to the commissioner enables committee members to draft the report while recognizing other obligations committee members may have.

The review of applications for only two consecutive quarters is necessary to prevent the committee from reviewing the same application several times while the fund is approaching zero. The committee can reopen the application should the fund amount increase after the initial two reviewing periods.

It is necessary for the commissioner to have discretion about the committee's findings since it is under the commissioner's name that an order directing restitution is signed. This discretion is limited to accepting, rejecting, or requesting a reexamination of the applicants.

NEW RULE VI APPLICATION REVIEW REQUIREMENTS (1) Claimants shall submit a written application on a form prescribed by the commissioner.

(2) Only persons whose applications are complete and show they meet all of the eligibility requirements specified in 30-10-1005, MCA, and other relevant statutes shall have their applications reviewed by the committee.

(3) Incomplete applications shall be returned to the claimant. Any request by the department for additional information must be answered within 30 days for an application to be considered by the committee in the following quarter. Claimants failing to respond within 30 days shall not be considered in the following quarter, except for good cause shown.

(4) The committee shall not review more than one application per victim per investment scheme.

AUTH: 30-10-1008, MCA
IMP: 30-10-1006, MCA

REASON: It is necessary to explicitly state what a claimant must do to have his or her application reviewed by the committee. Furthermore, the application must be completed before the committee can review it. The commissioner understands oftentimes persons inadvertently omit necessary information, and therefore a mechanism is necessary to handle incomplete applications. Thirty days afford the claimant ample time to correct any deficiencies in an application and return the completed information to the commissioner for review.

If a person does not respond within thirty days, that person will still have the opportunity to have his or her application reviewed. However, that review will not be in the following quarter. This time frame is necessary to make sure the committee has ample time to review all applications prior to meeting.

The final requirement is to ensure multiple transactions within an investment scheme are considered as one. This is necessary to prevent a person from separating their investments and seeking multiple restitution amounts, thereby depleting the fund for one victim. This comports with statutory language denoting a maximum of $25,000 per claimant of unpaid restitution awarded in a final order.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions either in writing or orally at the hearing. Written data, views, or arguments may also be submitted to Brett O'Neil, Staff Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail bo'neil@mt.gov, and must be received no later than 5:00 p.m., May 16, 2012.

5. Brett O'Neil, Staff Attorney, has been designated to preside over and conduct this hearing.

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

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

/s/ Brett O'Neil	/s/ Jesse Laslovich
Brett O'Neil	Jesse Laslovich
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State April 2, 2012.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.55.109 pertaining to incorporation by reference	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (CECRA REMEDIATION)

TO: All Concerned Persons

1. On May 14, 2012, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., April 23, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, Montana Numeric Water Quality Standards (~~February 2008~~ August 2010);

(b) Drinking Water Maximum Contaminant Levels, published at 40 CFR 141.11, 40 CFR 141.61, 40 CFR 141.62, 40 CFR 141.63, 40 CFR 141.64, 40 CFR 141.65, and 40 CFR 141.66 (~~2008~~ 2010);

(c) remains the same.

(d) U.S. Environmental Protection Agency, Regional Screening Levels for Chemical Contaminants at Superfund Sites (~~April 2009~~ November 2011), except when:

(i) through (5) remain the same.

AUTH: 75-10-702, 75-10-704, MCA
IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: It is necessary to update these references to ensure the most recent versions of the documents are used by the department.

DEQ-7 standards are appropriate as they have already been adopted by the Board of Environmental Review as the standards that apply to surface water and ground water. The department has used these levels consistently when evaluating potential risk to surface water and ground water. Use of the maximum contaminant levels is appropriate as they have been adopted by EPA for protection of public

drinking water supplies. The department has used these levels consistently when evaluating potential risks to drinking water.

The regional screening levels are being used by various states and EPA and provide screening values that provide the same levels of protection for non-petroleum compounds as are provided by the risk-based guidance for petroleum previously adopted by the department. The regional screening levels are based on ingestion, inhalation, and dermal contact and include residential and industrial exposure and are used to screen potential risk at a wide variety of sites. These regional screening levels also provide soil screening levels that address migration to ground water. The department is incorporating the most recent version of the regional screening levels to ensure updates, based on new toxicity data or other factors, are adequately considered. EPA updated the regional screening levels in November 2011 and the primary updates are summarized. EPA completed its health risk assessment of trichloroethylene, which resulted in new screening levels to evaluate the potential for vapor intrusion and ground water contamination. For soil, air, and tapwater, there are two health-based regional screening levels for trichloroethylene, one that screens for potential cancer risk and another one that screens for potential non-cancer health hazards. Tapwater "non-cancer" regional screening levels have been modified to incorporate child-specific exposure factors for a 1-6 year old, similar to the regional screening level approach used for soils. Previously, non-cancer tapwater screening levels were based on adult exposure assumptions. This focus on children results in a lowering of the non-cancer tapwater regional screening levels by a factor of two or three. Cancer-based regional screening levels are not affected, as they already incorporate both child and adult exposure factors. In addition, tapwater regional screening levels now consider dermal exposures as per EPA's Risk Assessment Guidance for Superfund (RAGS), Part E, for chemicals for which data are available.

All of the documents incorporated by reference are available on the department's web site at: http://deq.mt.gov/StateSuperfund/default.mcpx. In addition, these documents are available upon request from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than May 10, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than May 10, 2012.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be six based on 60 liable or potentially liable persons under 75-10-715, MCA, who have received notice letters at facilities DEQ is currently addressing.

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

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North BY: */s/ Richard H. Opper*
JOHN F. NORTH RICHARD H. OPPER, Director
Rule Reviewer

Certified to the Secretary of State, April 2, 2012.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, and 23.4.225, pertaining to drug and alcohol analyses	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 4, 2012, at 2:30 p.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice 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 Justice no later than 5:00 p.m. on April 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.4.201 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

(1) remains the same.

(2) "Alcohol" means an organic hydrocarbon molecule which contains a hydroxyl (oxygen, hydrogen) as its primary functional group, such compounds to include such common alcohols as: methanol, ethanol, isopropanol, and all other compounds chemically ~~classed~~ classified as an alcohol.

(3) "Alcohol analyses" includes ~~all manipulations~~ any testing required to achieve a result demonstrating the presence and/or concentration of alcohol in breath, blood, or any other bodily substance.

(4) "Alveolar air" means that air which is located in the alveoli ~~region~~ of the lungs and is responsible for the exchange of gases between the blood and the lung. This is ~~a~~ the type of breath upon which the 2100:1 breath blood ratio is established.

~~(5) "Annual" means once every 365 days.~~

(6) remains the same but is renumbered (5).

~~(7) "Authorized designee" means a breath test specialist/operator selected by the breath test specialist/senior operator to perform the senior operator's duties.~~

~~(8)~~ (6) "Associated equipment" means:

(a) remains the same.

(b) any approved device ~~which is designed~~ capable of capturing and analyzing deep lung air to detect and verify the presence of alcohol ~~or provide an estimated value of alcohol concentration~~, i.e., a PAST device.

(9) and (10) remain the same, but are renumbered (7) and (8).

(11) remains the same, but is renumbered (9).

(12) through (15) remain the same, but are renumbered (14) through (17).

(16) through (18) remain the same, but are renumbered (10) through (12).

(19) remains the same, but is renumbered (18).

~~(20)~~ (13) "Breath-test specialist" means a person qualified under these rules to use a breath analysis instrument or a preliminary alcohol screening device, i.e., PAST device. Depending on the person's degree of training as set forth in ARM 23.4.216, he/she may be certified as:

(a) ~~a breath test specialist/~~operator;

(b) ~~a breath test specialist/~~senior operator; and/or

(c) ~~a breath test specialist/~~technician.

(21) through (27) remain the same, but are renumbered (19) through (25).

(26) "Renewal materials" in ARM 23.3.217 means materials which relate to the field of breath alcohol testing, and may include an exam, a practical demonstration on the instrument, current legal decisions, or updates on instrument technology and operation.

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

~~(30)~~ (29) "Supply" means any item which is consumed during one or more test modes of the breath analysis instrument or associated equipment, i.e., simulator solution~~,~~ and mouthpieces~~, test record cards~~.

~~(31)~~ (30) "Test," in reference to a breath analysis, means a full and complete analysis of properly delivered breath sample or samples. Such analysis is to be considered complete when the breath analysis instrument has executed its prescribed program, a final result known as the reported alcohol concentration is obtained, and a printed record is produced by the breath ~~test~~ analysis instrument. All breath ~~analysis~~ analyses must be performed in accordance with the procedures set forth by the Forensic Science Division. In reference to other biological sample analysis, a test of the sample may consist of more than one analysis of the submitted sample or samples in accordance with the procedures set forth by the Forensic Science Division.

(32) remains the same, but is renumbered (31).

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The proposed amendments to ARM 23.4.201 are reasonable and necessary as follows: The changes in (2), (3), (4), (13), and (30) correct misspellings and clerical errors. The removal of (5) "annual" definition conforms with removing the word "annual" and designating laboratory certification valid for 365 days in ARM 23.4.214. The word "annual" is no longer used in ARM Title 23, chapter 4, subchapter 2; consequently, the definition is no longer needed. The proposed amendment to (6)(b) clarifies the definition of a PAST device for purposes of the proposed amendment to ARM 23.4.212(7) and brings the definition into

conformance with ARM 23.4.225(5) and (6). The removal of (7) "authorized designee" definition conforms with the removal of "authorized designee" from ARM 23.4.213(1) and (1)(d) and brings ARM 23.4.213(1) and (1)(d) into compliance with the requirement in ARM 23.4.218(1) that permit holders "shall perform only those functions designated by that permit." The amendments to (13) simplify the different categories of breath-test specialists for ease of identification and clarity in the rules. The amendment to (26) defines "renewal materials" as used in ARM 23.4.217 as revised. "Test record cards" was removed in (29) because modern breath analysis instruments no longer use these cards.

23.4.212 BREATH ANALYSIS INSTRUMENTATION AND ASSOCIATED EQUIPMENT (1) through (5)(c) remain the same.

(d) The manufacturer/vendor shall, if requested to do so, send at least one representative knowledgeable in the technology and electronic configurations of the breath analysis instrument and capable of providing training for the personnel in the breath analysis section of the division. The manufacturer/vendor shall, if requested to do so, send at least one representative knowledgeable in the technology and electronic configurations of the associated equipment.

(e) remains the same.

(f) Failure to comply with these or any subsequent manufacturer/vendor related regulations may negate the ~~manufacturers~~ manufacturer's approval to market additional breath analysis instrumentation, associated equipment accessories, and/or supplies in the state of Montana.

(6) remains the same.

(7) Breath samples of deep lung air shall be analyzed using only the breath analysis instrumentation or PAST devices approved under this rule. ~~Breath analyses will be performed according to an operational checklist for the breath analysis instrument being used.~~

(8) remains the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The amendments to ARM 23.4.212 are reasonable and necessary as follows: The amendment in (5)(d) makes the presence of a manufacturer/vendor discretionary consistent with the rest of (5)(d). Proposed amendments in (5)(f) are clerical corrections. The amendments in (7) include use of only approved PAST devices as they were inadvertently not named here and are currently used by officers in the field to analyze a subject's deep lung air for presence of alcohol. The final sentence in (7) constitutes superfluous and confusing language, and therefore requires removal. A "check list requirement" is unnecessary because the breath analysis instrument provides its own individual operational check list at the actual time of the subject breath test and will not perform a breath analysis of a subject's breath unless the breath-test specialist operating the instrument complies with that check list. The PAST device, on the other hand, does not have or need an operational check list. The PAST device only analyzes a subject's breath test for the

presence of alcohol which may then be used for probable cause, and is not used as proof or quantification of blood alcohol content.

23.4.213 FIELD CERTIFICATION OF BREATH ANALYSIS INSTRUMENTS AND ASSOCIATED EQUIPMENT (1) Breath analysis instruments shall be field certified for accuracy at least once every 31 days by a ~~breath test specialist/~~senior operator~~, or his/her authorized designee,~~ using an ethyl alcohol water standard or an ethyl alcohol gas standard which has been approved by the division and using the field certification report form for the breath analysis instrument being certified.

(a) A field certification shall consist of a series of no less than two analyses obtained using an approved alcohol standard.

(b) A field certification is valid when the results of the approved standard are at plus or minus 10% of target value. The results of the field certification shall be reported to the third decimal (0.000) and recorded on the field certification report form. If a test record card or tape is used, it shall be affixed to the field certification report which is to be kept at the testing location, and a copy of the field certification report will be prepared for the division. All field certification reports will be sent to the division on a monthly basis.

(c) remains the same.

(d) Results of a field certification analysis outside the range specified in this rule shall be confirmed by the ~~breath test specialist/~~senior operator~~, or his/her authorized designee~~. If the test results are still out of the specified range, the breath analysis instrument will be removed from service and the division shall be notified.

(e) through (h) remain the same.

(i) A ~~proper~~ field certification prior to any subject test, and ~~a proper~~ either calibration checks with approved alcohol standards performed during the subject test or a field certification following a subject test, shall create the inference that the breath analysis instrument was in proper working order at the time of the subject test.

(j) remains the same.

(2) All devices meeting the definition of "associated equipment" contained in ARM 23.4.201~~(8)~~(6)(b) shall be field certified for accuracy at least once every 31 days by a breath-test specialist who has received training approved by the division in the proper methods for conducting such analyses.

(a) and (b) remain the same.

(c) Results of a field certification analysis outside the range specified in (2)(b) shall be confirmed/adjusted by the ~~breath test specialist/~~senior operator~~, or his/her authorized designee~~. If the test results are still out of the specified range, the PAST will be removed from service.

(d) through (f) remain the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The proposed amendments to ARM 23.4.213 are reasonable and necessary as follows: The amendment to (1) and (2)(c) clarifies that only a "senior operator" shall make these confirmations in compliance with ARM 23.4.218's

requirements that permit holders "shall perform only those functions designated by that permit." The amendments to (1)(i) remove the word "proper" as superfluous language. Adding language for calibration checks during a breath test complies with the current procedure for each and every subject test in that, during a subject test, a breath analysis instrument is designed to perform its own internal calibration checks prior to allowing the subject to provide a breath sample. If the breath analysis instrument finds itself not working as designed, the breath analysis instrument prohibits the subject from providing a breath sample. Section (2) is amended to refer to the revised definition section.

23.4.214 LABORATORY CERTIFICATION (1) All breath analysis instruments shall be returned to the division ~~on an annual basis~~ for a laboratory certification. A laboratory certification shall be considered valid for 365 days from the date of a laboratory certification. Such certification shall at a minimum consist of:

(a) remains the same.

(b) a series of controlled ethyl alcohol water/gas standards shall be analyzed with an accuracy requirement of +/- 5% or .005, whichever is greater, on all target values;

(c) remains the same.

(d) a review of the breath analysis instrument's sensitivity for the detection of ~~any~~ interfering substances.

(2) and (3) remain the same.

(4) All breath analysis instruments received from the division either after the laboratory certification, preventive maintenance, or after repair, must have a field certification performed by the ~~breath test specialist/~~senior operator ~~or his/her authorized designee~~, as set forth in ARM 23.4.213, prior to analysis of any subject's breath.

(5) remains the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The amendments to ARM 23.4.214 are reasonable and necessary as follows: Section (1) is amended to clarify the specific length of time that a certification is valid, and correspondingly when a certification expires. The 365-day time period was chosen to reflect current practice and clarify that the time starts at, and runs from, renewal. The amendment to (4) clarifies that only a "senior operator" shall perform these certifications in compliance with ARM 23.4.218's requirements that permit holders "shall perform only those functions designated by that permit."

23.4.215 QUALIFICATION OF BREATH ANALYSIS LOCATION (1) All locations performing breath analysis must have one or more ~~breath test specialist/~~senior operator(s) responsible for the care, maintenance, and field certification of the ~~unit~~ breath analysis instrument. The ~~specialist/~~senior operator does not have to be a member of the department which has the physical placement of the ~~unit~~ breath analysis instrument.

(2) All locations must have a sufficient number of breath-test specialists to warrant placement. The number of breath-test specialists for any location will be based on the total number of ~~specialist/~~operators and ~~specialist/~~senior operators within the county.

(3) remains the same.

(4) All locations are required to submit copies of all field certification reports and all breath analysis reports on a monthly basis. Failure to maintain this reporting schedule may result in the revocation of a testing location's certification and revocation of the ~~breath test specialist/~~senior operator's certification. Failure to file the above reports does not invalidate any subject analysis or field certification performed at that location.

(5) through (8) remain the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The amendment to ARM 23.4.215(1) and (4) clarifies that only a "senior operator" shall perform these certifications in compliance with ARM 23.4.218's requirements that permit holders "shall perform only those functions designated by that permit," and clarifies that "unit" means "breath analysis instrument." In (4), including "or field certification" in the final sentence provides consistency with the first sentence.

23.4.216 ~~QUALIFICATIONS OF PERSONNEL~~ INITIAL CERTIFICATION OF BREATH-TEST SPECIALISTS (1) An individual meets the qualifications for an ~~breath test specialist/~~operator permit by:

(a) through (c) remain the same.

(2) ~~A~~ The division shall issue an operator's permit ~~shall be issued~~ to ~~a~~ persons ~~successfully completing the training~~ complying with (1)(a) through (c).

(3) If ~~a breath test specialist~~ an operator candidate fails the certification examination, he/she may retake the examination within 30 days of notification of failure. ~~After a second test failure, all~~ An operator candidate~~s~~ ~~for~~ failing the operator ~~certification~~ examination a second time, must retake the ~~appropriate breath test specialist~~ operator initial certification training course and examination.

(4) An individual meets the qualifications for a ~~breath test specialist/~~senior operator permit by:

(a) holding a valid ~~breath test specialist~~ operator permit ~~for at least one year. A special exemption for this requirement may be obtained through the division~~;

(b) attending an approved ~~breath test specialist/~~senior operator training course conducted by personnel from the division;

(c) satisfactorily demonstrating knowledge of the principles of breath-test analysis through discussion and ~~examination~~ completion of the senior operator training course;

(d) and (e) remain the same.

(5) ~~A~~ The division shall issue a senior operator's permit ~~shall be issued~~ to ~~a~~ ~~person~~ an operator successfully ~~completing the training~~ complying with (4)(a) through (e).

(6) A person meets the qualifications for ~~breath test specialist/~~technician by:

(a) holding a valid ~~breath test specialist/~~senior operator permit for at least one year. A special exemption for this requirement may be obtained through the division;

(b) attending an approved ~~breath test specialist/~~technician training course conducted by personnel from the division, or an approved manufacturer's course in technical repair and maintenance;

(c) and (d) remain the same.

(7) The ~~breath test specialist/~~technician permit is held in addition to the ~~breath test specialist/~~senior operator permit. An individual holding a ~~breath test specialist/~~technician permit is required to continue the duties and responsibilities of a ~~breath test specialist/~~senior operator.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The amendments to ARM 23.4.216 are reasonable and necessary to make this rule succinct and less confusing. The proposed amendments clearly identify "operator," "senior operator," or "technician" for each pertinent subsection and change the passive language to active language for clarity. The proposed language uses consistent names for each certification requirement, as follows:

The amendments to (3) change "test" to "examination" for consistency and clearly delineate the procedures for failing the examination a second time to prevent future misinterpretation. Section (4)(a) no longer requires a one-year wait period due to the advanced technology and ease of operation of the breath analysis instrument. Section (4) also deletes "examination," because examinations will not be given by the division. Instead, completion of the training course itself is deemed sufficient to meet this requirement.

23.4.217 ~~RECERTIFICATION~~ RENEWAL OF BREATH-TEST ~~PERSONNEL~~ SPECIALIST PERMITS (1) The division ~~must approve~~ will develop and provide ~~any~~ breath-test specialist permit renewal ~~course~~ materials to a senior operator for each department ~~necessary for the recertification of the breath test specialist/operator~~. ~~The division shall place a copy of the recertification exam in the custody of the breath test specialist/senior operator.~~

(2) ~~The breath test specialist/s~~ Senior operators shall ~~have the responsibility of presenting~~ provide the ~~approved~~ permit renewal ~~recertification course and monitoring the examination of~~ materials to all ~~personnel~~ breath-test specialists within the senior operators' department ~~seeking recertification~~. ~~The division may, if it determines that the circumstances warrant, give recertification training to any individual(s) seeking recertification directly from the division.~~ A senior operator from another department may provide the permit renewal materials to departments with no senior operator.

(3) All breath-test specialists shall review the permit renewal materials and acknowledge review as required by the division.

~~(3)~~ (4) ~~All examinations~~ The senior operators shall ~~be sent~~ send all acknowledgment forms to the division ~~for grading~~ unless digital acknowledgment is requested by the division.

~~(4)~~ (5) ~~Permits shall be issued to~~ The division shall renew permits for all ~~individuals~~ breath-test specialists complying with (3). ~~successfully completing the breath test specialist recertification training. The permit expires the last day of the month, in the following year in which the specialist was certified~~.

~~(5) All breath test specialist/operators shall be recertified on a regular basis by attending a recertification course approved by the division.~~

~~(6) In addition to the regular recertification, all breath test specialist/senior operators may be recertified by a representative of the division once every two years on a schedule to be determined by the division.~~

~~(7) Training may include, but is not limited to, the following subjects:~~

~~(a) toxicology and pharmacology of alcohol in the human system;~~

~~(b) breath analysis instrument theory;~~

~~(c) breath analysis instrument operation;~~

~~(d) current legal decisions;~~

~~(e) training techniques; and~~

~~(f) any area deemed appropriate by the division.~~

~~(8) The breath test specialist/senior operator is still required to submit an annual examination based on the material he/she is presenting to the breath test specialist/operators, in addition to the biannual recertification which may be conducted by the division.~~

~~(9) A permit will be issued to all individuals successfully completing the senior operator's recertification training. Certification expires the last day of the month, in the following year in which the specialist was certified.~~

~~(10) The breath test specialist/technician is only required to fulfill the recertification requirements of a breath test specialist/senior operator. The technician's proficiency will be assessed through monitoring of his/her performance.~~

~~(11) All breath test specialists must successfully pass a recertification course within 90 days after his/her expiration date.~~

~~(12)~~ (6) ~~If a~~ A breath-test specialist ~~fails to recertify within the specified time frame, he/she~~ failing to comply with (3) prior to expiration of her/his current permit, shall not perform any analysis of a person's breath for alcohol until the breath-test specialist's permit is renewed. All breath-test specialists who fail to comply with (3) within 90 days of the expiration date of her/his current permit must either ~~attend~~ complete an initial certification course or file a written request~~, in writing,~~ with the division for an exemption. Exemption requests will be reviewed and approved for good cause by the division. Good cause may include, but is not limited to, lapse in law enforcement service due to military duty, illness, death in the family, or injury. If approved, the breath-test specialist must then comply with (3) within 30 days of the division's approval date.

~~(13) If a breath test specialist fails the recertification examination, he/she may retake the examination within 30 days of notification of failure. After a second test failure, all candidates for recertification must retake the appropriate breath test specialist course.~~

(7) The division may directly provide the approved permit renewal materials to, and accept acknowledgment forms from, any breath-test specialist at the division's discretion.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: As written, this rule was somewhat confusing, resulting in recent legal opinions prohibiting the use of subject breath tests at trial. The amendments to ARM 23.4.217 are reasonable and necessary to address these problems by removing redundant and confusing language, changing passive language to active language for clarity, and providing consistency in language throughout these rules. Any change not specifically addressed below is for clarification or clerical purposes only and is not intended to have a substantive effect.

In the title, "Renewal" is proposed for "Recertification" and "Personnel" for "breath-test specialist" to conform to the changes in the renewal procedure as implemented by this rule change. Section (1) clarifies the procedure the division will use to develop each year's permit renewal materials.

For (2), the proposed amendments simplify the language to just "senior operator" for ease of identification and to prevent confusion. The division has determined that an "examination" and "monitoring" for permit renewal will not be needed each year. The division will follow permit renewal procedures in other states, such as Missouri, which requires that operators show practical competence on the breath analysis instruments; or in Iowa, where the operators are notified of changes in procedure or the instrument's manual by participating in an interactive web site. The addition of the sentence, "A senior operator from another department may provide the permit renewal materials to departments with no senior operator" recognizes that small law enforcement divisions may not have a senior operator but still have operators who need their permits renewed. A senior operator from another division may renew permits in compliance with ARM 23.4.215(1), which provides that the senior operator who maintains and conducts field certifications on the breath analysis instrument does not have to be a member of the department that physically possesses the breath analysis instrument.

The amendments to (3) clarify the division's intent that all breath-test specialists complete the same materials for permit renewal.

Section (4) provides clear direction to senior operators as to the new permit renewal procedures, whether the materials are written or digital. The time limit requirements for expiration of permits and renewal requirements have been removed because ARM 23.4.218 independently provides these time requirements.

The repeal of old (5), (6), (8), (9), (10), and (11) is necessary because these sections are redundant and confusing and have been rewritten concisely in (3), (5), and (6). Old (7) is now defined at ARM 23.4.201(26).

Because the changes to this rule implement a different renewal process, and do away with the recertification course and examination, new (6) is necessary to clarify the applicable procedures and timelines if a permit is not renewed on time, including defining "good cause" for an exemption.

23.4.218 PERMITS (1) ~~The division shall issue permits to perform analysis of a person's breath for alcohol to individuals who qualify under these rules~~. No individual may perform a breath analysis for alcohol pursuant to 61-8-402 , MCA, without a current permit. Individuals holding permits issued by the division shall perform only those functions designated by that permit.

(2) Permits ~~issued~~ shall expire ~~the last day of the month,~~ on January 31 in the ~~following~~ year following ~~of which the specialist was certified,~~ initial certification or permit renewal. ~~unless revoked prior to that date. Individuals seeking renewal or upgrading of a permit must demonstrate to the satisfaction of the division such competency and ability to warrant renewal or upgrade of the permit.~~ The division has the right to deny or delay the issuance or renewal of any permit for good cause.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The amendments are reasonable and necessary to remove redundant language already provided in ARM 23.4.216 and 23.4.217, and clarify the expiration date of permits. January 31 was chosen to establish a uniform date of expiration that conforms with the division's schedule.

23.4.219 REVOCATION OF PERMITS (1) and (1)(a) remain the same.

(b) fails to comply with any section of the rules; or

(c) ~~as a breath test specialist/operator,~~ fails to demonstrate that he/she can properly carry out the duties and responsibilities of the issued permit.~~; or~~

~~(d) as a breath test specialist/senior operator and/or breath test specialist/technician, fails to carry out the responsibilities incumbent of that permit.~~

(2) remains the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The proposed amendments are reasonable and necessary to remove redundant language.

23.4.220 COLLECTION OF BLOOD SAMPLES FOR DRUG AND/OR ALCOHOL ANALYSIS (1) through (3) remain the same.

(4) All blood samples must be of sufficient volume to provide accurate and repeatable analyses. Required volumes will be ~~dependant~~ dependent on the current technology employed by the division. Any submitted sample not meeting the required sample volume will not be analyzed.

(5) through (7) remain the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The clerical amendment corrects a misspelled word.

23.4.225 PRELIMINARY ALCOHOL SCREENING TESTS (PASTs) (1) All models and/or types of PASTs devices used for testing must be approved by the division. A list of approved PASTs devices will be maintained at the division.

(2) Individuals conducting PASTs as authorized by statute must be certified as breath-test specialists.

(3) Individuals certified as breath-test specialists pursuant to ARM 23.4.216 on or before July 1, 1995, are deemed to be PAST-certified after attending a PAST operation course approved by the division. Individuals certified as breath-test specialists after July 1, 1995, are deemed to be PAST-certified.

(4) through (6) remain the same.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

REASON: The amendments are reasonable and necessary to correctly identify PAST devices.

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: J. Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than May 10, 2012.

5. J. Stuart Segrest, Department of Justice, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ Steve Bullock
Steve Bullock
Attorney General
Department of Justice

Certified to the Secretary of State April 2, 2012.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.29.601, 24.29.604, 24.29.607, 24.29.608, 24.29.610, 24.29.611, 24.29.616, 24.29.617, 24.29.618, 24.29.623, 24.29.908, 24.29.954, and 24.29.956, and the adoption of NEW RULES I and II, related to workers' compensation insurance coverage under compensation plan No. 1 and plan No. 2	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On May 4, 2012, at 10:00 a.m., a public hearing will be held in the first floor conference room, room 104, Walt Sullivan Building, 1315 E. Lockey Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 department no later than 5:00 p.m., on April 30, 2012, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulations Bureau, Attention: Bill Wheeler, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail bwheeler@mt.gov.

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

24.29.601 DEFINITIONS For the purposes of ARM Title 24, chapter 29, subchapter 6, the following definitions apply:

(1) and (a) remain the same.

(b) pay ~~compensation~~ benefits and all liabilities which are likely to be incurred under the Workers' Compensation Act, and the Occupational Disease ~~Acts~~ Act for occupational diseases that occurred prior to July 1, 2005; and

(c) have sufficient cash or cash equivalents, security deposit, and excess insurance to ~~make benefit and compensation payments~~ pay benefits as they come due.

(2) and (3) remain the same.

~~(4)~~ (5) "Claims summary" means a compilation of information relating to prior and existing claims made under the Workers' Compensation Act and the

Occupational Disease ~~Acts of Montana~~ Act for occupational diseases that occurred prior to July 1, 2005, by showing by policy year, the total number of medical and indemnity claims, total ~~compensation~~ benefits paid, and the total amount reserved for future liabilities.

~~(5)~~ (4) "~~Compensation benefits~~ Benefits" means wage loss, legal, medical, rehabilitation, and all other benefits that are payable under the ~~Montana~~ Workers' Compensation Act and the Occupational Disease ~~Acts~~ Act (Title 39, chapter 72, MCA) for occupational diseases that occurred prior to July 1, 2005, including assessments or financial obligations.

(6) through (9) remain the same.

(10) "Occupational Disease Act" means Title 39, chapter 72, MCA, as it existed prior to July 1, 2005.

(10) remains the same, but is renumbered (11).

~~(11)~~ (12) "Reviewed financial statements" means a set of documents that includes the applicant's:

(a) income statement~~,~~;

(b) balance sheet~~,~~;

(c) statement of cash flow~~,~~;

(d) notes to the financial statements~~,~~; and

(e) a signed, dated statement from an independent certified public accountant expressing limited assurance that there are no material modifications that should be made to the statements, in order for them to be in conformity with generally accepted accounting principles.

(13) "Workers' Compensation Act" means Title 39, chapter 71, MCA.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101 through 39-71-2108, MCA

REASON: There is reasonable necessity to amend ARM 24.29.601 to define various terms used in the substantive rules, which are proposed for amendment or adoption by this notice. In addition, there is reasonable necessity to make various technical corrections in language, punctuation, and earmarking to improve the readability of the rule, while the rule is otherwise being amended.

24.29.604 MONTANA SELF-INSURERS GUARANTY FUND--ACCEPTANCE REQUIRED FOR PRIVATE EMPLOYERS OR PRIVATE GROUPS

(1) The department's approval of requests from private applicants to self-insure is contingent upon the acceptance of membership in the guaranty fund in accordance with 39-71-2609, MCA. Public employers and groups of public employers are not eligible for membership in the guaranty fund, and the guaranty fund has no role in the approval of decisions regarding the eligibility of public employers or groups of employers to self-insure, or in the amount of security required.

(2) remains the same.

(3) The guaranty fund shall demonstrate its concurrence~~/~~ or nonconcurrence with department approval of a private plan no. 1 applicant by submitting in writing to the department, a formal acceptance or denial of the plan no. 1 applicant.

(4) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101, 39-71-2103 through 39-71-2106, 39-71-2608, MCA

REASON: There is reasonable necessity to amend ARM 24.29.604 and 24.29.607 to improve clarity and conform the rules to current usage guidelines, while related rules are otherwise being amended. The department concludes that there is reasonable necessity to add language to ARM 24.29.604 to further clarify that the guaranty fund does not have a role in self-insurance decisions regarding public employers or groups of public employers.

24.29.607 PUBLIC EMPLOYERS OTHER THAN STATE AGENCIES
(1) The provisions of ARM Title 24, chapter 29, subchapter 6 apply to public employers and public employer groups, other than state agencies as defined in 39-71-403, MCA, except that the guaranty fund has no involvement in department decisions regarding public employers or public employer groups.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101 through 39-71-2108, 39-71-2603, 39-71-2609, MCA

24.29.608 ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 1--ELIGIBILITY (1) Any employer or employer group, except state agencies specified in 39-71-403, MCA, may elect to apply to be bound as a self-insurer under plan no. 1, if in accordance with 39-71-2102, MCA, and ARM 24.29.609, the employer or employer group submits, on forms provided by the department, satisfactory proof of ability to pay the ~~compensation~~ benefits which are reasonably likely to be incurred under the Workers' Compensation Act, and the Occupational Disease ~~Acts~~ Act for occupational diseases that occurred before July 1, 2005, during the year or the portion of the year for which election under this plan is effective. Approval to be bound as a self-insurer under plan no. 1 will be granted by the department with the concurrence of the guaranty fund.

AUTH: 39-71-203, ~~39-71-2102,~~ MCA
IMP: 39-71-403, 39-71-2101 through 39-71-2103, MCA

REASON: There is reasonable necessity to amend ARM 24.29.608 and 24.29.610 to clarify the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Occupational Disease Act in 2005 and the incorporation of those provisions into the Workers' Compensation Act, while rules on the same general subject matter are otherwise being amended. In addition, there is reasonable necessity to delete an inappropriate AUTH citation.

24.29.610 WHEN SECURITY REQUIRED (1) remains the same.

(2) The security deposit requirement may be waived in whole or in part by the department, with the concurrence of the guaranty fund, for applicants who provide substantive evidence that the statutory amount of the security deposit is not needed. This evidence must reflect the applicant's ability to pay the ~~compensation~~ benefits provided for in ~~Title 39, chapter 71, of the Montana Code Annotated~~ the Workers' Compensation Act, and the Occupational Disease Act for occupational diseases that occurred before July 1, 2005.

(3) ~~The~~ A self-insurer ~~who~~ that does not have sufficient securities on deposit with the department, with which to pay ~~the compensation~~ benefits, shall be required to furnish additional security.

AUTH: 39-71-203, ~~39-71-2106,~~ MCA
IMP: 39-71-403, 39-71-2106, MCA

24.29.611 SECURITY DEPOSIT -- CRITERIA (1) remains the same.

(a) The department shall accept a surety bond only from companies certified by the United States ~~department~~ Department of ~~treasury~~ Treasury as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the most recent Federal Register.

(i) A surety bond issued by a company that has a Best's rating of "A" or better and a financial size rating of X or greater will be approved.

(ii) A surety bond issued by a company that is rated by Best's, but does not meet the criteria specified in (1)(a)(i) will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.

(iii) A surety bond issued by a company not rated by Best's will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.

(b) The security deposit must name the department as obligee and must be held by the department as security for payment of all ~~workers' compensation and occupational disease~~ liabilities likely to be incurred under the Workers' Compensation Act, or the Occupational Disease Act for occupational diseases that occurred before July 1, 2005. The department, with the concurrence of the guaranty fund, shall retain a security deposit until all liabilities have been paid. In the event liabilities have not been met by the self-insurer, the department shall proceed pursuant to 39-71-2108, MCA. If the self-insurer has placed multiple forms of security deposits, the department shall, at its discretion, convert the deposits needed to pay claims.

(c) and (d) remain the same.

(e) ~~Certificates of deposits must be issued by financial institutions insured by the FDIC or FSLIC and may not exceed the limits of the FDIC or FSLIC insurance coverage.~~ A security deposit in the form of a certificate of deposit must be issued by a financial institution located within the United States and must be fully insured by a federally chartered insurance corporation.

(f) Letters of credit must be issued by a financial institution located within the United States with ~~a Sheshunoff percentile ranking of 50 or greater~~ investment grade ratings issued by Moody's Investors Service, Standard & Poor's, or Fitch Ratings. If

ratings from those rating entities are not available, the approval of the financial institution will be made at the discretion of the department, with the concurrence of the guaranty fund.

AUTH: 39-71-203, ~~39-71-2106,~~ MCA
IMP: 39-71-403, 39-71-2106, MCA

REASON: There is reasonable necessity to amend ARM 24.29.611 to update references to various technical terms and standards now used within the bond rating industry in response to recent developments in the rating industry. In addition, there is reasonable necessity to remove references to specific federal insurance programs, and to make other technical language changes which are consistent with the usage in related rules. There also is reasonable necessity to clarify the effect of certain ratings on the approval of a selected surety, in line with prudent financial standards applicable to surety providers. In addition, there is reasonable necessity to delete an inappropriate AUTH citation.

24.29.616 EXCESS INSURANCE -- WHEN REQUIRED (1) through (3) remain the same.

(a) It is issued by a carrier admitted and licensed in Montana with a Best's Rating of A- or better and a financial size rating of VI or greater. Excess coverage issued by a carrier not rated by Best's will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.

(b) Its provisions or coverage may be altered only upon the prior approval of the department, with the concurrence of the guaranty fund. Proposed changes to provisions or coverage of the excess insurance policy must be submitted to the department at least 60 days in advance of the proposed effective date of the changes.

(b) through (e) remain the same, but are renumbered (c) through (f).

~~(f)~~(g) Copies of the certificates and policies of the excess insurance must be filed with the department for a determination that such certificates and policies fully comply with the provisions of the Workers' Compensation ~~and~~ Act, the Occupational Disease ~~Acts~~ Act, and ARM Title 24, chapter 29, subchapter 6.

AUTH: 39-71-203, ~~39-71-2103,~~ MCA
IMP: 39-71-403, 39-71-2101, 39-71-2103, MCA

REASON: There is reasonable necessity to amend ARM 24.29.616 in order to specify that excess insurers be admitted carriers in Montana, and not merely licensed in Montana. The distinction is that admitted carriers are required to participate in an insurance guaranty association, while nonadmitted carriers are not. The participation in an insurance guaranty association provides an additional layer of financial stability and security in the event the excess insurer becomes insolvent. The department notes that there has been an increase in the number of insurers, including excess insurers, which have become insolvent in the recent past. The department concludes that because the excess layer of insurance applies only when there has been a significant loss on a given claim, the financial protection of the

significantly injured worker is very important. As such, the department concludes that it is reasonably prudent to ensure that only admitted excess carriers be allowed to provide the vital "back up" protection in the event of a catastrophic claim. There also is reasonable necessity to clarify that changes to a self-insurer's excess policy only take place upon the prior approval of the department (and as appropriate, with the concurrence of the guaranty fund), in order to make sure that proposed changes do not adversely affect the ability of the self-insurer to pay claims. The department has concluded, upon study of the matter, that changes to the coverage amounts or thresholds of excess coverage, or a change in excess carriers, poses a financial potential risk to claimants and the guaranty fund, and that such potential risks need to be evaluated and that appropriate additional security may be required, prior to a self-insurer's change of coverage. Finally, there is reasonable necessity to amend ARM 24.29.616 to clarify the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Occupational Disease Act in 2005, and the incorporation of those provisions into the Workers' Compensation Act, while rules on the same general subject matter are otherwise being amended. In addition, there is reasonable necessity to delete an inappropriate AUTH citation.

24.29.617 INITIAL ELECTION -- INDIVIDUAL EMPLOYERS (1) through (1)(d) remain the same.

~~(e) evidence that it had a minimum of 50 employees per year over the preceding 2 years; however, an employer with a minimum of less than 50 employees per year over the preceding 2 years may be considered if its liability is guaranteed by a parent corporation as provided in ARM 24.29.617(1)(c)(iii). The department, with the concurrence of the guaranty fund, may accept a guarantee from an employer in lieu of a parental guarantee. [This paragraph will sunset January 1, 1998];~~

(f) through (1)(l) remain the same, but are renumbered (e) through (1)(k).

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101 through 39-71-2103, MCA

REASON: There is reasonable necessity to amend ARM 24.29.617 and 24.29.618 to delete obsolete language from the rules, while the rules are otherwise being amended. Finally, there is reasonable necessity to make clarifications and technical language changes to ARM 24.29.618, regarding the applicability of various provisions to the individual members or to the group as a whole, while the rule is otherwise being amended.

24.29.618 INITIAL ELECTION -- EMPLOYER GROUPS (1) through (1)(d) remain the same.

(e) a copy of at least the most recent year's audited financial statements, or reviewed financial statements, if audited statements are not prepared as part of the employer's normal business practice, from each member of the employer group. The total premiums payable to the group from employers having reviewed financial statements shall not constitute more than 10~~%~~ percent of the group's total premium. The department or the guaranty fund may require copies of additional years' audited

or reviewed financial statements from the applicant. Upon request of the applicant, and when approved by the department and the guaranty fund, the submission of these financial statements may be to an independent certified public accountant (CPA). The department will advise the CPA of the nature and format of the information to be provided to the department. The applicant shall pay the cost of such a submission and review;

(f) evidence that each private employer in the group has been in business for a period of not less than ~~3~~ three years;

~~(g) evidence the employer group had a combined minimum of 100 employees per year over the preceding 2 years. [This paragraph will sunset January 1, 1998];~~

~~(h)~~ (g) a claims summary from insurance carriers who provided coverage for claims incurred in Montana for each member of the employer group for the preceding ~~3~~ three years;

(i) through (1)(t) remain the same, but are renumbered (h) through (1)(s).

(t) a business plan for the employer group;

(u) ~~a general plan of operation;~~

~~(v)~~ pro forma financial statements for each of the first ~~2~~ five years of the employer group's operation, to include any assumptions made; and

~~(w)~~ (v) copies of any contracts including, but not limited to, contracts with an administrative service company, claims ~~adjuster~~ examiner, and fiscal agent.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2101 through 39-71-2103, 39-71-2106, MCA

24.29.623 RENEWAL REQUIRED (1) An employer who has been self-insured may renew the election each ensuing year, by meeting all the requirements of these rules, except that the claims summary required in ARM 24.29.617(1)~~(f)~~(e) must be a claims summary for the preceding year(s) for claims incurred as a self-insurer in Montana. Application for renewal must be made 60 days prior to the renewal date, or on such other date as determined by the department and the guaranty fund.

(a) In addition to the other information required in ARM 24.29.617, except as provided by (1)(b), the employer shall submit an independent actuarial analysis for the preceding year, completed by a qualified actuary as defined by the American Academy of Actuaries. The analysis must include, but is not limited to, a reserve analysis that includes all self-insured periods in Montana, through the most recent calendar year. The results of the analysis must be summarized at the low level, middle (or expected) level, and high level, with the corresponding confidence level expressly stated for each.

(b) The department may waive the requirement of (1)(a) with the concurrence of the guaranty fund.

(2) An employer group which has elected to be bound by plan no. 1 may renew the election for each ensuing year by meeting all the requirements of these rules, except ARM 24.29.618(1)(c), (1)(d), (1)(e), (1)(f), (1)~~(h)~~(g), (1)(l), (1)(m), (1)~~(n)~~(g), (1)(r), (1)(s), (1)(t), (1)(u), and (1)(v)~~, and (1)(w)~~. Application for renewal must be made at least ~~90~~ 60 days prior to the renewal date~~,~~ or on such other date as

determined by the department and the guaranty fund. In addition to the information required in ARM 24.29.618, the employer group shall submit:

(a) a copy of the preceding year's audited financial statements for the self-insured group;

(b) ~~an actuarial report for the preceding year which includes recommended premium levels considered adequate to fund losses; and~~

~~(c)~~ a claims summary for the preceding ~~3~~ years for claims incurred as a self-insurer in Montana; and

(c) an independent actuarial analysis for the preceding year, completed by a qualified actuary, as defined by the American Academy of Actuaries. The results of the analysis must be summarized at the low level, middle (or expected) level, and high level, with the corresponding confidence level expressly stated for each. The analysis must include, but is not limited to:

(i) a reserve analysis that includes all self-insured periods in Montana, through the most recent calendar year; and

(ii) a premium/rate analysis that projects the total premium need and average rate for the upcoming year which is adequate to cover:

(A) all expected workers' compensation liability costs, whether past, present, or future, with respect to claims previously incurred or claims expected to be incurred in the upcoming year; and

(B) administrative expenses.

(3) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-403, 39-71-2104, MCA

REASON: There is reasonable necessity to amend ARM 24.29.623 in order to better describe the expected standard features of actuarial reports, and to make explicit who is considered by the department to be a qualified actuary. The department notes that although most of the actuarial reports it receives are of good quality, from time to time it receives actuary reports that fail to address elements that are important to the department's renewal analysis, or come from authors of uncertain background. The department concludes that there is reasonable necessity to provide clarifications while this rule is otherwise being amended.

The department concludes, based upon its recent experience in processing group renewals, that there is reasonable necessity to shorten the lead time from a minimum of 90 days to minimum of 60 days in advance of the expiration date for self-insurance. The department notes that the switch to 60 days for groups brings the renewal lead time into line with that for individual self-insured employers.

There is reasonable necessity to amend ARM 24.29.623 to make it conform to existing practices for renewals. As an example, summary claims information has been historically provided by self-insurers for all of the years of self-insurance in Montana, with greater summary detail provided for the most recent years. The number of years for which the greater summary detail is requested typically varies with the length of the self-insurer's experience. Rather than specify a certain number of years of claims summary information (which may not be available for a

newer self-insurer), the department will work with the self-insurer during the renewal process to obtain appropriate data.

There also is reasonable necessity to amend ARM 24.29.623 to update internal citations to rules that are being proposed for amendment or renumbering.

24.29.908 PENALTIES, ADMINISTRATIVE FINES AND INTEREST (1) Any assessment payment, surcharge remittance, summary report, or quarterly expenditure report received by the department more than five days past the due date is considered to be late.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-306, 39-71-915, MCA

REASON: There is reasonable necessity to amend ARM 24.29.908 to clarify that an insurer's failure to timely provide required summary reports subjects the insurer to potential liability for penalties, fines, and interest. The department has recently noticed that some insurers have become lax in the timeliness of providing summary reports, and appear unwilling to address the department's repeated request for timely reports.

24.29.954 CALCULATION OF AMOUNT OF ADMINISTRATION FUND ASSESSMENT (1) through (2)(d) remain the same.

(e) loss of hearing, whether under the Workers' Compensation or Occupational Disease ~~Acts~~ Act for occupational diseases that occurred prior to July 1, 2005;

(f) through (3)(h) remain the same.

(i) hearing loss treatment, whether under the Workers' Compensation or Occupational Disease ~~Acts~~ Act for occupational diseases that occurred prior to July 1, 2005.

(4) through (9)(c) remain the same.

(d) independent medical examinations requested by the insurer, where the purpose of the examination(s) is not for the diagnosis or treatment of the claimant's condition; ~~and~~

(e) matching payments to a catastrophically injured worker's family; and

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

(10) through (12) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-203, 39-71-209, MCA

REASON: There is reasonable necessity to amend ARM 24.29.954 to provide for technical changes and updates to the rule's language while otherwise amending related rules.

24.29.956 COMPUTATION AND COLLECTION OF THE ADMINISTRATION FUND ASSESSMENT PREMIUM SURCHARGE RATE FOR PLAN NO. 2 AND NO. 3 (1) and (2) remain the same.

(a) If the amount actually collected in premium surcharge is greater than ~~3% of~~ the calculated assessment on paid losses from the ~~prior assessment~~ preceding year, the department shall subtract the excess amount from the ~~3% of paid losses for the~~ next assessment. If the amount actually collected in premium surcharge is less than the ~~3% of~~ calculated assessment on paid losses from the ~~prior assessment~~ preceding year, the department shall add the underfunded amount to ~~the 3% of paid losses for~~ the next assessment.

(b) through (8) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-203, 39-71-2352, MCA

REASON: There is reasonable necessity to amend ARM 24.29.956 to make the provisions of the rule match up with changes to the underlying statutory provisions.

4. The proposed new rules provide as follows:

NEW RULE I SELF-INSURED EMPLOYERS AND GROUPS -- TRANSFER OF CLAIM LIABILITIES (1) Any current or former self-insurer or group may transfer existing workers' compensation liabilities to another entity upon authorization from the department and concurrence of the guaranty fund. The self-insurer or group shall:

(a) make application for the transfer of the claims; and

(b) provide an actuarial analysis of the claims to be transferred.

(2) The transfer application and approval process and guidelines will be consistent with the application and approval process for all new or proposed self-insured entities as provided by part 21 of the Workers' Compensation Act and ARM Title 24, chapter 29, subchapter 6.

(3) The independent actuarial analysis of the employer's or group's claim liabilities must be made using the preceding year's data, including all years of self-insurance liabilities. The actuarial report must be completed by a qualified actuary as defined by the American Academy of Actuaries.

(4) After the transfer of claims liabilities is complete, the new owner of the claims liabilities will have the same reporting requirements as all other prior self-insureds in Montana.

AUTH: 39-71-203, MCA
IMP: 39-71-2115, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to implement the provisions of section 2, Chapter 112, Laws of 2009 (House Bill 119), which requires rulemaking on the subject. There is reasonable necessity to describe a process which will allow the department (and guaranty fund, when appropriate) to evaluate whether the proposed claims transfer increases, decreases, or does not affect the financial ability to pay claims, and how it affects the risk of default in payment. In addition, it is reasonably necessary to specify that the entity assuming liability for the claims will have reporting responsibilities, so that the dissolution of the

original self-insurer or self-insured group does not adversely affect the proper handling and reporting related to the claims.

NEW RULE II SECURITY DEPOSITS FOR PLAN NUMBER TWO INSURERS -- REPORTS (1) All insurers authorized by the Montana insurance commissioner's office to write workers' compensation must place a deposit with the department. The deposit amount is determined by calculating the sum of the medical and indemnity payments from the most recently closed calendar year and multiplying that total by 40 percent, subject to the minimums and maximums required by the department.

(a) Periodic review by the department of an insurer's future claims liabilities may result in an increase in deposit requirements pursuant to 39-71-2215, MCA.

(b) Upon proof from the insurer that its liabilities have been reduced, a reduction of the amount held on deposit by the department may be granted at the department's discretion. Requests for reduction in deposit may be submitted in writing to the department no more frequently than once every 12 months.

(c) The department may require 30 days advance written notice by the insurer of the insurer's intent to exchange one form of securities for another.

(d) Securities must remain on deposit until the department is satisfied all liabilities of the insurer arising under Title 39, chapter 71, MCA, have been met.

(2) A plan number two insurer may deposit one or more of the following securities to meet its obligation to make a security deposit as required by 39-71-2215, MCA:

(a) a United States Treasury note;

(b) a certificate of deposit; or

(c) an irrevocable letter of credit.

(3) The security deposit must be issued in the form prescribed by the department and must include a statement that the grantor of the security deposit is required to give the department 60 days advance notice of its intent to terminate future liability. The grantor of the security deposit is not relieved of the liability for claims arising under Title 39, chapter 71, MCA, prior to the effective date of the termination. Notice must be sent to the department via certified or registered mail.

(a) A security deposit in the form of a certificate of deposit must be issued by a financial institution located within the United States and must be fully insured by a federally chartered insurance corporation.

(b) A security deposit in the form of an irrevocable letter of credit must be issued by a financial institution located within the United States that is acceptable to the department, based on its financial ratings.

(4) The security deposit must name the department as obligee and must be held by the department.

(a) A safekeeping or custodial arrangement with a bank or trust company located in the city of Helena, Montana, may be authorized if:

(i) the department is satisfied such securities are held under the same conditions of security as if the securities had been deposited with the department; and

(ii) the department is satisfied the hours of business do not hinder department access to or ability to sell and/or collect on the securities.

(b) If the deposit of securities with the department will result in the need to handle the securities for exchange or remittance of coupons for collection of interest then the department, at its discretion, may require the securities be held in the safekeeping or custodial arrangement described above at the insurer's direct expense.

(5) The insurer is required to submit the following reports:

(a) a copy of the "Exhibit of Premium and Losses-Business in the State of Montana During the Year," from the insurer's annual statement of the preceding calendar year, as filed with the Montana insurance commissioner;

(b) a total summary of experience claim losses including, but not limited to, compensation and medical benefits and reserves for future liability as of May 1 of each year; and

(c) other reports and information as required by the department.

(6) The reports required by (5) must be filed with the department:

(a) upon the insurer's initial authorization by the Montana insurance commissioner's office to write workers' compensation insurance;

(b) by May 1 of each following year; and

(c) upon request of the department.

AUTH: 39-71-203, MCA
IMP: 39-71-2215, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE II to clarify the financial conditions required by the type of security deposit placed by plan number two insurers with the department, and to implement 39-71-2215, MCA (enacted as Chap. 117, L. of 2007). The purpose of the deposit is to provide a ready source of funds to pay claims arising under Title 39, chapter 71, MCA, in the event the plan number two insurer becomes insolvent, is placed in receivership, declares bankruptcy, seeks protection from its creditors, or is otherwise unwilling or unable to pay its liabilities.

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: Bill Wheeler, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail bwheeler@mt.gov, and must be received no later than 5:00 p.m., May 11, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department's web site on the World Wide Web at http://dli.mt.gov/events/calendar.asp. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times,

concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all department 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 Department of Labor and Industry, Office of Legal Services, attn: Mark Cadwallader, 1315 E. Lockey Ave., P.O. Box 1728, Helena, Montana 59624-1728; faxed to the office at (406) 444-1394; e-mailed to mcadwallader@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply to portions of this rulemaking notice, and have been fulfilled. The primary bill sponsor of Chap. 117, Laws of 2007 (Senate Bill 108), was contacted on June 14, 2007, by mail. Bill sponsor notification concerning the 2005 repeal of the Occupational Disease Act, and consolidation of occupational disease into the Workers' Compensation Act, was given to the primary bill sponsor on October 17, 2005, via mail. The primary bill sponsor of Chapter 112, Laws of 2009 (House Bill 119) was contacted on or about May 14, 2009, via an in-person conversation.

9. The department's hearings bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 2, 2012

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.18.102, 32.18.103, 32.18.104, 32.18.105, and 32.18.107, and the adoption of NEW RULES I and II, pertaining to age tally mark, numeral mark, placement of digits, brand ownership and transfer, sale of branded livestock, change in brand recording, equine breed registry mark, freeze branding, and recording and transferring of brands	)))))))))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

1. On May 25, 2012, the Department of Livestock proposes to amend and adopt the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, May 8, 2012 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.18.102 AGE TALLY MARK (1) Single letter identification marks on cattle using numbers 0 to 9 inclusive may be used for an "age tally mark" ~~high on the shoulder or low on the thigh~~ and must be placed on the same side as the recorded brand used for ownership.

(2) The "age tally mark" ~~must be placed on the same side as the recorded brand used for ownership. It~~ can only be used when the owner's recorded brand is on the animal(s). The use of this mark is not mandatory.

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

32.18.103 NUMERAL MARK (1) A "numeral mark" (limited four digits) may be used on the ~~shoulder or hip of~~ same side as the owner's recorded brand on cattle for individual identification. This mark may be used in addition to the "age tally mark" permitted in ARM 32.18.102.

(2) The "numeral mark" ~~must be placed on the same side as the recorded brand used for ownership. It~~ can only be used when the owner's recorded brand is on the animal(s). The use of this mark is not mandatory.

(3) remains the same.

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

32.18.104 PLACEMENT OF DIGITS (1) and (2) remain the same.

(3) Anyone wanting to use a five digit system or the symbol system may write to the Department of Livestock, Brands Enforcement Division, ~~Capitol Station~~ P.O. Box 202001, Helena, Montana 596~~02~~20-2001. The ~~Department of Livestock~~ Brands Enforcement Division will then describe to them individually how they are to be used.

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

32.18.105 BRAND OWNERSHIP AND TRANSFER (1) remains the same.

(2) Names may be recorded in the following manner only: "x and y", or "x or y"; the designation"and/or" is not acceptable.

(a) A brand recorded in "x and y" designates tenants in common.

(b) A brand recorded in "x or y" designates joint tenancy with right of survivor ship.

(3) remains the same.

~~(4) If possible, when recording a brand, the ownership interest should be identified (i.e., joint tenancy with right of survivorship, tenancy in common, etc.).~~

AUTH: 81-1-102, MCA
IMP: 81-1-102, 81-3-102, 81-3-103, MCA

32.18.107 CHANGE IN BRAND RECORDING (1) ~~If~~ Once the department has begun processing a recording of a brand, any changes proposed in the original ~~recording~~ application will be considered a new ~~recording~~ application and an additional recording fee of $100 will be charged.

AUTH: 81-1-102, MCA
IMP: 81-1-102, 81-1-107, MCA

4. The proposed new rules provide as follows:

NEW RULE I FREEZE BRANDING (1) Freeze branding of cattle may be allowed under the following conditions:

(a) a freeze brand must be registered by the owner with the department;

(b) in order to register a freeze brand, the owner must have a hot iron brand registered with the department;

(c) the department will only issue a freeze brand that is identical in design and location to the owner's hot iron brand;

(d) the freeze brand will be issued on a separate certificate and will be charged an additional recording fee;

(e) freeze brands can only be sold or transferred along with the hot iron certificate;

(f) cattle freeze brands cannot be owned without a hot iron certificate brand that is identical in design and location to the owner's hot iron brand;

(g) a grazing permit will not be issued to freeze brand cattle.

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

NEW RULE II RECORDING AND TRANSFERRING OF BRANDS (1) All Montana brands must be issued through the Department of Livestock Brand Recording office.

(2) Brand fees are set by the Board of Livestock as authorized by state statute.

(3) Application forms for new brands are available on the department website, at the brand office in Helena, and at brand offices located in livestock auction yards.

(a) The application and appropriate fee must be submitted to the brand recorder for processing.

(i) Mailed, e-mailed, or faxed applications will be processed in the order in which they are received.

(ii) Walk-in applications will be processed on a first come, first served basis.

(4) The refund policy is as follows:

(a) fifty percent of the fee to record a brand is nonrefundable;

(b) if the applicant fails to respond to the brand recording office for a period of more than six months, the entire brand recording fee becomes nonrefundable.

(5) The brand recorder shall process the application in the following manner:

(a) deposit the fee;

(b) check for conflicts in the order listed on the application:

(i) the applicant must list ideas for brands in preferential order;

(ii) the first brand on the application that does not have any conflicts with existing brands will be issued to the applicant.

(c) issue brand and/or communicate results to the applicant:

(i) if none of the applicant's submissions are available, the brand recorder may check a similar brand for conflicts and offer it as an alternative option;

(ii) if the available option was not on the original application, the applicant must accept the offered option in writing within ten working days;

(iii) the applicant will have ten working days from the date of the offer letter to accept the offered available option. If the applicant's reply is received after ten working days it will be considered a new application and must be rechecked for conflicts and will require an additional $100 fee.

(6) All brand transfer requests must be submitted with the appropriate fee to the brand recording office:

(a) completion of the request for transfer (located on the reverse side of the official brand certificate) must include the notarized signatures of the original owners as listed on the front of the official brand certificate;

(b) if the original owner of the transferring brand is deceased, a certified copy of the death certificate and certified power of attorney or appropriate documentation must be provided to complete the transfer;

(c) the new owner names must be listed exactly as they will appear on the new certificate to be issued upon completion of the transfer process;

(d) the brand owner name on applications and transfer must consist of individuals or entities with documentable proof of identity:

(i) individuals must use legal names;

(ii) businesses and trusts must be registered with the Montana Secretary of State's office, or provide proof of registry with another state;

(e) where multiple individuals or entities appear on a brand owner name, either "and" or "or" must be used between owner names;

(i) no other notation or description is allowed (ex: DBA, hyphens, commas, parenthesis, in care of, "and/or").

(f) transfer fees apply as per ARM 32.18.107;

(i) to ensure that fees are commensurate with cost, owners may be charged additional fees as a result of their errors in transfer paperwork.

(7) Fees for new brands or transfers shall not be prorated.

(8) Changes to image, species, or position require submission of a new brand application and an additional $100 fee.

(9) Notwithstanding any other provision or policy, a brand will not be held or checked for conflicts by phone.

(10) All forms or model letters issued for purposes of recording brands or clarifying brand recording requirements are considered part of the brand rules and practices of the Board of Livestock.

(11) The Department of Livestock, as one of its primary services to the livestock industry, provides easily recognizable brands to prospective livestock owners.

(a) Departmental employees, having continual access to brand books and being acquainted with the communities in which they live and work, generally have advance opportunity to acquire desirable brands.

(b) Considering the service the department provides, employees shall not take unfair advantage of this opportunity:

(i) employees may not record more than three brands at any time;

(ii) employees may not record brands by phone;

(iii) employees may not record for others in any manner;

(iv) employees may not record any brand which has not been available for recording less than sixty days; and

(v) employees attempting to circumvent these rules are subject to disciplinary action.

AUTH: 81-1-102, MCA
IMP: 81-1-102, 81-3-107, MCA

REASON: The department has received requests for authorization to use freeze brands on cattle from producers of certain cattle breeds. To better service those producers and the industry the Board of Livestock voted to authorize cattle freeze branding under the above specified conditions. Clarification of wording and update of the department address was included for better producer understanding of these rules.

The department has used unwritten brand policy and procedures for decades past. The current Board of Livestock agreed that producers and the industry will be better served with written rules concerning brand ownership and transfer, recording and transferring of brands.

5. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., May 15, 2012.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. May 15, 2012.

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

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

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text

will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State April 2, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.433 pertaining to designated surveillance area	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

1. On May 25, 2012, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, May 8, 2012 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.433 DESIGNATED SURVEILLANCE AREA (1) through (1)(c) remain the same.

(d) Beaverhead County – from Madison-Beaverhead County line, south of Sweetwater Road to East Bench Road near Dillon, then south of East Bench Road to White Lane, then south of White Lane to Blacktail Road, then ~~East~~ south of Blacktail Road to ~~North Valley Road then north and east of North Valley Road to Stibel Lane, then east of Stibel Lane, which becomes Price Lane, to South Valley Road, then south of South Valley Road to Price Peet Road, then east of Price Peet Road~~ Highway 91, then west of Highway 91 to Interstate 15 business loop, then south of Interstate 15 business loop to Interstate 15, then east of Interstate 15 to the Montana/Idaho border.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 82-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

REASON: A recent elk study in the southern Ruby Range and Snowcrest Range (outside of the current Designated Surveillance Area), by the Montana Department of Fish, Wildlife and Parks (FWP) revealed a significant number of brucellosis exposed elk. Due to the potential of Brucella exposure to livestock, and to help to protect Montana livestock producers and its trading partners from the introduction of potentially infected livestock, it is necessary to include cattle

operations that overlap with the range of these elk in the Designated Surveillance Area.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., May 15, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. May 15, 2012.

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

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

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of 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.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State April 2, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.201, 32.3.212, 32.3.212B, 32.3.214, 32.3.221, 32.3.225, and the adoption of NEW RULES I and II pertaining to definitions, additional requirements for cattle, importation of cattle from Mexico, special requirements for goats, tuberculosis and brucellosis test, importation of wild species of cloven hoofed ungulates, and llamas	))))))))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

1. On May 25, 2012, the Department of Livestock proposes to amend and adopt the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, May 8, 2012 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.201 DEFINITIONS (1) through (1)(f) remain the same.

(g) "Originate from" means animals have resided for 60 days or more in the state or zone from which they are being shipped into Montana.

(g) remains the same but is renumbered (h).

(i) "Sporting bovine" means bucking bull, steer-wrestling steer, or roping bovine.

(j) "Tuberculosis test-eligible cattle" means all sexually intact cattle two months of age and older.

(k) "Tuberculosis test-eligible goat" means all sexually intact goats two months of age and older.

(h) and (i) remain the same but are renumbered (l) and (m).

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-20-101, MCA

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) remains the same.

(2) Test-eligible cattle originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test performed by an accredited veterinarian within 60 days prior to importation if they:

(a) are M-branded; or

(b) are Mx-branded; or

(c) are originally from Mexico; or

(d) have been in contact or exposed to M-branded, Mx-branded, or other cattle originally from Mexico; or

(e) are dairy cattle, except:

(i) dairy cattle who originate directly from an accredited tuberculosis free herd; or

(ii) dairy cattle less than six months of age accompanied by a tuberculosis test-negative dam.

(3) Sporting bovines originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test performed by an accredited veterinarian within 60 days prior to importation if they:

(a) are six months of age and older; or

(b) have attended at least a single sporting event; or

(c) are being imported for a specific sporting event.

(4) Test-eligible cattle originating from a tuberculosis modified accredited advanced U.S. state or zone must meet one of the following:

(a) one negative tuberculosis test within 60 days prior to importation; or

(b) one negative tuberculosis test within six months and part of a whole herd test; or

(c) originate directly from an accredited tuberculosis free herd; or

(d) less than six months of age and accompanied by a tuberculosis test-negative dam.

(5) Test-eligible cattle originating from a tuberculosis modified accredited U.S. state or zone must meet one of the following requirements:

(a) two negative tuberculosis tests 60-120 days apart, with the second test occurring within 60 days prior to importation into Montana; or

(b) one negative tuberculosis test within 60 days prior to importation into Montana and part of a whole herd test within the last 12 months; or

(c) one negative tuberculosis test within 60 days prior to importation into Montana and originate directly from an accredited tuberculosis free herd.

(6) Cattle less than two months of age originating from a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.

~~(2)~~ (7) All sexually intact male cattle entering Montana must meet the ~~T~~trichomoniasis testing and certification requirements set forth in ARM 32.3.502, except as provided below:

(a) and (b) remain the same.

(c) ~~nonvaccinated cattle less than 11 months of age placed under quarantine for Brucellosis vaccination or spaying within 30 days of arrival; and~~ those consigned directly to a feedlot approved by the state veterinarian and then directly to either a licensed slaughtering establishment or to a licensed livestock market and then directly to a licensed slaughtering establishment;

(d) through (g) remain the same.

~~(3)~~ (8) Any ~~T~~trichomoniasis test-eligible cattle used for sporting or exhibition purposes that breaches a fence and commingles with other cattle shall be tested for ~~T~~trichomoniasis. The owner of the trespassing cattle shall bear ~~all~~ the testing costs ~~for the requested test on that bovine.~~ including confinement, feed, veterinary, and laboratory.

~~(4)~~ (9) Any ~~T~~trichomoniasis test-eligible bull that remains in Montana for breeding purposes, change of ownership, or grazing must adhere to the conditions in ARM 32.3.502.

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

AUTH: 81-2-102, 81-2-103, 81-2-107, MCA
IMP: 81-2-102, 81-2-703, MCA

32.3.212B IMPORTATION OF CATTLE FROM MEXICO ~~(1) Steers and spayed heifers from states in Mexico that have been determined by the state veterinarian to have fully implemented the control/preparatory phase (STAGE I) of the Mexican Tuberculosis eradication program may be imported into the state until March 1, 1997, providing they have been tested negative for Tuberculosis in accordance with the Norma Official Mexicana (NOM) within 60 days prior to entry into the United States. Steers and spayed heifers from states in Mexico that have not been determined to have implemented the control/preparatory phase (STAGE I) of the Mexican Tuberculosis eradication program may not be imported into the state. Until March 1, 1997, these steers and spayed heifers must be retested 120-180 days after import into Montana.~~

~~(2) After March 1, 1997, steers and spayed heifers from states in Mexico that have been determined by the state veterinarian to have fully implemented the eradication phase (STAGE II) of the Mexican Tuberculosis eradication program may be imported into the state providing they have been tested negative for Tuberculosis in accordance with the Norma Official Mexicana (NOM) within 60 days prior to entry into the United States or originate from a herd that is equivalent to an accredited Tuberculosis free herd in the United States that are moved directly from a herd of origin across the border as a single group and not commingled with other cattle prior to arriving at the border. Steers and spayed heifers from states in Mexico that have not been determined to have implemented the eradication phase (STAGE II) of the Mexican Tuberculosis eradication program may not be imported into the state.~~

~~(3) Steers and spayed heifers that have been determined by the state veterinarian to have achieved accredited Tuberculosis free status may move directly into the state without testing or further restrictions provided they are moved as a single group and not commingled with other cattle prior to arriving at the border.~~

~~(4) Holstein and holstein crossbred steers and spayed heifers from Mexico are prohibited from entering the state regardless of test history.~~

(1) All M-branded, Mx-branded, and other cattle or bison two months of age and older originating directly from Mexico (imported into the U.S. within 60 days) require two negative TB tests 60-120 days apart. The first negative test can be the U.S. entry test. The second negative TB test must be performed by a USDA-APHIS

VS accredited veterinarian and must be within 60 days prior to importation into Montana.

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

32.3.214 SPECIAL REQUIREMENTS FOR GOATS (1) remains the same.

(2) Dairy and breeding goats may enter the state of Montana provided they originate ~~in~~ from a certified brucellosis free herd, for which the certified herd number and date of last herd test are shown on the permit, or health certificate; or they have been tested for brucellosis with negative results within 30 days of the date of shipment.

(3) ~~All dairy goats brought into the state, except those for slaughter only, must be tested for Tuberculosis before they may be brought into the state.~~ All test-eligible dairy breeds of goats originating from a tuberculosis accredited free U.S. state or zone must have one negative tuberculosis test within 60 days prior to importation unless:

(a) ~~All test results shall be recorded on or attached to all copies of the animal's health certificate.~~ the animals are for exhibition purposes only and will return to the state of origin; or

(b) they originate directly from an accredited tuberculosis free herd; or

(c) they are less than six months of age and accompanied by a tuberculosis test-negative dam.

(4) All test-eligible goats originating from a tuberculosis modified accredited advanced U.S. state or zone must have one negative tuberculosis test within 60 days prior to importation unless:

(a) they originate directly from an accredited tuberculosis free herd; or

(b) they are less than six months of age and accompanied by a tuberculosis test-negative dam.

(5) All test-eligible goats originating from a tuberculosis modified accredited U.S. state or zone must meet one of the following requirements:

(a) two negative tuberculosis tests 60-120 days apart, with the second test occurring within 60 days prior to importation into Montana; or

(b) one negative tuberculosis test within 60 days prior to importation into Montana and part of a whole herd test within the past 12 months; or

(c) one negative tuberculosis test within 60 days prior to importation into Montana and must originate directly from an accredited tuberculosis free herd.

(6) Goats less than two months of age originating from, and residing for 60 days or more, in a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.

(7) All test results and dates, including herd accreditation numbers, shall be recorded on or attached to all copies of the animal's health certificate.

AUTH: 81-2-102, 81-20-101, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-20-101, 81-2-103, 81-2-701, MCA

32.3.221 ~~TUBERCULOSIS AND BRUCELLOSIS TEST, IMPORTATION OF WILD SPECIES OF CLOVEN HOOFED UNGULATES~~ SPECIAL REQUIREMENTS FOR ALTERNATIVE LIVESTOCK AS DEFINED IN 87-4-406, MCA (1) All ~~wild species of cloven hoofed ungulates~~ alternative livestock six months of age and older imported into ~~brought into the state~~ Montana must be either teste~~d~~ -negative for ~~Tuberculosis and B~~brucellosis ~~and found to be negative~~ within 30 days prior to importation or originate from a brucellosis certified free herd.

~~(a) The Tuberculosis test must be:~~

~~(i) of a type approved for use by the department;~~

~~(ii) performed not more than 90 days on cervidae or 60 days on bovidae prior to entry into the state; and~~

~~(iii) conducted by a federally accredited veterinarian. The test must be a type approved for that species by the state veterinarian.~~

~~(b)~~ (a) The ~~B~~brucellosis test must be a type approved by the state veterinarian~~, and is valid for 30 days~~.

(2) Non-cervid alternative livestock originating from a tuberculosis accredited free or modified accredited advanced U.S. state or zone require a negative tuberculosis test on all animals two months of age and older within 60 days prior to importation.

(3) All cervids six months of age and older originating from a tuberculosis accredited free or tuberculosis modified accredited advanced U.S. state or zone and all alternative livestock two months of age and older originating from a tuberculosis modified accredited U.S. state or zone require one of the following:

(a) one negative single cervical test on all sexually intact animals within 90 days prior to importation and part of a whole herd test within the last 12 months; or

(b) two negative single cervical tests on all sexually intact animals 90-120 days apart, with the second test occurring within 90 days prior to importation; or

(c) one negative single cervical test on all sexually intact animals within 90 days prior to importation and must originate directly from an accredited tuberculosis free herd.

(4) Animals less than two months of age originating from a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.

~~(2)~~ (5) All test results, including herd accreditation numbers and dates of herd tests if applicable, shall be recorded on or attached to all copies of the animal's health certificate.

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

32.3.225 ~~LLAMAS~~ CAMELIDS (1) ~~Llamas~~ Camelids may enter the state of Montana provided they enter in conformity with ARM 32.3.201 through 32.3.211. ~~and in addition are:~~

~~(a)~~ (2) ~~with regard to Brucellosis,~~ Camelids must be officially tested negative to ~~B~~brucellosis within 30 days of entry into the state.

~~(b)~~ (3) Sexually intact camelids two months of age and older originating from a tuberculosis accredited free or tuberculosis modified accredited advanced U.S.

state or zone require a negative axillary test ~~with regard to Tuberculosis, officially tested negative for Tuberculosis~~ within 60 days prior to importation. ~~of entry into the state using the axillary or other test approved for camildae.~~

(4) Sexually intact camelids two months of age and older originating from a tuberculosis modified accredited U.S. state or zone require one of the following:

(a) two negative axillary tests on all animals 60-120 days apart, with the second test occurring within 60 days prior to importation; or

(b) one negative single cervical test on all animals within 60 days prior to importation and part of a whole herd test within the previous 12 months; or

(c) one negative single cervical test on all animals within 60 days prior to importation and originate directly from an accredited tuberculosis free herd.

(5) Animals less than two months of age originating from a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.

(6) All test results and dates, including herd accreditation numbers, shall be recorded on or attached to all copies of the animal's health certificate.

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

4. The proposed new rules provide as follows:

NEW RULE I ELEPHANTS (1) Elephants may enter the state of Montana provided they enter in conformity with ARM 32.3.201 through 32.3.211.

(2) All elephants require an Elephant TB STAT-PAK Assay within 12 months prior to importation into Montana. If the results of the test are positive, a negative Multi-Antigen Print Immuno-Assay (MAPIA) or a Dual Path Platform VetTB Assay is also required.

(3) Elephants with no known exposure to TB culture-positive animals in the previous five years require three negative trunk washes and culture with 12 months prior to importation.

(4) Elephants exposed to TB culture-positive animals in the previous five years require three negative daily trunk washes and culture within 90 days prior to importation into Montana.

(5) All test results and dates shall be recorded on or attached to all copies of the animal's health certificate.

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

NEW RULE II NONHUMAN PRIMATES (1) Nonhuman primates may enter the state of Montana provided they enter in conformity with ARM 32.3.201 through 32.3.211.

(2) All nonhuman primates require a negative intradermal tuberculosis test within 30 days prior to importation into Montana.

(3) All test results and dates shall be recorded on or attached to all copies of the animal's health certificate.

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

REASON: Currently, most of Montana's TB import requirements are in an official order that was initially implemented in 2005, and updated in 2008 and 2010. The 62nd Legislature (2011) limited the duration of any official order to five years (81-2-102 (2)(b), MCA), and therefore, MDOL proposes to amend and adopt into rule the existing TB official order. MDOL will also be either rescinding or adoptiing into rule all other orders that are longstanding. This will include orders on CWD, ruminant protein feeding, importation of Canadian animals, and others as applicable.

5. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., May 15, 2012.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. May 15, 2012.

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

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

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed

text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The bill sponsor, Gordon Vance, was notified March 29, 2012 by e-mail.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State April 2, 2012.

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

In the matter of the adoption of New Rule I pertaining to the Montana tobacco settlement fund	)	NOTICE OF PROPOSED ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 12, 2012, the Department of Public Health and Human Services proposes to adopt the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I TOBACCO SETTLEMENT ACCOUNTS: PURPOSES AND USES (1) The department will design and implement programs to prevent tobacco-related disease.

(2) The program will include, but will not be limited to, the following components: state and community interventions; health communication interventions; cessation interventions; surveillance and evaluation; and administration and management.

(3) The department will use national guidelines, including tobacco use prevention and control standards established by the Centers for Disease Control and Prevention in developing and implementing the statewide program.

(4) The department will use other evidence-based policies, interventions, and enforcement activities in the design and implementation of the program.

(5) The department will use the national guidelines and other evidence-based recommendations in the development of community interventions implemented by local and tribal health departments.

(6) The department will coordinate and work with other state agencies to implement tobacco disease prevention interventions, policies, and enforcement activities.

AUTH: 17-6-606, MCA

IMP: 17-6-606, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing a new rule related to Montana Code Annotated Title 17, chapter 6, part 6 (606) Montana Tobacco Settlement Trust Fund. These rules are necessary to specify the key programmatic components the department should consider in the design and implementation of its tobacco use prevention program. The statute specifies that the department must consider the standards contained in the "Best Practices for Comprehensive Tobacco Control Programs" published by the Centers for Disease Control and Prevention (CDC) but does not indicate the specific components of a comprehensive program the department or local and tribal health departments should implement. The statute also does not indicate whether or not the department should consider other national guidelines or evidence-based activities in the design and implementation of the program beyond the recommendations from the CDC. The rules are necessary to ensure that the department considers both the recommendations provided by the CDC, as well as other national guidelines and evidence-based interventions. The rules are also necessary to specify that the department will coordinate and work with other state agencies to implement tobacco prevention interventions, policies, and enforcement activities as appropriate.

New Rule I

This new rule includes the elements the department will use to design and implement programs to prevent tobacco-related disease. The department specifies in the rules the components that will be included in the Montana's tobacco disease prevention program, the national guidelines and evidence-based recommendations that the department will use in designing and implementing a program, and that the department will coordinate and work with other state agencies that also implement tobacco prevention activities.

Fiscal Impact

The proposed new rules are not associated with any fees, costs, or benefits and will have no financial impact.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 10, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to Kenneth Mordan at the above address no later than 5:00 p.m., May 10, 2012.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 7 persons based on there are 63 local and tribal health departments and five urban Indian health centers that can potentially receive funding from the state of Montana for tobacco prevention efforts through the state's master settlement agreement.

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

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

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

/s/ Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State April 2, 2012.

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

In the matter of the amendment of ARM 37.78.102 and 37.78.508 pertaining to good cause criteria TANF policy manual	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 3, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on April 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) The TANF program shall be administered in accordance with the requirements of federal law governing temporary assistance for needy families as set forth in Title IV of the Social Security Act, 42 USC 601 et seq. (2012). ~~, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Balanced Budget Act of 1997, and the Deficit Reduction Act of 2005.~~

(2) The "Montana TANF Cash Assistance Manual" dated ~~January 1~~ June 8, 2012 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-2-201, 53-4-212, MCA
IMP: 53-2-201 53-4-211, 53-4-601, MCA

37.78.508 TANF: TANF CASH ASSISTANCE; GOOD CAUSE ~~(1) A TANF Cash Assistance participant's failure to comply with a program requirement, such as providing information necessary to determine eligibility, reporting changes within ten days of knowing of the change, or a requirement under a Family Investment Agreement/WoRC Employability Plan (FIA/EP), including but not limited to participation in an allowable work activity or the requirement of accepting or maintaining suitable employment, shall not result in an adverse action, including imposition of a sanction if good cause exists for the failure to comply.~~

(1) A TANF Cash Assistance participant's failure to comply with employment and training activities, failure to comply with any requirement under a Family Investment Agreement/WoRC Employability Plan (FIA/EP), including providing verification of participation in employment and training activities outlined in the FIA/EP, or failure to accept and/or maintain employment shall not result in an adverse action, including sanctions, if good cause exists for the failure to comply or for the participant's actions. A TANF Cash Assistance participant's failure to provide financial or nonfinancial verification shall not result in an adverse action, including denial or closure of TANF benefits, if good cause exists for the participant's actions.

(2) ~~If it appears that a participant has failed to comply with a FIA requirement, t~~The participant shall be given the opportunity to ~~provide~~ document good cause for failing to comply by providing and verifying information to the ~~eligibility~~ case manager ~~or work readiness component (WoRC) case manager~~ regarding the alleged noncompliance and the reasons for the alleged failure to comply. If the information provided is not sufficient to prove good cause and it is determined the participant has failed to prove good cause for the noncompliance, appropriate adverse action will be taken, including the imposition of a sanction in accordance with ARM 37.78.506 if appropriate. ~~If the committee that reviews the sanction determines from the available information that there was a failure to comply and that the participant has failed to prove good cause for the noncompliance, a sanction shall be imposed in accordance with ARM 37.78.506.~~

~~(3) Good cause consists of verified circumstances beyond the participant's control which prevent compliance with a requirement or which excuse a failure to comply.~~

~~(4)~~ (3) ~~Good cause for failure to keep appointments, report changes, provide required information, or comply with FIA/EP activities or other eligibility requirements includes, but is not limited to, the following verified circumstances:~~ Good cause for failure to complete employment and training activities or comply with FIA/EP activities is limited to the following verified circumstances:

(a) through (g) remain the same.

~~(5)~~(4) Good cause for failure to accept employment or for voluntarily quitting a job or reducing earned income from employment ~~includes, but~~ is ~~not~~ limited to~~,~~ the following verified circumstances:

(a) through (j) remain the same.

(5) Good cause for failure to provide financial or nonfinancial verification to determine or continue eligibility is limited to the following:

(a) verified circumstances beyond the participant's control for failing to provide citizenship verification, birth certificate, kinship documentation, income, or resources; and

(b) participant must be making a good faith effort to obtain the required verification.

AUTH: 53-2-201, 53-4-212, MCA
IMP: 53-2-201, 53-4-211, 53-4-601 MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.78.102 and 37.78.508.

ARM 37.78.102

This rule currently adopts and incorporates by reference the TANF policy manual effective January 1, 2012. The department proposes to make revisions to this manual that will take effect on June 8, 2012. The proposed amendments to ARM 37.78.102 are necessary to incorporate into this rule the revised versions of the policy manual and to permit all interested parties to comment on the department's policies and offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 8265 TANF recipients, which is the average of the total number of recipients between July 2011 and September 2011.

ARM 37.78.508

The department is amending this rule to remove any ambiguity in the existing rule regarding the TANF program eligibility requirement, stated at 42 USC. 608(a)(1), that a minor child must reside in the household for the caretaker adult to receive TANF assistance. The department does not have the authority to excuse compliance with a statutory program requirement and has never interpreted its rules to provide for such an exception.

The amendments to this rule are necessary to remove ambiguity resulting from the language "including but not limited to" that is being deleted The revised language more clearly states the TANF program only allows good cause exception to excuse the listed activities.

TANF MANUAL CHANGES

TANF 1509-1 Case Management

This manual section is being updated to clarify the good cause criteria for FIA/EP and employment related circumstances as well as add criteria for nonfinancial and financial noncompliance.

TANF 702-2 WoRC Sanction Review

This manual section is being updated to clarify the good cause criteria related to lifting a sanction that is being imposed or that has already been imposed.

These changes to the TANF policy manual may be viewed at the following web site: http://www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml

Fiscal Impact: No fiscal impact is anticipated due to this rule change.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 10, 2012.

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

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

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

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

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State April 2, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.105 and 42.20.107 relating to the valuation of real property	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 14, 2012, at 1:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.20.105 CONDOMINIUMS/TOWNHOMES (1) It is the intention of the department to employ an appraisal methodology for condominiums and townhouse/townhomes (as defined in 70-23-102, MCA) which is consistent with 15-8-111 and 15-8-511, MCA. The terms "townhouse" and "townhome" are interchangeable and, therefore, reference to one term incorporates the other term. The methodology must provide for a separate assessment of each condominium/townhome unit, and allocation of the percentage interest of common elements must meet the market value standard. The methodology must include the consideration, use, and where applicable, the reconciliation of the cost approach, the sales comparison approach, and the income approach to valuation using accepted appraisal treatises and manuals. This rule relates solely to the administration of revenue laws, and nothing in this rule should be construed to affect the legal requirements of any other purpose.

(2) The department will employ the following appraisal and assessment methodology for the appraisal of condominiums/townhomes, except for time-share condominiums.

(a) The preferred approach for the appraisal of ~~the~~ residential condominium/townhome units is the sales comparison approach, where comparable sales are available. ~~The common elements of residential condominiums are inherent in the individual unit values when the sales comparison approach is~~

~~employed.~~ When comparable sales are not available, the cost approach must be used. In that instance, the condominium/townhome declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-403, MCA, ~~should~~ will be used to allocate the value. Allocation of value for each condominium unit will be determined by multiplying the percentage, ~~(~~expressed as a decimal~~)~~, ~~times~~ by the appraised value of the entire condominium/townhome project or by adding the individual unit cost to the individual unit's allocation of those elements deemed common. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach value is determined and allocated as specified in this subsection.

(b) The preferred approach for the appraisal of commercial condominium units is the income approach where reliable condominium income and expense data are available. The common elements of income-producing condominiums are inherent in the individual unit values when the income approach is employed. When reliable income and expense data are not available, the cost approach must be used. In that instance, the condominium declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-403, MCA, ~~should~~ will be used to allocate the value. Allocation of value for each condominium unit will be determined by multiplying the percentage, ~~(~~expressed as a decimal~~)~~, ~~times~~ by the appraised value of the entire condominium project. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach value is determined and allocated as specified in this subsection.

(3) For new townhome projects, a townhome declaration must identify the location and dimensions of each townhome unit's lot and must have been filed with the County Clerk and Recorder.

(4) For existing townhome projects, an amended townhome declaration must be filed that includes a description of the size in square footage or acreage of land associated with each townhome unit, and identify the remaining square footage or acreage associated with the common land and/or improvement elements.

(5) The deadline for filing new or amended townhome declarations is January 1. For tax year 2012 only, the deadline for filing new and amended townhome declarations is June 1.

~~(3)~~(6) The department will employ the following appraisal and assessment methodology for the appraisal of time-share condominiums.

(a) The entire condominium project will be appraised using accepted appraisal techniques or methods and, as appropriate, the cost replacement manuals identified in rule. The use of accepted techniques or methods means the consideration, use, and where applicable, the reconciliation of the cost approach, the sales comparison approach, and the income approach to valuation.

(b) Any units in a condominium project ~~which~~ that are not owned and operated as time-share condominium units will be valued pursuant to the methodology set forth in (2)(a) or (b).

(c) The total appraised value for all time-share condominium units comprising a condominium project will be calculated and assessed to the owner of record (time-share association). Thereafter, it will be incumbent upon the association to allocate its total tax liability among the various parties having interest in the time-share condominiums.

AUTH: 15-1-201
IMP: 15-7-103, 15-8-511, 70-23-102, 70-23-103, 70-23-301, 70-23-403, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.105, to properly implement House Bill 460 (Title 70, Chapter 2, MCA) as enacted by the 2011 Legislature. The statute requires the Department of Revenue to establish a rule pertaining to the methodology that would be used to value townhomes/townhouses.

Because the Legislature has granted the department the authority to make rules to supervise the administration of revenue laws of the state and assist in their enforcement in 15-1-201, MCA, nothing in the rule shall affect any legal requirements outside this purpose. The department proposes adding this clarifying language in (1), responding in part to an inquiry from the Director of Missoula City/County Office of Planning and Grants about the perceived impact of the rule on subdivision requirements not relating to revenue laws.

The rule brings the same method of valuing a condominium to a townhome/townhouse by applying the Unit Ownership Act, based on common elements associated with townhomes/townhouses that hold separate title to the land beneath the unit. This rule provides consistent methodology of valuation statewide and provides a mechanism for financial institutions to rely on for mortgage purposes in the state of Montana. The proposed amendments to ARM 42.20.105 implement that understanding and are also necessary to ensure the provisions of House Bill 460, relative to operation requirements and timelines, are clear and understandable for local governments.

The department also proposes to update the implementing citations for ARM 42.20.105 to include relevant references within the new law.

42.20.107 VALUATION METHODS FOR COMMERCIAL PROPERTIES

(1) remains the same.

(2) When the department uses an appraisal method that values land and improvements as a single unit, the department shall establish a combined appraised value of land and improvements. The single unit value method includes, but is not limited to, the comparable sales method for residential condominiums and the income method for commercial property. The assessment notice must contain a single combined appraised value of the land and improvements.

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

AUTH: 15-1-201, 15-7-139, MCA
IMP: 15-7-101, 15-7-102, 15-7-103, 15-7-111, 15-7-139, 15-7-201, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.107, to properly implement House Bill 132 (15-7-101, MCA) as enacted by the 2011 Legislature, which requires the department to report one "unit value" for residential condominiums and income producing properties when the department values the land and improvements as a unit.

The department values residential condominiums using the sales comparison method. The department values commercial property using the income method. Both methodologies require the department to value the property as one unit, but on the assessment notice the values are currently being reported separately.

The department also proposes to update the implementing citations for ARM 42.20.107 to include relevant references within the new law.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov, and must be received no later than May 18, 2012.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking Actions – Published Notices" heading. 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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above, faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of House Bill Number 132, L. 2011, Representative Brian Hoven, and the primary sponsor of House Bill Number 460, L. 2011, Representative Ken Peterson, were notified by regular mail on December 15, 2011. Both sponsors were subsequently notified by regular mail on March 19, 2012.

Cleo Anderson	Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State April 2, 2012

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VI relating to the Nursery Program	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 26, 2012, the Department of Agriculture published MAR Notice No. 4-14-201 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 150 of the 2012 Montana Administrative Register, Issue Number 2.

2. On February 16, 2012, a public hearing was held in Helena concerning the proposed adoption. The department received comments from seven individuals, making only six comments. Many comments were repeated in some form by multiple commenters.

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

COMMENT #1: Nursery Program should be paid using general funds.

RESPONSE #1: Only the Legislature may allow general funds to be used for a program. This program received no general funds last session.

COMMENT #2: Nursery Program should have additional risk categories.

RESPONSE #2: The current categories create a time range from 1-3 years with the possibility of more inspections for the most risky. Creating a risk criterion with additional levels would complicate the process of classification while providing no additional useful distinction.

COMMENT #3: There are inconsistencies between the justification indicating inspections every other year for low risk and the rule indicating every three years.

RESPONSE #3: This was a mistake. The rule language indicating every three years is correct.

COMMENT #4: Nursery industry groups should be allowed to comment before the director makes any finding on a reclassification of risk.

RESPONSE #4: Because the nursery industry is made of numerous groups, it would be hard to create a rule that would guarantee proper input, but as with all

government action the department will allow for public comment and industry groups are encouraged to provide it.

COMMENT #5: The hourly rate is too high.

RESPONSE #5: The rate is calculated to cover the expenses of the program. Without a rate at the amount set by the proposed rule, the program would run a deficit.

COMMENT #6: There should be no exceptions or exclusions from the law (i.e. all nursery growers/sellers should be subject to the same law and fee structure).

RESPONSE #6: This would require a change to the law and cannot be done by rule.

4. The department has adopted the following rules as proposed: New Rule I (4.12.1433), II (4.12.1434), III (4.12.1435), IV (4.12.1436), V (4.12.1437), and VI (4.12.1438).

/s/ *Cort Jensen*
Cort Jensen
Rule Reviewer

/s/ *Ron de Yong*
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State April 2, 2012

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 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 December 22, 2011, the Board of Environmental Review published MAR Notice No. 17-324 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 2726, 2011 Montana Administrative Register, issue number 24.

2. The board has amended 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, 17.24.1112, 17.24.1113, 17.24.1114, and 17.24.1116, adopted New Rules I (17.24.1264), III (17.24.1266), and IV (17.24.1267), and repealed ARM 17.24.763 exactly as proposed. The board has amended ARM 17.24.1111 and 17.24.1201 and adopted New Rules II (17.24.1265) and V (17.24.1019) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

17.24.1111 BONDING: BOND RELEASE APPLICATION CONTENTS

(1) and (2) remain as proposed.

(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~~ the information required by 82-4-232(6)(a), MCA.

(4) through (7) remain as proposed.

17.24.1201 FREQUENCY AND METHODS OF INSPECTIONS (1) remains as proposed.

(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~~ may not be considered to be an additional partial or complete inspection for the purposes of ARM 17.24.1201.

(3) and (4) remain as proposed.

NEW RULE II DEPARTMENT ELIGIBILITY REVIEW (1) through (3) remain as proposed.

(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~~ 82-4-227(11) or (12), MCA.

(5) through (6) remain as proposed.

NEW RULE V PERMIT REQUIREMENT - SHORT FORM (1) remains as proposed.

(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~~ 82-4-226(8), MCA, and issued a permit.

(3) All provisions of this subchapter, except ARM 17.24.1001(1), (2), and (4) through (6), 17.24.1006(2)~~,~~ and (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.

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

COMMENT NO. 1: Proposed changes to ARM 17.24.302 should be amended to limit information submittals to formats that are "protected from unauthorized alteration."

RESPONSE: The department currently has a guideline describing the formats for information submittals. The guideline requests that all required documents be submitted in PDF format. The guideline also requests that tabular and map data be submitted in the original format (.xlsx, .dwg, etc.) in addition to the PDF version. The intent of the proposed rule amendments is to provide the department with authority to require formats that allow the department to more easily analyze and incorporate the information into its databases. The PDF version of each document will remain unaltered and will be considered the "original" file document. Accordingly, the board declines to make the suggested change to ARM 17.24.302.

COMMENT NO. 2: Proposed changes to ARM 17.24.302, 17.24.645, and 17.24.646 should be amended to limit information submittals to only formats that are "mutually" agreed upon by the department and the applicant.

RESPONSE: If the proposed rule amendments were modified to include "mutual agreement," it would nullify the intent of the proposed amendments, which is to make it possible for the department to more easily incorporate information into its electronic databases. Also, the commentor's suggestion would potentially require the department to accept a different format from each applicant as all applicants may not agree on a single format. Therefore, the board declines to make the changes proposed in the comment.

COMMENT NO. 3: The phrase located in ARM 17.24.313(1)(h)(x) "revegetation types" should be replaced with the phrase "post-mine land use."

RESPONSE: The comment is outside the scope of the proposed amendments in ARM 17.24.313(1)(h)(x). The proposed amendment merely added a cross-reference, and the board cannot make a substantive amendment to the rule in this proceeding. A substantive amendment would require public notice and an opportunity to comment on the amendment.

COMMENT NO. 4: The term "operator" should be replaced with the term "permittee" in ARM 17.24.646 and 17.24.1201.

RESPONSE: The comment is outside the scope of the proposed rulemaking. Also, the operator is required to apply for a permit and is therefore also the permittee. Accordingly, the board declines to make the change proposed in the comment.

COMMENT NO. 5: The definition of the phrase "other constructed features," in ARM 17.24.711, should be amended to remove the specific size restriction and the design approval requirement. These specifics would then be replaced by generic language that provides a similar intent.

RESPONSE: The Office of Surface Mining required Montana to define "other constructed features" with limits on size, slope, stabilization against erosion, and other environmental factors that may affect stability. See 72 Fed. Reg. 57822, 57826 (October 10, 2007). It is difficult to predict all potential "other constructed features" that may benefit the post-mine land use. The board's proposed definition provides a specific limit on the size of features and requires that the department review a design to verify that the feature complies with slope, stabilization against erosion, and other environmental factors that may affect stability. The commentor's proposed language does not meet the Office of Surface Mining's requirement. Accordingly, the board declines to make the change proposed in the comment.

COMMENT NO. 6: The proposed increase in bonding acres for each drill site in ARM 17.24.1016 from 0.1 acres to 1.0 acres is excessive and should only be increased to 0.25 acres.

RESPONSE: All drill sites have a level of disturbance associated with the activity and without a detailed disturbance plan in the permit application, an assumed area must be assigned. If the applicant chooses to provide a detailed plan

for disturbance, the department maintains the authority in ARM 17.24.1016(3) to approve a smaller disturbance area for each drill site. Accordingly, the board declines to make the change proposed in the comment.

COMMENT NO. 7: The board should consider citing 82-4-232(6)(a) instead of adding similar language to ARM 17.24.1111(3).

RESPONSE: The board agrees with the comment and has amended the rule as shown above.

COMMENT NO. 8: Neither the Montana Code Annotated nor the federal regulations support the requirement in ARM 17.24.1111(3) to send notification letters prior to filing an application.

RESPONSE: Section 82-4-232(6), MCA, requires the application to include ". . . copies of letters that the permittee has sent. . . .." Furthermore, 30 CFR 800.40(a)(2) requires the bond release application to include ". . . copies of letters which he or she has sent. . . .." The board does not agree with the comment. However, in addressing Comment No. 7, the board will delete the language in ARM 17.24.1111(3) and replace it with a citation to 82-4-232(6).

COMMENT NO. 9: Proposed amendments to ARM 17.24.1201 should be modified in order to be no less effective than 30 CFR 840.11(d)(2).

RESPONSE: The commentor did not specify in what manner that ARM 17.24.1201 is less effective than 30 CFR 840.11(d)(2) and the board has not identified an area to support this comment. The proposed language is almost verbatim with the federal language except that the federal language requires an immediate inspection when the violation would constitute grounds for a cessation order. The proposed state language instead uses a description of these grounds. Accordingly, the board declines to amend the language.

COMMENT NO. 10: It is recommended that the word "must" be replaced with the word "shall" in the proposed amendment to ARM 17.24.1201.

RESPONSE: The board agrees that the word choice should be modified, but has determined that it is grammatically accurate to replace the word "must" with the word "may" instead of the word "shall" as the commentor suggested.

COMMENT NO 11: There is a typographical error located in New Rule II(4). The cross reference to 82-5-226(11) should be to 82-4-226(11).

RESPONSE: The board agrees with the comment and the rule has been amended as shown above.

COMMENT NO. 12: There is a typographical error located in New Rule V(2). The cross reference to 82-1-226(8) should be to 82-4-226(8).

RESPONSE: The board agrees with the comment and has amended the rule as shown above.

COMMENT NO. 13: As proposed, New Rule V(3) provides an exemption for all short form prospecting permits from the requirements of ARM 17.24.1001. The

intention of SB 286 is to exempt short form prospecting permits from ARM 17.24.1001(2) and (4) through (6).

RESPONSE: The board agrees with the comment and the rule has been amended as shown above.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Joseph W. Russell*

JOHN F. NORTH
Rule Reviewer

JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, April 2, 2012.

BEFORE THE DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 23.14.204, 23.14.205, and 23.14.206, and the amendment of ARM 23.14.101, 23.14.201, 23.14.203, 23.14.302, 23.14.303, 23.14.304, 23.14.305, 23.14.601, 23.14.603, 23.14.604, 23.14.605, 23.14.606, and 23.14.1008, concerning the duties and functions of the Board of Crime Control	)))))))))))	CORRECTED NOTICE OF REPEAL AND AMENDMENT

TO: All Concerned Persons

1. On February 9, 2012, the Department of Justice published MAR Notice No. 23-14-224, pertaining to the proposed amendment and repeal of the above-stated rules at page 275 of the 2012 Montana Administrative Register, Issue Number 3. On March 22, 2012, the Department of Justice published the notice of repeal and amendment at page 615 of the 2012 Montana Administrative Register, Issue Number 6.

2. The corrected notice is necessary because the agency inadvertently neglected to correct some authority and implementation citations that were renumbered during the 2011 legislative session. The correct authority and implementation citations are as follows:

23.14.601 GENERAL DEFINITIONS

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~41-5-812, 41-5-1003~~ 41-5-1805, 41-5-1903, MCA

23.14.603 REGIONAL PLAN

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~41-5-1003, 41-5-1004, 41-5-1005, 41-5-1007~~ 41-5-1903, 41-5-1904, 41-5-1905, 41-5-1907, MCA

23.14.604 PLAN APPROVAL PROCESS

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~41-5-1002, 41-5-1005~~ 41-5-1902, 41-5-1905, MCA

23.14.605 AMENDMENTS TO THE REGIONAL PLAN

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~41-5-1003, 41-5-1004, 41-5-1005~~ 41-5-1903, 41-5-1904, 41-5-1905, MCA

23.14.606 REPORTS

AUTH: ~~41-5-1008~~ 41-5-1908, MCA
IMP: ~~41-5-1003~~ 41-5-1903, MCA

3. The replacement pages for this corrected notice were submitted on March 31, 2012.

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

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

Certified to the Secretary of State on April 2, 2012.

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

In the matter of the repeal of ARM 24.207.402 adoption of USPAP by reference	)))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On November 25, 2011, the Board of Real Estate Appraisers (board) published MAR notice no. 24-207-34 regarding the public hearing on the proposed repeal of the above-stated rule, at page 2487 of the 2011 Montana Administrative Register, issue no. 22.

2. On December 20, 2011, a public hearing was held on the proposed repeal of the above-stated rule in Helena. No comments were received by the December 28, 2011, deadline.

3. The board has repealed ARM 24.207.402 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS
JENNIFER MCGINNIS, CERTIFIED GENERAL, CHAIRPERSON

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

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

Certified to the Secretary of State April 2, 2012

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of ARM 36.17.601 through 36.17.606 and the adoption of New Rules I through VII regarding the application procedures and loan requirements of the Renewable Resources Grant and Loan Program	)))))))	NOTICE OF REPEAL AND ADOPTION

To: All Concerned Persons

1. On February 23, 2012, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-160 regarding a notice of public hearing on the proposed repeal and adoption of the above-stated rules at page 365 of the 2012 Montana Administrative Register, Issue No. 4.

2. No written comments or oral testimony pertaining to the rulemaking were received.

3. The department has repealed ARM 36.17.601 through 36.17.606 as proposed.

4. The department has adopted New Rules I (36.17.607), II (36.17.608), III (36.17.609), IV (36.17.610), V (36.17.611), VI (36.17.612), and VII (36.17.613) as proposed.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Kevin Peterson
Kevin Peterson
Rule Reviewer

Certified to the Secretary of State on April 2, 2012.

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

In the matter of the adoption of New Rules I and II, the amendment of ARM 37.62.102, 37.62.103, 37.62.106, 37.62.108, 37.62.110, 37.62.111, 37.62.114, 37.62.123, 37.62.126, 37.62.134, 37.62.140, 37.62.148, 37.62.2121, and the repeal of ARM 37.62.136, 37.62.138, and 37.62.146 pertaining to Montana child support guidelines	))))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 10, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-568 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2356 of the 2011 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.62.102, 37.62.103, 37.62.106, 37.62.110, 37.62.111, 37.62.114, 37.62.123, 37.62.126, 37.62.134, 37.62.140, 37.62.148, and 37.62.2121 as proposed.

3. The department has repealed ARM 37.62.136, 37.62.138, and 37.62.146 as proposed.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.62.105) DETERMINATION OF INCOME FOR CHILD SUPPORT (1) and (a) remain as proposed.

(b) ~~In the absence or near absence of actual income, the value of a parent's assets may be considered for child support.~~ The net value of a parent's assets may be considered for child support where, in a specific case, it would be inappropriate not to do so.

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against ~~earnings~~ wages or salaries, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all

other government payments and benefits. Income also includes capital gains net of capital losses. To the extent the net gains result from recurring transactions, they may be averaged over a period of at least three years. If the net gains are attributable to a single event or year, they may be used to represent income over one or more years;

(b) through (5) remain as proposed.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

NEW RULE II (37.62.124) PARENTING DAYS (1) and (2) remain as proposed.

(3) A "day" is defined as the majority of a 24-hour calendar period in which the child is with or under the control of a parent. This assumes there is a correlation between time spent and resources expended for the care of the child. For purposes of this chapter, and unless otherwise agreed by the parents or specifically found by the court, the calendar period begins at midnight of the first day and ends at midnight of the second day. When the child is in the temporary care of a third party, such as in school or a day care facility, the parent who is the primary contact for the third party is the parent who has control of the child for the period of third-party care. If both parents are primary contacts for a third party, or if the parents are otherwise unable to agree on the total number of days for each parent, the number of disputed days may be totaled and divided equally between the parents.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

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

37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

(1) and (2) remain as proposed.

(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:

(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability. ~~If a parent is self-employed, a minimum of three years of profit and loss statements and/or income tax returns for both the individual parent and the business entity are required to consider the average of the parent's income for entry to the child support calculation~~ If a parent has been self-employed for three years or less, the profit and loss statements and income tax returns of the individual parent and the business entity for each of those years are required so that the average of the parent's self-employment income can be considered in the child support calculation. If the parent has been self-

employed for more than three years, a minimum of the most recent three years' profit and loss statements and tax returns are required; or

(b) remains as proposed.

(4) Nothing in this rule shall be construed to require the use of any particular method of determining annual income if it does not accurately reflect a parent's ~~income~~ resources available for child support.

(5) remains as proposed.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

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

COMMENT #1: Regarding New Rule I [37.62.105] a commenter expressed the belief that child support should be calculated on "cash flow" rather than on income for individuals as well as those who are self-employed. The commenter argued that not only should the accelerated component of depreciation be added back to business income but the principal payment on business loans should be an allowable deduction from income for child support.

RESPONSE #1: The department finds this suggestion overly complex and burdensome in terms of discovery but also incompatible with a generally accepted definition of cash flow, such as the following:

> Cash flow is "a revenue or expense stream that changes a cash account over a given period. Cash inflows usually arise from one of three activities – financing, operations or investing – although this also occurs as a result of donations or gifts in the case of personal finance. Cash outflows result from expenses or investments. This holds true for both business and personal finance." (www.investopedia.com - downloaded 2/2/12)

Cash flow includes, as inflow, profit from the operation of a business which is considered income for child support but also includes proceeds of business and personal loans which are not considered income. Cash outflow includes such items as loan repayment and payment of business and personal expenses and, generally, only the payment of business and some personal expenses are allowable deductions from income for child support. The commenter argues that the child support guidelines should allow a deduction for repayment of the principal of a business loan but would apparently not include the proceeds of the loan as income available for child support. The department is not persuaded by this argument and believes this treatment is one-sided and primarily benefits the self-employed parent.

COMMENT #2: Regarding New Rule I [37.62.105(1)(b)] two commenters found the provision allowing the consideration of a parent's assets in the support calculation "in

the absence or near absence of income" to be less than helpful. Both stated concerns with defining "a near absence" because the rule does not do so. One objected to limiting the circumstances in which assets may be considered and one preferred that "net worth" be substituted for "assets" in the provision.

RESPONSE #2: The department intended the provision to ensure that a parent with a high standard of living relative to the child but little or no income be required to support the child according to the parent's standard of living. 40-4-204(2)(c), MCA provides for consideration of "the standard of living that the child would have enjoyed had the marriage not been dissolved" in the calculation of child support.
In the absence of income, a high living standard is likely funded by liquid assets, such as cash, or the conversion of assets to cash. Whether the guideline provision uses the "absence or near absence of income" phrase, the "little or no income" phrase, or the phrase suggested by a commenter "… assets may be considered in those cases where it would be inequitable not to do so," a decision based on the facts of the case and the language of the administrative rule must be made at some point and the rules cannot, and should not attempt to provide for every possible scenario.

In addition, the department is not insensitive to the concerns of the commenter wishing to substitute "net worth" for "assets" in the rule. However, net worth is not the same as assets. It is not clear how the guidelines could be applied to net worth. The department suggests adding "net" to the "value of a parent's assets…" which would allow for deduction of an asset-related liability from the gross value of the asset. The department believes that the following provision addresses all the objections of the two commenters and the department will substitute the following for the proposed provision at New Rule I [37.62.105(1)(b)].

"The net value of a parent's assets may be considered for child support where, in a specific case, it would be inappropriate not to do so."

COMMENT #3: Regarding New Rule I [37.62.105(2)(a)] one commenter considers it a mistake to require the inclusion of "capital gain income" in every case. The commenter felt that if such a gain was a one-time occurrence and addressed in the property division in a divorce, that it should not be counted in a child support determination.

RESPONSE #3: The department finds it would be inappropriate not to review all sources of income and supports the inclusion of net capital gains as income for child support. If the net gains have been divided between the parents, obviously, only that portion of the gains owned by each parent will be considered income for that parent in the calculation. The mere fact that the gain is addressed as part of a property division in a divorce does not render the net capital gain something other than income.

Most property distributions involve a division of assets and, as such, do not enter into a calculation based on income. However, when an asset produces income, the

parent's share of that income is available for child support. In light of this commenter's remarks regarding the use of cash flow rather than income (see comment #1) it is useful to point out that the use of cash flow to calculate child support would include not only the part of an investment that is a capital gain but the entire principal amount paid to the parent. For example, the sale of stock for $25,000 may create only a small capital gain – say, $3,000 – but for cash flow purposes, the entire $25,000 would be paid to the parent and would be available for child support.

It is important to remember that net capital gains attributable to a single year or a single event, depending on the amount of the gain and the facts and circumstances of the case, may be used to represent income over more than the single year in which it is received.

COMMENT #4: A commenter objected to the following statement indicating net capital gains may be spread over one or more years, as "nebulous": "If the net gains are attributable to a single event or year, they may be used to represent income over one or more years." The commenter suggested the gains be spread over a fixed period of time, such as a year or 18 months, which period could then be argued by the parties. The commenter also expressed a desire for a provision requiring a second calculation that does not include the one-time income and which takes effect at a specific future point in time so there is an end to the one-time income period.

RESPONSE #4: When establishing or modifying child support orders, the department frequently provides one or more additional child support calculation worksheets when the family's circumstances will change in the near future. Whether a child is emancipating, a job is ending, a student is graduating, or the amount of a capital gain has run its course, an additional worksheet should be provided so that it is unnecessary to return to the court or the department for a modification due to changed circumstances that could have been foreseen when the order was entered or last modified. The department believes that ARM 37.62.140 provides all the authority necessary to provide multiple child support calculations if the situation calls for it.

COMMENT #5: One commenter objected to the inclusion of "severance pay" in the rule for determination of parents' income because it is an outlier and because all child support calculations are assumed to be prospective in nature. Once the severance pay is included, the commenter argues, there is no way short of modification to remove it.

RESPONSE #5: The department would argue that Montana's child support guidelines are more flexible than the commenter suggests. Some circumstances require more than one child support calculation to address a family's situation and, indeed, there are circumstances where a calculation may cover a time period in the past. Severance pay is intended to cushion a layoff or termination and may be the parent's only source from which to pay child support. If necessary, the department suggests preparing one calculation that includes the severance pay and one

calculation that does not. The first calculation would be effective for the time period covered by the severance pay and the second calculation effective when that time period ends. See ARM 37.62.140.

COMMENT #6: One commenter objected to the inclusion of "draws or advances against earnings" in the rule for determining a parent's income because draws and advances are not income for child support. The commenter defined draws and advances as withdrawals from the assets of a business.

RESPONSE #6: The department has always understood the disputed language as applying to wages and salary. The department thanks the commenter for pointing out this unanticipated interpretation and the department will modify the phrase, as follows, so that its meaning is clear "…draws or advances against wages or salary."

COMMENT #7: Regarding New Rule II [37.62.124(3)] while this commenter agrees with the department's expansion of the definition of "day," the commenter objects to limiting what the parents may agree to regarding the definition of "day," and feels the language should read "and unless otherwise agreed or the court makes specific findings." This commenter further indicates a similar change should be incorporated in (3) of this rule.

RESPONSE #7: The department agrees the district court always has equitable powers to make specific findings related to variations from the guidelines, and has amended the language in New Rule II [37.62.124(3)] accordingly.

COMMENT #8: One commenter stated approval of the distinction between "line item presumptions" and the "bottom line presumption" in the proposed changes to ARM 37.62.108, but would add an additional sentence to the provision, as follows. "Line item presumptions may be rebutted by findings supported by the greater weight of the evidence and are not subject to specific findings required by 40-4-202(3)(b) MCA."

RESPONSE #8: 40-4-202, MCA does not include a paragraph (3)(b). By the context of the comment, the department believes that 40-4-204(3)(b), MCA is the intended citation. Without judging the merits of the commenter's suggested provision, the department believes it is without authority to bind Montana's district courts in the manner proposed. The department suggests that the Montana Legislature is the proper forum for such an amendment.

COMMENT #9: One commenter found the proposed changes to ARM 37.62.102(2) helpful.

RESPONSE #9: The department appreciates the comment.

COMMENT #10: One commenter felt that reversion clauses referred to in ARM 37.62.102(6) have inherent problems because the parties may dispute the

underlying reversion and without a factual dispute, the changes will not be reflected in the court file.

RESPONSE #10: The department agrees that parties may have a dispute as to the underlying facts surrounding a reversion, but that should not be a barrier to the use of such clauses. Further, certain reversions can be addressed in such a manner as to prevent dispute, such as agreement and recitation in the order as to a date of emancipation of a child. Files of the department would reflect a reversion in child support collections when there is no dispute. As a result, this rule will be adopted as proposed.

COMMENT #11: One commenter, commenting to ARM 37.62.102(7) suggested a more general example might be a statement "that the income reflected on tax returns may not accurately reflect the spendable cash available for supporting the family, including the child."

RESPONSE #11: The current guidelines already provide that "Income for child support may differ from a determination of income for tax purposes" at ARM 37.62.108(5). The department believes that "income" rather than "spendable cash" is the proper terminology for the provision.

COMMENT #12: Two commenters objected to the provision in ARM 37.62.108(3)(a) on the basis that it does not address a parent's business in existence less than three years. One commenter also suggested that "if available" be added following the requirement for three years of financial statements and tax returns.

RESPONSE #12: Concerned that "if available" gives the wrong impression regarding the necessity of providing the information, the department has amended (3)(a) to address the objections.

COMMENT #13: Two commenters addressed the rule at ARM 37.62.108(4) which is a new statement informing users that no particular method of determining income is required if it does not reflect a parent's income for child support. One commenter objected to use of the word "income" and preferred the word "resources" to describe that which the parent has available for child support. The other commenter pledged wholehearted support for this new provision.

RESPONSE #13: The department agrees that the broader term, "resources," should be used in this subsection of the rule and has amended the rule accordingly.

COMMENT #14: Two commenters expressed concern that the guidelines in ARM 37.62.111(1)(b) do not allow for the imputed cost of child care when income is imputed to a parent.

RESPONSE #14: Although this particular provision of the child support guidelines is not proposed to change, the question is one that comes up frequently and the department appreciates the opportunity to address it. If a child care expense is

entered on the calculation worksheet for the residential parent, the nonresidential parent will pay a portion of the expense and this will normally result in a higher amount of support due. A higher amount is appropriate if the child care is an actual expense but if not, it is the position of the department that the child support is artificially higher. If and when the residential parent is forced to pay a child care expense in order to work outside the home, a modification of the child support order should be considered to accommodate the new expense in the calculation and adjust the amount owing, if necessary.

The 1998 amendments to the child support guidelines introduced the policy that the only deductions allowed from imputed income are for federal and state income tax and social security contributions. Furthermore, imputed income is not to be used in the calculation of tax credits. This is true whether income is imputed to the custodial or the noncustodial parent. Neither parent is allowed, under the guidelines, to reduce income of any kind with imputed child care expenses.

COMMENT #15: Regarding ARM 37.62.134, one commenter expressed dismay at the amount of effort required to determine the number of days a child spends with each parent during a year which is a requirement to completing a child support calculation. The effect of a given number of days on the support calculation is also very complex according to this commenter.

RESPONSE #15: The department is well aware of the complexity surrounding the number of days a child spends with each parent during the year. The department has considered assigning a child to a range of days, such as 111 to 150 but, unfortunately, cliffs or ledges in the child support obligations are the result. A cliff or ledge occurs when a small change in the number of days for the parent results in a big change in the amount of child support. Suggestions regarding an improved method for addressing the amount of time the child spends with each parent are welcomed by the department at any time.

COMMENT #16: Regarding ARM 37.62.134(2)(a), a commenter pointed out that "It is not fair that Mother, to make it possible for Father to increase his earnings, can go out of her way to take the children 2 days per week during their school year and pay all the associated expenses, and not receive any credit for those expenses. Therefore I believe the artificial number "110 days" should be stricken and the amount should be proportional to the number of days Mother has the children compared to the number of days Father has the children."

RESPONSE #16: The department proposed this specific change to the guidelines in 2006 for the same reason. Public comments, many from family law attorneys, were almost entirely negative regarding the change and the department decided not to pursue it.

COMMENT #17: A department employee objected to the repeal of ARM 37.62.146 on the grounds that it is detrimental to a child with a prior determined amount of child support.

RESPONSE #17: The department finds the suggestion fails to consider the statutory requirement to consider all the children to whom support is owed by a parent without regard to when a child was born. In the absence of this rule, a parent's obligation for other dependent children will be considered in accordance with statute, whether establishing or modifying a support order.

COMMENT #18: One commenter requested the rules provide for placing child support liens against livestock.

RESPONSE #18: The department finds that this suggestion relates to situations which are not appropriately addressed in these rules. The department likewise notes that lien statutes and child support statutes adequately provide for such action when appropriate.

7. The adoption, amendment, and repeal of these rules are effective July 1, 2012.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 2, 2012

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

In the matter of the amendment of ARM 37.80.101, pertaining to child care policy manual revisions	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 25, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-570 pertaining to the proposed amendment of the above-stated rule at page 2489 of the 2011 Montana Administrative Register, Issue Number 22. On January 26, 2012, the department published the notice of amendment at page 195 of the 2012 Montana Administrative Register, Issue Number 2.

2. This notice of correction is being filed to correct a typographical error made when typing the year in the effective date of the Montana Child Care Manual. The correct effective date is January 27, 2012. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (12) remain as amended.

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

(a) remains as amended.

(b) the Montana Child Care Manual in effect on January 27, ~~2011~~ 2012. The Montana Child Care Manual, dated January 27, ~~2011~~ 2012, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2012.

/s/ Frank X. Clinch
Rule Reviewer

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

Certified to the Secretary of State April 2, 2012.

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

In the matter of the amendment of ARM 37.82.701, 37.86.1701, 37.86.1705 and 37.86.1706 pertaining to plan first 1115 waiver implementation	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 9, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-573 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 298 of the 2012 Montana Administrative Register, Issue Number 3.

2. The department has amended ARM 37.86.1701, 37.86.1705, and 37.86.1706 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:

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) individuals under age 19 who currently reside in Montana and are receiving foster care, guardianship, or adoption assistance under Title IV-E of the Social Security Act, whether or not such assistance originated in Montana. Eligibility requirements for Title IV-E foster care and adoption assistance are found in ARM 37.50.101, 37.50.105, 37.50.106, and 45 CFR part 233.

(b) through (3) remain as proposed.

AUTH: 53-4-212, 53-4-1105, 53-6-113, MCA
IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

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: Several commenters voiced their concerns regarding the costs of unintended pregnancies. They explained that the cost of an unplanned pregnancy to Montana Medicaid is $12,257 whereas the cost of providing family planning services and contraceptives is $272.24. They said that 35% of Montana births are covered by Medicaid. They also explained the federal government participates in the Plan First waiver funding further reducing expenses to Montanans.

RESPONSE #1: The department agrees that there will be cost savings as a result of these rule amendments.

COMMENT #2: Several commenters expressed their frustration that the 2011 Legislature eliminated state funding of Montana's family planning clinics.

RESPONSE #2: The comments are beyond the scope of the proposed rule amendments. The commenters are encouraged to contact their senators and representatives.

COMMENT #3: One commenter explained that unintended pregnancies lead to less than optimum outcomes which include: accessing prenatal care later, higher risk pregnancies and less healthy newborns, less breastfeeding, more need for foster care, more single motherhood, and children being born into lives of poverty and lack of opportunity for upward mobility and success.

RESPONSE #3: The department is driven to optimize the health of Montanans and agrees that Montanans will be healthier as a result of these rule amendments.

COMMENT #4: One commenter explained that 49% of all pregnancies are unintended and about half of these pregnancies end in abortion. Preventing unintended pregnancies will reduce the number of abortions.

RESPONSE #4: The department agrees that reducing the number of unintended pregnancies should result in fewer abortions.

COMMENT #5: The Associate Area Director, Office of Health Care Programs for the Billings Area Indian Health Service commented that Plan First will be beneficial to their population.

RESPONSE #5: The department agrees that these rule amendments will be beneficial to all Montanans including Montanans that are Native Americans.

COMMENT #6: The Department of Public Health and Human Services, Health Resources Division commented that the effective date of these rule amendments should be moved from February 1, 2012 to May 1, 2012 because the approval date of the 1115 Plan First waiver and the enhancements to the claims processing system were not as prompt as anticipated.

RESPONSE #6: The department agrees that the effective date of these rule amendments should be May 1, 2012.

COMMENT #7: The Department of Public Health and Human Services, Child and Family Services Division is requesting that ARM 37.82.701(1)(a) be amended by adding the word "guardianship" to the list of groups covered under Medicaid. This request is made due to a change in Title IV-E of the Federal Social Security Act that makes these children in Title IV-E guardianships categorically eligible for Medicaid

(just as children in foster care and subsidized adoptions have been in the past). The citation to this federal law is: section 473(b)(3)(C) of the Social Security Act.

RESPONSE #7: The department agrees and will make the rule amendment as requested.

5. These rule amendments will be effective May 1, 2012.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 2, 2012

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.101, 44.3.1701, 44.3.1703, 44.3.1714, 44.3.1720, 44.3.2010, 44.3.2015, 44.3.2103, 44.3.2110, 44.3.2111, 44.3.2113, 44.3.2402, 44.3.2403, 44.3.2501, 44.3.2505, the amendment and transfer of 44.9.201 through 44.9.203, 44.9.303, 44.9.306, 44.9.307, 44.9.310 through 44.9.312, and 44.9.401 through 44.9.404, the repeal of 44.3.103, 44.3.2305, 44.3.2401, 44.9.101 through 44.9.103, 44.9.301, 44.9.302, 44.9.304, 44.9.305, 44.9.309, 44.9.314, 44.9.315, and 44.9.405, and the transfer of ARM 44.9.204, pertaining to elections	))	NOTICE OF AMENDMENT, AMENDMENT AND TRANSFER, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On January 12, 2012, the Secretary of State published MAR Notice No. 44-2-180 pertaining to the public hearing on the proposed amendment, amendment and transfer, repeal, and transfer of the above-stated rules at page 52 of the 2012 Montana Administrative Register, Issue Number 1.

2. No public comment or testimony was received.

3. The Secretary of State has amended the following rules as proposed: ARM 44.3.101, 44.3.1701, 44.3.1703, 44.3.1720, 44.3.2010, 44.3.2015, 44.3.2103, 44.3.2110, 44.3.2113, 44.3.2501, and 44.3.2505.

4. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.3.1714 HANDLING VOTING MACHINE ERROR DURING COUNT

(1) through (3) remain as proposed.

(a) if no other tested voting machine is available, votes cast on paper ballots must be counted manually in accordance with 13-15-206, MCA~~:~~; and

(b) remains as proposed.

AUTH: 13-15-206, 13-17-211, MCA
IMP: 13-15-209, MCA

The Secretary of State made the change to correct a typographical error in the proposal notice by substituting a semicolon for a colon.

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1) An individual who provides sufficient identification specified in ARM 44.3.219~~0~~2, but whose name does not appear on the precinct register, shall be permitted to:

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

(b) through (3) remain as proposed.

AUTH: 13-13-603, MCA
IMP: 13-13-114, MCA

The Secretary of State made the change to correct a typographical error in the proposal notice.

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER BALLOTS (1) remains as proposed.

(a) If a majority of the ~~counting~~ designated board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the ~~counting~~ designated board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) remains as proposed.

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

The Secretary of State changed "counting" board to "designated" board in (1)(a) and (1)(b) to conform to the amendment to (1) because the board may be either a counting board or a recount board.

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER BALLOTS (1) remains as proposed.

(a) If a majority of the ~~counting~~ designated board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the ~~counting~~ designated board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) remains as proposed.

(3) remains the same.

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

The Secretary of State changed "counting" board to "designated" board in (1)(a) and (1)(b) to conform to the amendment to (1) because the board may be either a counting board or a recount board.

5. The Secretary of State has amended and transferred the following rules as proposed: ARM 44.9.201 (44.3.2701), 44.9.203 (44.3.2703), 44.9.306 (44.3.2710), 44.9.307 (44.3.2711), 44.9.310 (44.3.2714), 44.9.311 (44.3.2715), 44.9.401 (44.3.2720), 44.9.402 (44.3.2721), 44.9.403 (44.3.2722), and 44.9.404 (44.3.2723).

6. The Secretary of State has amended and transferred the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.9.202 (44.3.2702) PLAN SPECIFICATIONS (1) The ~~written~~ plan for the conduct of an election or elections held on the same election day must include:

(a) through (g) remain the same.

(h) remains as proposed.

(i) a written timetable for the conduct of the election prepared in accordance with the specifications set forth in ARM ~~44.9.203~~ 44.3.2703 below;

(j) remains the same.

(i) returned as undeliverable (e.g.~~,~~ "return postage guaranteed"); and

(ii) returns (e.g.~~,~~ elector to apply own postage or postage pre-paid, how);

(k) and (l) remain the same.

(m) remains as proposed.

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

The Secretary of State eliminated the word "written" in (1) to conform to the change in the rule title and made the change to (1)(i) to update the ARM reference to the transferred ARM number. The addition of a comma in (1)(j)(i) and (1)(j)(ii) is to correct a typographical error.

44.9.303 (44.3.2707) VOTING BY NONREGISTERED ELIGIBLE ELECTORS (1) and (2) remain the same.

(a) voting in person at that time, provided the ballots are available, and in the manner provided in ~~ARM 44.9.301 and 44.9.302 above~~ 13-19-304, MCA; or

(b) through (3) remain the same.

(a) remains as proposed.

(b) remains the same.

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

The Secretary of State substituted the statutory reference and eliminated the ARM references because the two referenced rules are now repealed.

44.9.312 (44.3.2716) SIGNATURE VERIFICATION PROCEDURES

(1) remains the same.

(a) arrangements shall be made by the school district clerk (election administrator) for the transport of ballots to and from the county election administrator for signature verification in compliance with ARM ~~44.9.309 and 44.9.310~~ 44.3.2714;

(b) and (c) remain as proposed.

(d) remains the same.

(e) remains as proposed.

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

(g) through (3) remain the same.

(4) remains as proposed.

AUTH: 13-19-105, MCA
IMP: 13-19-304, 13-19-309, 13-19-312, MCA

The Secretary of State made the change to update the ARM reference in (1)(a) to the transferred ARM number and to delete the ARM reference in (1)(f) because ARM 44.9.313 was repealed in 2010 making the reference obsolete.

7. The Secretary of State has repealed the following rules as proposed: ARM 44.3.103, 44.3.2305, 44.3.2401, 44.9.101 through 44.9.103, 44.9.301, 44.9.302, 44.9.304, 44.9.305, 44.9.309, 44.9.314, 44.9.315, and 44.9.405.

8. The Secretary of State has transferred the following rule as proposed: ARM 44.9.204 (44.3.2704).

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of March, 2012.

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 December 31, 2011. This table includes those rules adopted during the period January 1, 2012, through March 31, 2012, 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 December 31, 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 2011/2012 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.

ADMINISTRATION, Department of, Title 2

I	Renewal Fees for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators, p. 1853, 2392
I-IV	Financial Responsibility of Mortgage Loan Originators and Control Persons - Ultimate Equity Owners of Mortgage Entities, p. 2108, 183
I-IX	Bank Debt Cancellation Contracts - Debt Suspension Agreements, p. 1430, 2801
I-IX	Credit Union Debt Cancellation Contract - Debt Suspension Agreements, p. 1842, 2816
2.21.901	and other rules - Disability and Maternity Leave Policy, p. 2101, 2513
2.21.6401	and other rules - Performance Management and Evaluation, p. 2105, 2514
2.59.104	Semiannual Assessment for Banks, p. 460

(Public Employees' Retirement Board)

2.43.1306	Actuarial Rates, Assumptions, and Methods for Valuation Purposes - Actuarial Equivalence for the Board-Administered Defined Benefit Retirement Systems, p. 2196, 2800
2.43.2608	and other rules - Return of PERS Retirees to PERS-Covered Employment, p. 1839, 2515
2.43.3502	and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 2332, 2799

(Board of Public Education)

10.54.3610 and other rules - Content Standards for English Language Arts and Literacy - General Standards - Communication Arts Content Standards and Performance Descriptors, p. 1868, 2520

10.54.4010 and other rules - Content Standards for Mathematics - Mathematics Content Standards and Performance Descriptors, p. 1931, 2522

10.57.217 and other rules - Educator/Specialist Discipline, p. 244

10.57.412 and other rule - Areas of Specialized Competency, p. 241

10.55.909 Student Records, p. 2461, 305

(Montana Arts Council)

10.111.701 and other rules - Cultural and Aesthetic Project Grant Proposals, p. 535

FISH, WILDLIFE AND PARKS, Department of, Title 12

12.9.602 and other rules - Upland Game Bird Release and Habitat Enhancement Programs, p. 463

(Fish, Wildlife and Parks Commission)

12.6.1112 and other rule - Falconry, p. 2467, 501

12.6.1401 and other rules - Raptor Propagation, p. 2463, 500

12.11.610 and other rules - Recreational Use Rules on the Bitterroot River, Blackfoot River, and Clark Fork River, p. 767, 2524

12.11.2308 and other rules - No Wake Zones Surrounding Commercial Marinas, p. 253

ENVIRONMENTAL QUALITY, Department of, Title 17

17.36.103 and other rules - Application Contents - Review Procedures - Compliance With Local Requirements - Certificate of Approval - Certification of Local Department or Board of Health - Sewage Systems, p. 1577, 2278

17.40.201 and other rules - Definitions - Classification of Systems - Certification of Operators - Examinations - Certified Operator in Charge of System--Exceptions, p. 257

17.50.203 Completion of Shielding, p. 1442, 2142

17.56.101 and other rules - Definitions - Cleanup Plan - Release Categorization, p. 1775, 2279

17.56.308 and other rules - Underground Storage Tanks - Operating Tags - Delivery Prohibition, p. 1048, 2139

17.56.402 Petroleum UST Systems, p. 264

17.74.301 and other rules - Incorporation by Reference - OSHA Preclusion - Asbestos Project Management, p. 493, 718, 2264

(Board of Environmental Review)

17.8.801 and other rules - Air Quality - Definitions - Ambient Air Increments - Major Stationary Sources - Source Impact Analysis - Source Information - Sources Impacting Federal Class I Areas - Definitions - When Air Quality Permit Required - Baseline for Determining Credit for Emissions - Air Quality Offsets, p. 799, 2134

17.24.301 and other rules - Definitions - Format - Data Collection - 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 - Other Treatment Facilities - Permanent Impoundments - Flood Control Impoundments - Ground Water Monitoring - Surface Water Monitoring - Redistribution and Stockpiling of Soil - Establishment of Vegetation - Soil Amendments - Management Techniques - 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 - Department's Obligations Regarding the Applicant/Violator System - Department Eligibility Review - Questions About and Challenges to Ownership or Control Findings - Information Requirements for Permittees - Permit Requirement-Short Form - Coal Conservation, p. 2726

17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89, 1244, 5

17.30.1201 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Effluent Limitations and Standards - Standards of Performance - Treatment Requirements, p. 771, 2131

17.38.208 and other rules - Treatment Requirements - Control Tests - Testing and Sampling Records and Reporting Requirements - Definitions - Incorporation by Reference - Cross-Connections: Regulatory Requirements - Voluntary Cross-Connection Control Programs: Application Requirements - Standards and Requirements for Cross-Connection Control, p. 267

TRANSPORTATION, Department of, Title 18

I-II Fuel Tax Refund for Agricultural Uses, p. 330

18.6.202 and other rules - Outdoor Advertising, p. 2470, 185

18.7.301 and other rules - Motorist Information Signs, p. 2393

CORRECTIONS, Department of, Title 20

I-V Education of Exonerated Persons, p. 334
20.7.506 and other rules - Siting - Establishment - Expansion of Prerelease Centers, p. 1339, 2030, 2395

JUSTICE, Department of, Title 23

23.6.105 and other rules - Removal of a Member of the Tow Truck Complaint Resolution Committee - Removing References to the Public Service Commission and Satellite Operations - Clarifying Requirements Regarding Insurance - Requirements for Safety Certification of Tow Trucks - Extending the Time Period for Safety Certification of Tow Trucks, p. 1783, 2396
23.15.306 Mental Health Therapists, p. 1585, 2143

(Board of Crime Control)
23.14.204 and other rules - Duties and Functions of the Board of Crime Control, p. 275, 615

(Gambling Control Division)
23.16.117 and other rules - Change in Business Entity Type - Transfer of Interest to a New Owner - Change of Liquor License Type - Change of Location for a Licensed Manufacturer, Distributor, or Route Operator - Card Game Tournaments - Licensure of Sports Tab Sponsors - Video Gambling Machine Bill Acceptors - Software Specifications for Video Keno Machines, p. 2205, 2628
23.16.1702 and other rules - Sports Pool Card Interval Payouts - Authorized Sports Pools - Design and Conduct of Sports Tab Game Payouts - Sports Tab Game Prizes, p. 7, 402

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Registration for Out-of-State Volunteer Professionals, p. 2335, 79
24.7.301 and other rules - Board of Labor Appeals - Unemployment Insurance, p. 195, 573
24.11.462 and other rule - Unemployment Insurance, p. 473
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 2484, 306
24.29.601 and other rules - Workers' Compensation Insurance Coverage Under Compensation Plan No. 1 and Plan No. 2, p. 283, 403

24.33.121 Construction Contractor Registration Fees - Evidence of Compliance With Laws - Construction Contractor Registration Requirements, p. 339

(Board of Alternative Health Care)

24.111.409 Inactive Status - Naturopathic Physician National Substance Formulary List - Direct-Entry Midwife Apprenticeship Requirements - Naturopathic Physician Continuing Education Requirements - Midwives Continuing Education Requirements, p. 345

(Board of Architects and Landscape Architects)

24.114.501 and other rules - Architect Examination - Landscape Architect Applications - Education and Experience, p. 1445, 2397

(Board of Barbers and Cosmetologists)

24.121.301 and other rules - Definitions - General Requirements - Licensing - School Requirements - Teacher-Training - Salon Preparation Storage and Handling - Continuing Education - Unprofessional Conduct, p. 2591, 616

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Interns and Preceptors - Applications for Certification - Renewals - Continuing Education, p. 2212, 503

(Board of Dentistry)

24.138.509 and other rules - Dental Hygiene Limited Access Permit - Medical Assistance Program Relapse - Dentist Administration of Anesthesia - Anesthesia Definitions - Committee - Permits, p. 1791, 2629

(State Electrical Board)

24.141.405 and other rule - Fee Schedule - Nonroutine Applications, p. 1347, 1588, 2398

(Board of Funeral Service)

24.147.401 Fee Schedule, p. 351

(Board of Hearing Aid Dispenser)

24.150.301 and other rules - Definitions - Fees - Record Retention - Examination - Transactional Document Requirements, p. 294

(Board of Medical Examiners)

24.156.1401 and other rules - Acupuncturist Licensure - Unprofessional Conduct - Physician Assistant Supervision - Chart Review - Acupuncturist Discipline Reporting - Continuing Education - Physician Assistant Performing Radiologic Procedures - Acupuncture School Approval, p. 1591, 404, 504

(Board of Nursing)

24.159.301 and other rules - Definitions - Fees - Faculty for Practical Nursing Programs - Medication Aides - Prohibited Intravenous Therapies - Licensure by Examination - Medication Aides - Nurse Reexamination, p. 1350, 2144

24.159.2001 and other rules - Nurses' Assistance Program, p. 2338

(Board of Outfitters)

24.171.401 and other rules - Fees - Outfitter Records - Safety Provisions - Inactive License - Guide License - Determination of Client Hunter Use - Renewals - Web Site Posting - Successorship, p. 1265, 2149

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Wholesale Drug Distributor Licensing - Registered Pharmacist Continuing Education - Use of Contingency Kits, Definition - Information Required for Submission - Electronic Format Required for the Transmission of Information - Requirements for Submitting Prescription Registry Information - Failure to Report Prescription Information - Registry Information Review - Unsolicited Patient Profiles - Access to Prescription Drug Registry Information - Registry Information Retention - Advisory Group - Prescription Drug Registry Fee - Release of Prescription Drug Registry Information to Other Entities - Interstate Exchange of Registry Information, p. 2606, 506

24.174.301 and other rules - Definitions - Dangerous Drug Fee Schedule - Administration of Vaccines by Pharmacists - Transmission of Prescriptions - Identification of Pharmacist-in-Charge - Minimum Information Required for Licensure - Telepharmacy Operations - Acceptable Cancer Drugs - Emergency Prescription Refills - Remote Medication Order Processing Services - Schedule I, II, III, IV, and V Dangerous Drugs - Board-Established Medical Assistance Program - Quality Improvement Program - Limited Service Pharmacy - Class IV Facility, p. 2761

(Board of Plumbers)

24.180.301 and other rules - Definitions - Journeyman Must Work in the Employ of Master - Master Plumbers Registration of Business Name - Nonroutine Applications, p. 476

(Board of Private Security Patrol Officers and Investigators)

24.182.401 and other rules - Fee Schedule - Training Courses Standards - Curriculum, p. 1603, 2537

(Board of Psychologists)

24.189.401 Fee Schedule - Nonresident Psychological Services - Application Procedures - Required Supervised Experience - Work Samples- Examination - Professional Responsibility - Temporary Permit, p. 354

(Board of Professional Engineers and Professional Land Surveyors)

24.183.404 and other rules - Fee Schedule - Certificate of Authorization - Application - Grant and Issue Licenses - Uniform Standards, p. 1449, 80

(Board of Public Accountants)

24.201.501 and other rules - Education Requirements - Out-of-State Applicants - Retired Status - Profession Monitoring - Renewal and Continuing Education - Advisory Committee - Continuing Education Reporting for Permit to Practice - Reinstatement, p. 543

(Board of Real Estate Appraisers)

24.101.413 and other rules - Renewal Dates - Requirements - Fees - Definitions - Appraisal Management, p. 1610, 2401

24.207.402 Adoption of USPAP by Reference, p. 2487

24.207.505 and other rule - Qualifying Education Requirements for Licensed Real Estate Appraisers - Residential Certification, p. 1362, 2400

(Board of Realty Regulation)

24.210.301 and other rules - Definitions - Fee Schedule - Trust Account Requirements - Internet Advertising Rules - Brokers - Salespersons - Property Management - Public Participation - Course Provider, p. 556

24.210.667 and other rule - Continuing Real Estate Education - Continuing Property Management Education, p. 815, 2280

(Board of Social Work Examiners and Professional Counselors)

I-XII Qualification of Social Workers and Professional Counselors to Perform Psychological Testing, Evaluation, and Assessment, p. 533, 2153

24.101.413 and other rules - Renewal Dates - Requirements - Licensure - Regulation of Marriage and Family Therapists, p. 550, 2158

LIVESTOCK, Department of, Title 32

32.2.404 and other rules - Department Livestock Permit Fees - Miscellaneous Fees - Definitions - Bison Unlawfully Estrayed - Public-Owned Migratory Bison From Herds Affected With a Dangerous Disease - Use of Brucella Abortus Vaccine - Domestic Bison Permit Before Removal From County or State - Livestock Market Releases, p. 1464, 2541

32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Official Trichomoniasis Testing - Certification Requirement - Reporting Trichomoniasis - Movement of Animals From Test Positive Herds - Epizootic Areas - Epidemiological Investigations - Exposed Herd Notification - Common Grazing - Grazing Associations - Penalties, p. 1470, 2632

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Horse Creek Controlled Groundwater Area, p. 2218, 117
36.17.601 Application Procedures - Loan Requirements of the Renewable Resources Grant and Loan Program, p. 365

(Board of Land Commissioners)
36.25.110 Rental Rate for State Grazing Leases, p. 1479, 2641
36.25.801 and other rules - Land Banking Program, p. 1618, 2414
36.25.1011 and other rules - Establishment of Lease Rental Rates, Lease Assignments, and Sale Procedures for State Cabinsites, p. 2347, 82

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37.5.304 and other rules - Medicaid Credible Allegation of Fraud, p. 2222, 2823
37.12.301 and other rules - Licensure of Laboratories Conducting Analyses of Public Water Supplies, p. 1059, 2286
37.62.102 and other rules - Montana Child Support Guidelines, p. 2356
37.70.406 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1978, 2419
37.78.102 and other rules - TANF Policy Revisions, p. 2246, 2827
37.80.101 and other rule - Permissive Licensing Facilities Exclusion From Subsidy Child Care Program, p. 1815, 2295
37.80.101 and other rules - Child Care Policy Manual Revisions, p. 2489, 195
37.81.304 Maximum Big Sky Rx Premium Change, p. 2238, 2826
37.82.701 and other rules - Plan First 1115 Waiver Implementation, p. 298
37.85.206 and other rules - Medicaid Diabetes and Cardiovascular Disease Prevention Services, p. 483
37.86.702 and other rules - Audiology - Hearing Aids, p. 1628, 1976, 2293
37.86.805 and other rules - Durable Medical Equipment - Hearing Aids, p. 2230, 2825
37.86.1101 and other rules - Medicaid Pharmacy Reimbursement, p. 1805, 2416
37.86.2207 EPSDT Services Reimbursement, p. 2227, 2824
37.86.2803 and other rules - Medicaid Inpatient Hospital Services, p. 2241, 2542
37.86.2803 and other rules - Medicaid Inpatient Hospital Services, p. 173, 624
37.86.2907 Medicaid Inpatient Hospital Services, p. 1625, 2292
37.86.4201 and other rules - Dialysis Clinics, p. 1811, 2294
37.87.1303 and other rules - Home and Community-Based Services (Waiver) for Youth With Serious Emotional Disturbance, p. 167, 622
37.88.901 and other rule - Mental Health Services for Adults Program of Assertive Community Treatment (PACT), p. 2234, 617
37.95.102 and other rules - Infant Care, p. 600
37.104.101 and other rule - Emergency Medical Services (EMS), p. 2382, 187
37.107.117 Montana Marijuana Program, p. 595
37.111.101 Public Sleeping Accommodations, p. 375

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Office of, Title 44