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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICE SECTION

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361, 17.30.1362 pertaining to concentrated animal feeding operations, general permits, additional conditions applicable to specific categories of MPDES permits, modification or revocation and reissuance of permits, minor modification of permits and adoption of New Rule I pertaining to technical standards for concentrated animal feeding operation	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (WATER QUALITY)

TO: All Concerned Persons

1. On January 11, 2013, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., December 31, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) ~~"Concentrated animal feeding operation (CAFO)" means an animal feeding operation which meets the criteria in 40 CFR Part 122.23, or which the department designates under (3). CAFOs that are required to obtain a permit shall either apply for an individual MPDES permit or submit an application for coverage under an MPDES CAFO general permit. A permit application for an individual permit or application for coverage under a general permit must include the information specified in ARM 17.30.1322(6)(a) through (f) and 40 CFR 122.21(i)(l), including a topographic map. If the department has not made a general permit available to the CAFO, the CAFO owner or operator shall submit an application for an individual permit to the department.~~ Concentrated animal feeding operations (CAFOs), as defined in 75-5-801, MCA, or designated in accordance with (5) through (7), are point sources subject to the MPDES requirements as provided in this rule. Once an

animal feeding operation is defined as a CAFO for at least one type of animal, the MPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(2) ~~Concentrated animal feeding operations are point sources subject to the MPDES permit program.~~ A CAFO must not discharge a pollutant to state surface waters unless the discharge is authorized under an MPDES permit. In order to obtain authorization under an MPDES permit, the CAFO owner or operator must either apply for an individual permit or submit a notice of intent for coverage under a general permit.

(3) An application for an individual permit must include the information specified in ARM 17.30.1322(9). A notice of intent to be covered under a general permit must include the information specified in ARM 17.30.1322(9) and 40 CFR 122.28(b).

(4) CAFOs that meet the requirements of 40 CFR Part 412 must be authorized by the department under a general permit, unless the department discovers site-specific information that indicates a general permit is not sufficiently protective of water quality during its review under (8). If the department determines that a general permit is not sufficient to protect water quality, the department shall require an individual permit for the CAFO.

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

(8) The department shall review notices of intent submitted by CAFO owners for coverage under a general permit according to the procedures in 40 CFR 122.23(h)(1).

(9) The discharge of manure, litter, or process wastewater from a CAFO's land application area to state surface waters is subject to MPDES requirements, except where the discharge is an agricultural storm water discharge, as defined in 40 CFR 122.23(e).

(10) The board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620:

(a) 40 CFR 122.23 (except 40 CFR 122.23(d), (f), (g), (i), and (j)) (July 1, 2012), which specifies permit application requirements, definitions, and procedures for issuing individual or general permits to CAFOs.

(b) 40 CFR 122.28(b)(2)(vii) (July 1, 2012), which sets forth informational requirements for notices of intent submitted by CAFOs.

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

REASON: The board is proposing to amend ARM 17.30.1330 in order to incorporate by reference EPA's revisions to the application and permit requirements for concentrated animal feeding operations (CAFOs) that were promulgated by the agency in 2008. The board is proposing to incorporate the regulations, rather than adopt the entire text of the regulations, in order to be consistent with the requirements of 75-5-802, MCA. That statute instructs the board to adopt by reference the CAFO permitting requirements and definitions contained in 40 CFR

122.23 and 40 CFR Part 412. In accordance with this directive, the board is amending ARM 17.30.1330 to incorporate EPA's most recent revisions to the CAFO application requirements in 40 CFR 122.23 and 40 CFR Part 412. The board's specific reasons for the proposed amendments to various sections of the rule are given below.

The board is amending ARM 17.30.1330(1) to eliminate language that may be inconsistent with the requirements in 40 CFR 122.23 and add new language clarifying the scope of the CAFO permitting requirements. The proposed language is taken from the text of 40 CFR 122.23(a) and explains the circumstances under which the application requirements in ARM 17.30.1330 will apply. The board is proposing to revise the text of the federal regulation by replacing the federal definition of CAFO cited in 40 CFR 122.23(a) with a citation to the definition of CAFO contained in state statute.

The board is proposing to amend (2) to eliminate language explaining that CAFOs are point sources, since that explanation is included in the proposed amendment to (1). The board is proposing to replace the existing language in (2) with the text of 40 CFR 122.23(d) explaining that a CAFO operator must seek coverage under an MPDES permit if the CAFO discharges pollutants to state surface waters. This amendment is necessary to clarify who must apply for an MPDES permit. The remaining text of 40 CFR 122.23, defining circumstances that would establish when a CAFO proposes to discharge, is not proposed for adoption because that portion has been vacated by the Fifth Circuit. On July 30, 2012, EPA published a final rule revising 40 CFR 122.23(d) and (f) and removing 40 CFR 122.23(g), (i) and (j) in response to National Pork Producers Council v. EPA, 635 F 3d 738, 5th Circuit, 2011.

The board is proposing a new (3) to establish CAFO application requirements for coverage under an individual permit or a general permit. The proposed language is based on the requirements of 40 CFR 122.23(d). This amendment is necessary to specify the informational requirements that apply to notices of intent contained in federal rules and to further specify the informational requirements that apply to both notices of intent and individual permits set forth in ARM 17.30.1322(9).

The board is proposing a new (4) to clarify that, when a CAFO meets the requirements of 40 CFR Part 412, the department must authorize the discharge under a general permit. This amendment is necessary to conform to the legislative directive in 75-5-802, MCA, which requires coverage under a general permit whenever a CAFO meets the requirements of 40 CFR Part 412.

The board is proposing new (8) in conformance with the directive in 75-5-802, MCA, requiring the board to adopt by reference the CAFO permitting requirements in 40 CFR 122.23. The proposed amendment explains that the department shall review notices of intent for coverage under a general permit using the procedures in 40 CFR 122.23(h)(1).

The board is proposing new (9) to explain that discharges to surface waters from a CAFO's land application site are subject to the MPDES requirements, except where the discharge meets the definition of "agricultural storm water discharge," as defined in 40 CFR 122.23(e). This amendment is necessary to notify CAFO owners that land application areas that discharge to surface waters require a permit and also to incorporate the exception to that requirement.

The board is proposing new (10) to specify that a CAFO must apply for a permit whenever the CAFO is required to do so under (2). The proposed amendment is necessary to be consistent with the time frames for submitting an application specified in 40 CFR 122.23(f).

The board is proposing to add new (10) in order to incorporate by reference the federal rules proposed for inclusion in ARM 17.30.1330 that are applicable to permit application requirements for CAFOs. The incorporation by reference of these federal rules is necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

17.30.1341 GENERAL PERMITS (1) through (11) remain the same.

(12) ~~For purposes of this rule, the board hereby adopts and incorporates by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):~~ A concentrated animal feeding operation (CAFO) owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h).

~~(a) 40 CFR 122.28 (July 1, 1991) which sets forth criteria for selecting categories of point sources appropriate for general permitting;~~

~~(b) 40 CFR 124.10(d)(1) (July 1, 1991) which sets forth minimum contents of public notices;~~

~~(c) 40 CFR 122.26(c)(2) (July 1, 1991) which sets forth criteria for determining when a point source is considered a "significant contributor of pollution";~~

~~(d) 16 USC 1132 (wilderness area designations); and~~

~~(e) 16 USC 1274 (wild and scenic river designations).~~

(13) The board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR 122.28 (July 1, 2012), which sets forth criteria for selecting categories of point sources appropriate for general permitting;

(b) 40 CFR 124.10(d)(1) (July 1, 2012), which sets forth minimum contents of public notices; and

(c) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit.

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

REASON: The board is proposing to amend the general permit requirements in ARM 17.30.1341 in order to make them consistent with the equivalent federal requirements set forth in 40 CFR 122.28. 40 CFR 122.23(h) requires that CAFOs seeking coverage under a general permit must submit a notice of intent (NOI) providing the information required in 40 CFR 122.21 (ARM 17.30.1322) and including a nutrient management plan (NMP) that meets the requirements in 40 CFR 122.42(e) and Part 412. 40 CFR 122.23(h) also requires that the department make the NOI and NMP available for public comment in accordance with 40 CFR 124.11 (ARM 17.30.1373) through 124.13 (ARM 17.30.1375), respond to any significant public comments, and, if necessary, require the CAFO to make changes in the NMP.

40 CFR 123.23(h) also requires that, when the department authorizes a CAFO under a general permit, the terms of the NMP shall be incorporated into the general permit and become enforceable under the permit for the CAFO.

The board is proposing to delete the current text of (12)(c), which incorporates by reference 40 CFR 122.26(c)(2) (the process for submitting group application requirements for discharges associated with industrial activity). The federal rule was repealed by EPA. The board is also proposing to delete the current text of (12)(d) and (e), which incorporates by reference 16 USC 1132 (wilderness designations) and 16 USC 1274 (wild and scenic river designations). These federal statutes are not implemented by the department under the MPDES program and they are not a required element of a delegated state's permit program.

The board is proposing to move the remaining incorporations by reference of federal rules currently in (12) and place them in new (13) and update the reference to the current federal regulation. The amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25 and to eliminate incorporations by references that are not necessary.

17.30.1343 ADDITIONAL CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF MPDES PERMITS (1) The following conditions, in addition to those set forth in ARM 17.30.1342, apply to all MPDES permits within the categories specified below:

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

(c) ~~All permits issued to concentrated animal feeding operations (CAFOs), in addition to meeting those requirements set forth in ARM 17.30.1322, 17.30.1330, 17.30.1341, and 17.30.1342 must include the requirements set out in 40 CFR 122.42(e). The design, monitoring, recordkeeping, reporting, and specifications for CAFOs must be prepared in accordance with and comply with the criteria set forth in the technical standards for nutrient management and effluent limit guidelines established in 40 CFR Part 412 and department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations."~~ Any permit issued to a concentrated animal feeding operation (CAFO) must include the requirements specified in 40 CFR 122.42(e). In general, the requirements in that federal regulation include:

(i) a requirement to implement a nutrient management plan that contains best management practices necessary to meet the requirements of 40 CFR 122.42(e)(1) and any applicable effluent limitations in 40 CFR Part 412;

(ii) recordkeeping and reporting requirements;

(iii) requirements relating to the transfer of manure or process wastewater to other persons;

(iv) a requirement to include specific terms in the nutrient management plan and a duty to comply with those terms; and

(v) requirements relating to changes in a nutrient management plan.

~~(3)~~ (2) The board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR 122.44(f) (July 1, 2012), which ~~is a federal agency rule setting~~ sets forth "notification levels" for dischargers of pollutants that may be inserted in a

permit upon a petition from the permittee or upon the initiative of the department;

(b) 40 CFR Part 412 (July 1, 2012), which establishes the effluent limitation guidelines and best management practices for CAFOs; and

(c) ~~department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations," 2005 edition~~ 40 CFR 122.42(e) (July 1, 2012), which establishes additional permit conditions for CAFOs.

~~(4) See ARM 17.30.1303 for additional information about all materials incorporated by reference. All material that is incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

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

REASON: The board is proposing to amend (1)(c) of ARM 17.30.1343 by eliminating references to rules that generally apply to all MPDES permits. Since the purpose of (1)(c) is to establish additional permit conditions that apply only to CAFOs, the inclusion of references to generally applicable MPDES requirements is not necessary.

The board is proposing to replace the existing language in (1)(c) with a requirement that all CAFO permits include the additional permit requirements specified in 40 CFR 122.42(e). Rather than adopt the text of the federal regulation, the board is proposing to incorporate by reference the requirements of 40 CFR 122.42(e) to be consistent with the legislative directive in 75-5-802, MCA. That statute directs the board to incorporate by reference the federal regulations for permitting CAFOs. In general, the additional permit conditions that are proposed for adoption by reference include the following: (1) a requirement to implement a nutrient management plan (NMP) that contains best management practices necessary to meet the requirements of 40 CFR 122.43(e)(1) and any applicable effluent limitations in 40 CFR Part 412; (2) a requirement to create, maintain, and make available to the department certain records; (3) a requirement to maintain a copy of the NMP on-site; (4) a requirement to provide an analysis of manure, litter, or process wastewater prior to transfer to other persons; (5) a requirement to comply with the terms of the NMP; and (6) requirements relating to changes in the NMP.

The board is also proposing to eliminate language requiring CAFOs to comply with department Circular DEQ-9 due to EPA's revisions to the CAFO regulations in 2008, specifically 40 CFR 123.36. This federal rule requires each delegated state to establish technical standards for nutrient management that is consistent with 40 CFR 412.4(c)(2). This technical standard is an effluent limitation which specifies the application rate for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO. The technical standards adopted by the state must include: (1) the requirement to develop a nutrient management plan that is based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface water, and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals; and (2) appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical

standards, including consideration of multiyear phosphorus application, phased implementation of phosphorus-based nutrient management, and other components as determined appropriate by the state. The proposed technical standards are in New Rule I.

The board is also proposing to replace the requirement to comply with Circular DEQ-9 with a requirement to comply with the technical standards given in New Rule I. New Rule I fulfills the requirements of 40 CFR 123.36. Department Circular DEQ-9 was adopted by the board in 2006 prior to promulgation of the 2008 federal CAFO rule, which placed into regulation, in 40 CFR 122.23, 122.42(e), and Part 412, the requirements for nutrient management, best management practices, record keeping, and annual reporting for CAFOs. These provisions of DEQ-9 are no longer necessary. Other requirements of Circular DEQ-9 are neither consistent with, nor required by, 40 CFR 123.36 or 40 CFR 122.42(e).

17.30.1361 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS (1) remains the same.

(2) The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees:

(a) when ~~T~~there are material and substantial alterations or additions to the permitted facility or activity ~~which~~ that occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. ~~(c~~Certain reconstruction activities may cause the new source provisions of ARM 17.30.1340 to be applicable~~).~~;

(b) when ~~T~~the department ~~has received~~ receives new information that was not available at the time of permit issuance. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For MPDES general permits (ARM 17.30.1341) this subsection includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger MPDES permits (ARM 17.30.1340), this subsection includes any significant information derived from effluent testing after issuance of the permit~~.~~;

(c) when ~~T~~the standards or requirements on which the permit was based have been changed by amendment or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) ~~F~~for promulgation of amended standards or requirements, when:

(A) through (C) remain the same.

(ii) ~~F~~for judicial decisions, a court of competent jurisdiction has remanded and stayed board rules or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with ARM 17.30.1365 within 90 days of judicial remand~~.~~;

(d) when ~~T~~the department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an MPDES compliance

schedule be modified to extend beyond an applicable reasonably available remedy. However, in no case may an MPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also ARM 17.30.1362(1)(c) minor modifications);

(e) ~~W~~when the permittee has filed a request for a variance under the federal Clean Water Act, sections 301(c), (g), (h), (i), (k), or 316(a), or for "fundamentally different factors" within the time specified in ARM 17.30.1322 or 40 CFR 125.27(a);

(f) ~~W~~when required to incorporate an applicable federal Clean Water Act section 307(a) toxic effluent standard or prohibition (see ARM 17.30.1344(2));

(g) ~~W~~when required by the "reopener" conditions in a permit, which are established in the permit under ARM 17.30.1344(2) (toxic effluent limitations) or under any pretreatment requirements in the permit;

(h)~~(i)~~ ~~U~~upon request of a permittee who qualifies for effluent limitations on a net basis under ARM 17.30.1345(10)~~;~~ or

~~(ii)~~ when a discharger is no longer eligible for net limitations, as provided in ARM 17.30.1345(12);

(i) ~~A~~as necessary under ARM 17.30.1412 (compliance schedule for development of pretreatment program);

(j) ~~U~~upon failure of the department to notify, as required by section 402(b)(3) of the federal Clean Water Act, another state whose waters may be affected by a discharge from Montana;

(k) ~~W~~when the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c);

(l) ~~T~~to establish a "notification level" as provided in ARM 17.30.1344;

(m) ~~T~~to modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of the federal Clean Water Act for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of the federal Clean Water Act. In no case may the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance;

(n) ~~F~~for small municipal separate storm sewer systems, to include effluent limitations requiring implementation of minimum control measures as specified in ARM 17.30.1111(6) if:

(i) and (ii) remain the same.

(o) ~~T~~to correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions; and

(p) ~~W~~when the discharger has installed the treatment technology considered by the department in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but may not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(q) To incorporate the terms of a concentrated animal feeding operation's (CAFO) nutrient management plan into the terms and conditions of a general permit, when a CAFO obtains coverage under a general permit in accordance with 40 CFR

122.23(h) and 122.28, is not a cause for modification pursuant to the requirements of this rule.

(3) The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) cause exists for termination under ARM 17.30.1363, and the department determines that modification or revocation and reissuance is appropriate; and

(b) the department has received notification (as required in the permit, see ARM 17.30.1362(12)(c)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (ARM 17.30.1360(2)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(4) The board ~~hereby~~ adopts and incorporates ~~herein~~ by reference ~~(see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~ the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O Box 200901, Helena, MT 59620-0901:

(a) 40 CFR Part 133 (July 1, 2012), which ~~is a series of federal agency rules setting~~ sets forth requirements for the level of effluent quality available through the application of secondary (or equivalent) treatment;

(b) sections 301(c), (g), (i), and (k) of the federal Clean Water Act, codified at 33 USC section 1311(c), (g), (i), and (k), which ~~are federal statutory provisions allowing~~ allow for modifying or extending dates for achieving effluent limitations;

(c) section 316(a) of the federal Clean Water Act, codified at 33 USC section 1326, which ~~is a federal statutory provision allowing~~ allows a variance from an applicable effluent limitation based on fundamentally different factors (FDF);

(d) section 402(b)(3) of the federal Clean Water Act, codified at 33 USC section 1342(b)(3), which ~~is a federal statutory provision requiring~~ requires that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge; ~~and~~

(e) 40 CFR 125.3(c) (July 1, 2012), ~~which is a federal agency rule setting~~ sets forth methods of imposing technology-based treatment requirements in permits;

(f) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit; and

(g) 40 CFR 122.28 (July 1, 2012), which sets forth conditions applicable to the issuance of general permits.

~~(f) Copies of the above listed materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

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

REASON: The board is proposing to amend the conditions for modification of a general permit issued to a CAFO in ARM 17.30.1361 in order to make them consistent with the federal regulation at 40 CFR 122.62 and update the date for other incorporations by reference in this rule. 40 CFR 122.62 states that modifications to a CAFO's nutrient management plan (NMP) are not a basis for modification of the general permit if those modifications are made in accordance

with 40 CFR 122.23(h) and 122.28. 40 CFR 122.23(h), incorporated by reference at ARM 17.30.1330, establishes procedures for authorizing a CAFO seeking coverage under a general permit. 40 CFR 122.28, incorporated by reference at ARM 17.30.1341, establishes procedures and conditions for all categories of general permits. In general, these federal regulations specify that, if the changes in a CAFO's NMP are made in accordance with 40 CFR 122.42(e)(6), including public notification, the incorporation of these changes into the CAFO's permit are not a basis for public notice of the general permit.

These amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25. The incorporation by reference of these federal rules is necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

17.30.1362 MINOR MODIFICATIONS OF PERMITS (1) Upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this rule, without following the procedures of ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384. Any permit modification not processed as a minor modification under this rule must be made for cause and with a draft permit (ARM 17.30.1370) and public notice as required in ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384. Minor modifications may only:

(a) through (d) remain the same.

(e)~~(i)~~ change the construction schedule for a discharger ~~which~~ that is a new source. No such change may affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under ARM 17.30.1340;

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

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

~~(g)~~ (h) incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in ARM 17.30.1413 (or a modification thereto that has been approved in accordance with the procedures in ARM 17.30.1426) as enforceable conditions of the POTW's permits~~.~~; or

(i) incorporate changes to the terms of a CAFO's nutrient management plan that have been reviewed and approved in accordance with the requirements of 40 CFR 122.42(e)(6).

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

REASON: The board is proposing to amend the conditions for minor amendments of MPDES permits in ARM 17.30.1362 to make them consistent with 40 CFR 122.63. This new condition states that the terms of a CAFO's NMP may be incorporated into the permit as a minor amendment if the plan has been revised in accordance with the requirements of 40 CFR 122.42(e)(6). This federal rule requires that a CAFO must provide the department with the most current version of the NMP and identify any changes in the NMP. The department must determine if

any changes in the terms of the NMP are substantial according to the criteria of 40 CFR 122.42(e)(6)(iii). If the changes are not substantial, they must be incorporated into the permit and the department must notify the owner or operator of the CAFO to implement the changes and make the changes available to the public. If the changes are substantial according to the criteria of 40 CFR 122.42(e)(6)(iii), the department must notify the public and make the NMP available for public comment in accordance with 40 CFR 124.11 (ARM 17.30.1373) through 124.13 (ARM 17.30.1375), respond to any significant public comments, and require the CAFO to implement the changes. For large CAFOs, changes in the annual calculations of manure, litter, and process wastewater that are made in accordance with 40 CFR 122.42(e)(5)(i)(B) and (5)(ii)(D) are not subject to this process.

These amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25. The incorporation by reference of these federal rules is necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

4. The proposed new rule provides as follows:

NEW RULE I TECHNCIAL STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATION (1) The owner or operator of a CAFO as defined in ARM 17.30.1330 that is subject to the requirements of 40 CFR 412 Subparts C or D shall develop and implement a nutrient management plan (NMP) in accordance with the requirements of this rule and 40 CFR 122.42(e). The NMP must address the form, source and amount of nutrients, and the timing and method of application for all manure, litter, and other process wastewater that is applied to land under the ownership or operational control of the CAFO.

(2) For purposes of this rule, the following terms have the meaning and interpretations as indicated below and are supplemental to the definitions contained in ARM 17.30.1304:

(a) "expected crop yield" means the estimated crop yield, expressed as bushels per acre or tons per acre, in a future year based on one of the following:

(i) if historic crop yield data are available, the expected crop yield must be based on the average of at least three years of previous crop yield data (past average yield) using the formula: estimated crop yield = 1.05 X past average yield; or

(ii) if historic crop data are unavailable, expected crop yield must be based on realistic yield goals determined from other sources and described in the facility's NMP;

(b) "field" means an area of land that is capable of supporting vegetation and is homogeneous with respect to crop or cover type where manure is to be applied and is under the control of a CAFO owner or operator;

(c) "manure" means manure, litter, or process wastewater, including bedding, compost, and raw materials or other materials comingled with manure or set aside for disposal;

(d) "multiyear phosphorus application" means phosphorus applied to a field in excess of the crop needs for that year;

(e) "Olsen soil test" means the concentration of phosphorus in the soil as

determined by the Olsen sodium-bicarbonate extraction in accordance with method code 4D5 in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Soil Survey Laboratory Methods Manual, Soil Survey Investigations Report No. 42, Version 4.0, November 2004;

(f) "process wastewater" means water directly or indirectly used in the operation of a CAFO for any or all of the following:

(i) spillage or overflow from animal or poultry watering systems;

(ii) washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities;

(iii) direct contact swimming, washing, or spray cooling of animals;

(iv) dust control; or

(v) any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding;

(g) "site vulnerability rating" means the narrative description of a field for phosphorus loss as determined by Table 4 (Site/Field Vulnerability to Phosphorus Loss) in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006; and

(h) "total phosphorus index value" means the sum of the weighted risk factors for a field as determined by Table 3 (Phosphorus Index Assessment) in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006.

(3) Except as provided in (10), application rates for manure applied to each field must be determined based on the criteria given in (a) through (c).

(a) The CAFO shall complete a field-specific assessment to determine the appropriate basis (nitrogen- or phosphorus-based) for application of plant nutrients. The field-specific assessment must be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:

(i) nitrogen-based application if the site vulnerability rating is low or medium (total phosphorus index value is less than 22);

(ii) phosphorus-based application up to crop removal if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or

(iii) no application of phosphorus if:

(A) the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43); or

(B) the results of a representative soil phosphorus test for the field results in a value of 150 mg/L phosphorous or more using the Olsen soil test.

(b) The CAFO shall complete a nutrient need analysis for each crop to determine the acceptable amounts of nitrogen and phosphorus to be applied to the field based on the appropriate basis (nitrogen- or phosphorus-based application) as determined in (a). The nutrient needs must be determined based on Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops. For crops not listed in Bulletin 161, the department may approve a fertilizer

application rate provided by the local county extension service.

(c) The CAFO shall complete a nutrient budget based on the nutrients needs of the crop as determined in (b) that accounts for all sources of nutrients available to the crop. Other sources that must be addressed where applicable include those in (i) through (vi) below.

(i) The nitrogen needs determined in (b) must be reduced based on nitrogen fixation credits if a legume crop was grown in the field in the previous year based on the nitrogen fixation rates given in Schedule I.

Schedule I. Nitrogen Fixation Estimates for Dryland Conditions

Crop	Nitrogen Fixation (pounds per acre)
Alfalfa (after harvest)	40-80
Alfalfa (green manure)	80-90
Spring Pea	40-100
Winter Pea	70-100
Lentil	30-100
Chickpea	30-90
Fababean	50-125
Lupin	50-55
Hairy Vetch	90-100
Sweetclover (annual)	15-20
Sweetclover (biennial)	80-150
Red Clover	50-125
Black Medic	15-25

(ii) The nitrogen needs determined in (b) must be reduced based on nitrogen residuals from past manure applications based on nitrogen mineralization rates given in Schedule II.

Schedule II. Nitrogen Mineralization Rates

Type of Wastes	First Year[(1)]	Second Year
Fresh poultry manure	0.90	0.02
Fresh swine manure	0.75	0.04
Fresh cattle manure	0.70	0.04
Fresh sheep and horse manure	0.60	0.06
Liquid manure, covered tank	0.65	0.05
Liquid manure, storage pond	0.65	0.05
Solid manure, stack	0.60	0.06
Solid manure, open pit	0.55	0.05
Manure pack, roofed	0.50	0.05
Manure pack, open feedlot	0.45	0.05
Storage pond effluent	0.40	0.06
Oxidation ditch effluent	0.40	0.06

Aerobic lagoon effluent	0.40	0.06
Anaerobic lagoon effluent	0.30	0.06

(1) If irrigated, reduce first year mineralization by 0.05.

(iii) The nitrogen needs determined in (b) must be reduced based on any nutrients provided by commercial fertilizer, irrigation water, or other sources. The CAFO shall provide the basis for the nutrients adjustments on the NMP.

(iv) Nitrogen availability may be adjusted to reflect the method of application given in Schedule III. For phosphorus-based application, the nitrogen availability is 1.0.

Schedule III. Nitrogen Availability and Loss by Method of Application

Application Method	Loss Factor
Injection (sweep)	0.90
Injection (knife)	0.95
Broadcast (incorporated within 12 hours)	0.7
Broadcast (incorporated after 12 hours but before four days)	0.6
Broadcast (incorporated after four days)	0.5
Sprinkling	0.75

(v) The nutrient budget must be completed on forms provided by the department.

(vi) If after the first three years of implementing the NMP the yield does not average at least 80% of the planned expected crop yield, the NMP must be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yield is approved by the department. The amendment must be submitted as an amendment in accordance with ARM 17.30.1365.

(4) Manure that is land applied must be sampled at least once per year and analyzed for total nitrogen (as N), ammonium nitrogen (as NH_4-N), total phosphorus (as P_2O_5), total potassium (as K_20), and percent dry matter (solids). Except for percent dry matter, the results of this analysis must be expressed as pounds per 1,000 gal for liquid wastes and pounds per ton for solid manure. The sample must be representative of the manure that is to be applied to a field and must be collected and analyzed in accordance with (a) and (b).

(a) Solid manure must be sampled from at least ten different locations (subsamples) within the material to be applied from a depth of at least 18 inches below the surface. Subsamples must be thoroughly mixed in a clean receptacle and a sample of the mixed material must be collected and placed in a sealable plastic bag or other sample container approved by the analytical laboratory. The sample must be identified with the name, source, and date. The sample must be cooled to four degrees centigrade and analyzed within seven days or frozen at minus 18 degrees centigrade for up to six months or as directed by the analytical laboratory

specified in (6).

(b) Liquid manure must be agitated for a minimum of four hours prior to sample collection or until thoroughly mixed. A minimum of five one-quart subsamples must be collected from different locations in the storage facility. The subsamples must be collected from the liquid manure at a depth of least 12 inches below the surface. The subsamples must be combined into a single container and thoroughly mixed. A sample for laboratory analysis must be collected from the composited subsamples and placed into a clean one-quart plastic bottle or other sample container approved by the analytical laboratory. The sample must be identified with the name, source, and date. The sample container must not be completely filled. The sample must be cooled to four degrees centigrade and analyzed within seven days, or frozen at minus 18 degrees centigrade for up to six months or as directed by the analytical laboratory specified in (6).

(5) Each field where manure is to be land applied must be sampled at least once every five years in accordance with the procedure given in (a) through (d).

(a) A minimum of ten individual core samples must be composited to formulate a composite sample for the field. Core sampling in fields with significant landscape variation, including soil type, slope, degree of erosion, drainage, historic usage, or other factors, must be collected from each unit in proportion to the relative abundance in terms of total area. Uniform fields may be sampled in a simple random, stratified random, or systematic pattern following the guidance sources listed below. Individual core samples must be composited and thoroughly mixed in a clean plastic container except that core samples collected at different depths must be kept separate. Alternative soil sampling procedures are given in the following:

(i) United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Sampling Soils for Nutrient Management – Manure Resource Series, MT, April 2007; and

(ii) Montana State University Extension, MontGuide, Interpretation of Soil Test Reports for Agriculture, MT200702AG, July 2007.

(b) The composite soil sample for phosphorus analysis must be collected from a depth of zero to six inches below the surface and analyzed for phosphorus using the Olsen soil test method. Results must be reported as mg/kg phosphorus and pounds per acre.

(c) Composite soil samples for nitrogen analysis must be collected from a depth of zero to six inches below the surface and analyzed for total nitrogen (as N) and nitrate (as N). A second composite sample must be collected at a depth of six to 24 inches and analyzed for nitrate (as N) only. Samples must be analyzed in accordance with method code 4H2a1-3 in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Soil Survey Laboratory Methods Manual, Soil Survey Investigations Report No. 42, Version 4.0, November 2004. Results must be reported as mg/kg total nitrogen and pounds per acre.

(6) Analytical laboratories approved for manure and soil testing are given in Montana State University Extension Service Publication 4449-1, Soil Sampling and Laboratory Selection, June 2005.

(7) Manure must be applied to fields at times and under conditions that will hold the nutrients in place for crop growth and protect surface and ground water using best management practices described in the nutrient management plan. The

intended target spreading dates must be included in the NMP. Manure must not be land applied under the following conditions:

(a) on land that is flooded or saturated with water;

(b) during or within 36 hours of a rainfall event that exceeds four hours in duration or 0.25 inches or more of precipitation; or

(c) to frozen or snow-covered ground.

(8) Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of application equipment.

(a) For an existing CAFO, the NMP must include a statement indicating that the existing equipment has been calibrated to ensure delivery of the application rates described in the plan and has the capacity to meet those rates. The CAFO shall maintain the supporting documentation on site and shall make this information available to the department upon request.

(b) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment verification prior to the first application of manure. The information required in (a) must be maintained on site and incorporated into any subsequent amendment of the NMP. The CAFO shall maintain the supporting documentation on site and shall make this information available to the department upon request.

(c) If a commercial hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate in the NMP. The CAFO shall maintain the supporting documentation on site and shall make this information available to the department upon request.

(9) A multiyear phosphorus application is allowed for fields that require a nitrogen-based application based on a site-specific assessment (site vulnerability rating less than 22) as described in (3). When such application is made, the following conditions apply:

(a) the application may not exceed the recommended nitrogen application rate during the years of application which may include a calculation for fertilizer inefficiencies or the estimated nitrogen removal in harvested plant biomass during the year of application when there is no recommended nitrogen application;

(b) conservation practices must be included in the NMP and implemented to minimize the risk of phosphorus loss from the field; and

(c) no additional manure may be applied to the field until the phosphorus applied in the single application has been removed through plant harvest.

(10) As an alternative to the manure application rates based on the criteria given in (3), the CAFO may develop application rates for manure based on United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Conservation Practice Standard, Code 590 (November 2006), provided that the following conditions are met:

(a) a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters must be conducted;

(b) the form, source, amount, timing, and method of application of manure and any other nutrients to each field must be based on realistic production goals, and minimizing nitrogen and phosphorus movement to surface water must be addressed;

(c) the appropriate flexibilities for the CAFO must be maintained to implement a multiyear phosphorus application as described in (9);

(d) manure must be sampled a minimum of once annually for nitrogen and phosphorus and must be analyzed based on procedures and methods given in (4) and (5);

(e) soil must be analyzed a minimum of once every three years for phosphorus content;

(f) the results of the manure and soil sampling analysis must be used in determining manure application rates; and

(g) the nutrient budget must be completed on forms provided by the department.

(11) The board adopts and incorporates by reference the following, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena 59620-0901, or on the department's web site at http://deq.mt.gov/default.mcpx.

(a) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management Agronomy Technical Note MT-77 (revision 3), (January 2006);

(b) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Method 4D5 (Olsen Sodium-Bicarbonate Extraction), Soil Survey Laboratory Methods Manual, Soil Survey Investigations Report No. 42, Version 4.0, (November 2004);

(c) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Sampling Soils for Nutrient Management – Manure Resource Series, MT (April 2007);

(d) Montana State University Extension, MontGuide, Interpretation of Soil Test Reports for Agriculture, MT200702AG, (July 2007);

(e) Montana State University Extension Service Publication 4449-1, Soil Sampling and Laboratory Selection, (June 2005); and

(f) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Conservation Practice Standard, Nutrient Management, Code 590, (November 2006).

AUTH: 75-5-401, 75-5-802, MCA
IMP: 75-5-401, 75-5-802, MCA

REASON: The board is proposing to adopt New Rule I to comply with the requirements of 40 CFR 123.36. This federal rule requires each delegated state to establish technical standards for nutrient management that are consistent with 40 CFR 412.4(c)(2). This technical standard is an effluent limitation that specifies the application rate for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO.

The technical standards adopted by the state must include: (1) a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface water and a nutrient management plan (NMP) that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals; and (2) appropriate flexibilities for any CAFO to

implement nutrient management practices to comply with the technical standards, including consideration of multiyear phosphorus application, phased implementation of phosphorus-based nutrient management, and other components as determined appropriate by the state.

The technical standards in New Rule I are based on and derived from Section 6 of Department Circular DEQ-9 that the board adopted in 2006, which describes procedures for conducting a field-specific assessment and determination of application rates for manure, litter, and process water. New Rule I also contains sampling procedures that are described in Section 5 of Department Circular DEQ-9. In addition to these procedures, New Rule I includes a section of definitions explaining technical terms used in the rule, identifies analytical procedures for analysis of soils and manure and analytical laboratories that may perform these analyses, and sets out conditions under which multiyear phosphorus application rates are acceptable.

The board is also proposing to eliminate language in ARM 17.30.1343 requiring CAFOs to comply with Department Circular DEQ-9 due to EPA's revisions to the CAFO regulations in 2008, specifically 40 CFR 123.36. Department Circular DEQ-9 was adopted by the board in 2006 prior to promulgation of the 2008 federal CAFO rule, which placed into regulation, in 40 CFR 122.23, 122.42(e), and Part 412, the requirements for nutrient management, best management practices, record keeping, and annual reporting for CAFOs. These provisions of Department Circular DEQ-9 are no longer necessary. Other requirements of Department Circular DEQ-9 are neither consistent with, nor required by, 40 CFR 123.36 or 40 CFR 122.42(e).

These amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25 and 40 CFR 123.36.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 17, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

Certified to the Secretary of State, December 10, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.702, 17.36.345, 17.36.914, and 17.38.101 pertaining to Department Circular DEQ-4	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY) (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT) (PUBLIC WATER AND SEWAGE SYSTEMS REQUIREMENTS)

TO: All Concerned Persons

1. On January 11, 2013, at 2:00 p.m., or at the conclusion of the hearing for MAR Notice No. 17-342, the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and 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., December 31, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (25) remain the same.

(26) The board adopts and incorporates by reference:

(a) remains the same.

(b) Department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems" (~~2009~~ 2013 edition), which establishes technical standards for construction of subsurface wastewater treatment systems; and

(c) and (d) remain the same.

AUTH: 75-5-301, 75-5-303, MCA

IMP: 75-5-303, MCA

REASON: The department is proposing to revise Department Circular DEQ-4. The proposed amendment to this rule is necessary to adopt the revised DEQ-4 for purposes of the nondegradation rules adopted under the provisions of the Montana Water Quality Act, Title 75, chapter 5, MCA. The proposed revisions to Circular DEQ-4 are summarized in the Reason for the amendments to ARM 17.38.101. The complete text of the proposed amendments to the DEQ-4 Circular is available on the department's web site at http://www.deq.mt.gov/wqinfo/Sub/default.mcpx.

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (c) remain the same.

(d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," ~~2009~~ 2013 edition;

(e) through (2) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department is proposing to revise Department Circular DEQ-4. The proposed amendment to this rule is necessary to adopt the revised DEQ-4 for purposes of the subdivision rules adopted under the provisions of the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. A summary of the revisions to DEQ-4 is contained in the Reason for the amendments to ARM 17.38.101. The complete text of the proposed amendments to the DEQ-4 Circular is available on the department's web site at http://www.deq.mt.gov/wqinfo/Sub/default.mcpx.

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) remains the same.

(2) Department Circular DEQ-4, ~~2009~~ 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 1999 edition, which sets forth design standards for wastewater facilities, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) through (7) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

REASON: The proposed amendment to this rule is necessary to adopt the revised DEQ-4 in the state standards for sewage treatment that are implemented by local health departments. The proposed revisions to Circular DEQ-4 are

summarized in the Reason for the amendments to ARM 17.38.101. The complete text of the proposed amendments to the DEQ-4 Circular is available on the department's web site at http://www.deq.mt.gov/wqinfo/Sub/default.mcpx.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (18)(b) remain the same.

(19) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (c) remain the same.

(d) Department of Environmental Quality Circular DEQ-4, ~~2009~~ 2013 edition, which sets forth standards for subsurface wastewater treatment systems;

(e) through (20) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The proposed amendments to ARM 17.38.101 adopt the revised Circular DEQ-4 by reference. The amendments are necessary to establish the standards the department will use when it reviews, under the public water and sewer laws in Title 75, chapter 6, MCA, plans and specifications for public subsurface wastewater systems. The proposed revisions to Circular DEQ-4 are summarized below. The complete text of the proposed amendments to the DEQ-4 Circular is available on the department's web site at http://www.deq.mt.gov/wqinfo/Sub/default.mcpx.

Proposed Revisions to Department Circular DEQ-4

Throughout the entire document format was reorganized, illustrations added, grammar corrected, and numbering reconfigured. In response to emerging technology, it is necessary to also add new chapters, including an appendix with design examples.

General references in the Circular to the applicability of local building codes and uniform codes, such as uniform plumbing and electrical codes, have been deleted. The department lacks authority to generally enforce these codes, because some components governed by the codes (e.g., buildings, wiring, and service lines) are not subject to statutes administered by the department. When a code provision does apply to a component reviewed by the department under the Circular, the provision has been specifically added to the text of the Circular. For example, the Circular requires that wastewater pumping stations be provided with effluent pumps, controls, and wiring that are corrosion-resistant and listed by Underwriters Laboratories, Canadian Standards Association, or another approved testing and/or accrediting agency, as meeting the requirements for National Electric Code (NEC) Class I, Division 2 locations.

Following is a list by chapter of the proposed revisions to Department Circular DEQ-4.

Table of Contents. The table was reorganized to include the new headings in

the Circular.

Chapter 1, Introduction. Further explanation is provided of gravity and pressure dosed systems, and new system descriptions are provided for shallow capped, waste segregation, and subsurface drip treatment options. New definitions are added to match existing statutes, rules, and other Department Circulars.

Chapter 2, Site Conditions. The revisions add new requirements and clarify existing requirements for site evaluations, including provisions relating to soil evaluation, staking, non-degradation, and sizing. Provisions are inserted to allow minor cut and fill of natural soil during construction.

Chapter 3, Wastewater. The revisions provide a new methodology for evaluating wastewater flows in large onsite systems. The revisions also add a chapter on high strength waste and water treatment waste residuals.

Chapter 4, Collection, Pumping and Distribution Systems. The revisions add a new chapter discussing sewer collection systems, pumping stations, and effluent distribution systems. Much of the new information is taken from Department Circular DEQ-2.

Chapter 5, Primary Treatment. The revisions modify and clarify sizing, construction, and installation requirements for septic tanks. The revisions also add provisions for the use of poly and fiberglass septic tanks.

Chapter 6, Secondary Treatment. The revisions revise requirements for subsurface treatment systems, including the following systems: standard absorption trenches, shallow capped absorption trenches, deep absorption trenches, sand-lined absorption trenches, gravelless trenches and other absorption methods, elevated sand mounds, gray water systems, evapo-transpiration/absorption (ETA) systems, evapo-transpiration (ET) systems, and absorption beds. The revisions add a chapter discussing subsurface drip, and remove the provisions for at-grade systems.

Chapter 7, Advanced Treatment. The revisions clarify requirements and sizing criteria for drainfields and system configurations for the following advanced treatment systems: recirculating media filter, **i**ntermittent sand filter**,** recirculating sand filter, aerobic wastewater treatment units, and chemical nutrient–reduction systems. The revisions also add a chapter discussing alternative advanced treatment systems.

Chapter 8, Miscellaneous. The revisions add a chapter outlining waste segregation through the use of composting and incinerating toilets.

Appendix A, Percolation Test Procedure. The revisions remove percolation test procedure 2 from allowable methodologies.

Appendix B, Soils and Site Characterization. The revisions add and change definitions in the Appendix to match the Circular and add percolation rates to the soil textural triangle.

Appendix C, Groundwater Observation Well Installation and Measurement Procedures. The revisions add a ground water monitoring report form.

Appendix D, Operation and Maintenance. The revisions clarify existing requirements.

Appendix E, Design Examples. The revisions add design examples for an elevated sand mound and an ETA system.

4. Concerned persons may submit their data, views, or arguments, either

orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 17, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water 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 the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Certified to the Secretary of State, December 10, 2012.

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

In the matter of the amendment of ARM 24.11.204, 24.11.452A, 24.11.454A, 24.11.455, 24.11 457, 24.11.475 and 24.11.485, and the adoption of New Rule I, pertaining to unemployment insurance	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On January 18, 2013, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the Sanders Auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 14, 2013, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail dgilbert@mt.gov.

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

24.11.204 DEFINITIONS The terms used by the department are, in great part, defined in 39-51-201 through 39-51-205, MCA. In addition to these statutory definitions, the following definitions apply to this chapter, unless context or the particular rule provides otherwise:

(1) through (22) remain the same.

(23) "Leaving work," as used in 39-51-2302, MCA, means:

(a) any permanent, long-term, or indefinite voluntary reduction in a worker's hours of insured full-time work for a particular employer initiated by the worker, whether or not the reduction occurs in response to ~~some~~ an act or omission ~~on the part~~ of the employer ~~and whether or not sanctioned~~ or is approved by the employer; or

(b) ~~failing to return to work following a period of temporary layoff or suspension if the worker knew or should have known that the layoff or suspension was no longer in effect and that work was once again available to the worker~~ a cessation of employment initiated by the worker, which resulted from the worker's absence from work without an employer-approved leave of absence for:

(i) seven or more consecutive work days due to a physical or mental condition, which prevented the worker from performing the essential functions of the job with or without a reasonable accommodation; or

(ii) three or more consecutive work days without the employer's permission for any other reason.

(24) through (30) remain the same.

(31) "Same work" means an offer by an individual's present employer of the same hours, wages, terms of employment, and working conditions.

(31) through (38) remain the same but are renumbered (32) through (39).

(40) "Voluntary quit" means a worker left work with or without good cause attributable to the employment.

(39) through (41) remain the same but are renumbered (41) through (43).

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-2111, 39-51-2112, 39-51-2115, 39-51-2116, 39-51-2304, MCA

REASON: The department finds there is reasonable necessity, in response to a recent increase in benefits claims issues, to propose to clarify the definition of "leaving work" by adding two distinct time periods after which the department will consider a worker to have separated from employment when the worker does not show up for work and has not been granted an employer-approved leave. The department finds that seven work days is a reasonable time during which an injured or ill employee may determine whether the employee could quickly return to work with or without a reasonable accommodation. The department further finds that an employee's failure to show up for work for three consecutive work days without the employer's permission reasonably constitutes job abandonment or "leaving work." An employer may act to discharge an employee before or after the time periods designated by the proposed rule. However, when the time frames set out by the proposed rule have run, the department will consider the employee to have "left work," which places the burden on the employee to demonstrate good cause for leaving that is attributable to the employment in order to qualify for unemployment insurance benefits. Unreasonable actions by the employer may constitute good cause, per ARM 24.11.457(2)(b). The proposed rule provides reasonable consistency for identifying the moving party for each separation from employment due to job abandonment.

The department also finds there is reasonable necessity to propose to insert the term "full-time" as a qualifier for a voluntary work reduction because a voluntary reduction of part-time work does not constitute "leaving work," but is adjudicated by the department as a work-availability issue, pursuant to 39-51-2104, MCA, and ARM 24.11.452A. For example, the department may determine a claimant who voluntarily reduces part-time work hours when more work hours are available to be ineligible for unemployment insurance benefits because the claimant has not made himself or herself available for remunerative work.

By eliminating the language related to a worker's failure to return to work after a temporary lay-off or suspension, the department proposes to harmonize the rule with ARM 24.11.491, which was adopted on May 31, 2011, to implement the provisions of Senate Bill 150 (L. 2011), codified as 39-51-2113, MCA. The law provides that when a worker has been suspended from employment for more than two weeks, the department deems the worker to have been discharged from employment. Similarly, the department deems a worker who has been laid-off on a temporary or permanent basis to have been discharged from employment due to a lack of work as of the last day worked. Accordingly, a worker suspended for more than two weeks or a laid-off worker may qualify for benefits, if otherwise eligible. Therefore, the proposed amendment to the definition of "leaving work" is necessary to bring the rule into conformance with the law.

The department further proposes to clarify that the term "voluntary quit" means leaving work, which may occur with good cause or without good cause attributable to the employment, as part of the amendment to the rule.

24.11.452A ELIBIBILITY FOR BENEFITS (1) through (5)(b) remain the same.

(c) withdraws temporarily or permanently from the labor market. Withdrawal from the labor market includes but is not limited to:

(i) a self-imposed limitation, such as an unrealistic wage or hour restriction or refusal to travel, that curtails claimant's ability to seek or accept suitable work;

(ii) a temporarily disabling health condition that prevents claimant from being able to perform suitable work;

(iii) an employer-approved leave of absence, per ARM 24.11.476; ~~or~~

(iv) claimant's residence in or travel to a foreign country, which is defined as any country other than the United States of America, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada; or

(v) failure by claimant to actively seek or accept suitable work due to family care-giving obligations, vacation, incarceration, lack of transportation, or any other reason.

(6) The department may allow benefits to be paid to a claimant who resides in or travels to a foreign country that has executed a reciprocal agreement with the United States government regarding unemployment insurance.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASON: The proposed amendment is reasonably necessary to put the public on notice that the department considers a claimant's availability for work to be adversely impacted by foreign travel, except when the travel occurs within the United States, Canada or certain U.S. protectorates. When a claimant is unavailable for remunerative work, the department considers the claimant to have temporarily withdrawn from the labor market. Therefore, a claimant who resides in or travels to a foreign country is ineligible for unemployment insurance benefits while out-of-country. The proposed amendment reasonably requires a claimant to remain in

proximity to claimant's labor market as a prerequisite for benefit eligibility. The proposed amendment does nothing to abrogate a claimant's constitutional right to travel, but disallows the collection of benefits while travelling outside of designated geographic regions.

24.11.454A LEAVING OR DISCHARGE FROM WORK

(1) through (5) remain the same.

(6) The department shall impute the reason for separation from work of limited duration in the following manner:

(a) when a worker agrees to accept employment of limited duration as specified by the employer or by a written employment contract, the department shall consider the worker to have been laid off due to a lack of work at the end of the duration agreed upon and the last day worked; or

(b) when an employer agrees to employ a worker for a limited duration as specified by the worker or by a written employment contract, the department shall consider the worker to have voluntarily left work only when the worker has refused an offer by the employer to continue the same work beyond the limited duration. In the absence of a valid offer by the employer to continue the same work, the department shall consider the worker to have been laid off due to a lack of work on the last day worked.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: Following the recent decision by the Montana Supreme Court in *Sheila Callahan & Friends v. DOLI,* 2012 MT 133, 365 Mont. 283; 280 P.3d 895, the department determined it is reasonably necessary to amend the rule to clarify that the department deems a worker to have been laid off due to a lack of work on the termination date of a written employment contract. When an employer offers a continuation of the same work under the same terms and conditions beyond the termination date set by an employment contract, the worker may decline the offer but the department shall consider the worker to have voluntarily left work. When an employer offers a new contract with substantially different terms and conditions, the department shall consider the new contract to constitute an offer of new work, not the same work, and the department shall consider the worker to have been laid off. Because the terms of a written employment contract are mutually agreed by the employer and worker who execute the contract, the written agreement proves valid notice of the end of work, regardless of the party that initially proposed the termination date. The proposed rule amendment is reasonable because the employer is the moving party to a separation from employment caused by the termination of an employment contract.

24.11.455 REFUSAL OF WORK (1) Pursuant to 39-51-2304~~(1)~~, MCA, ~~an individual~~ a claimant is disqualified for benefits if the ~~individual~~ claimant fails without good cause to:

(a) and (b) remain the same.

(2) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2304, MCA

REASON: The proposed amendment is reasonably necessary to clarify that a refusal of a valid offer of work only affects the benefit eligibility of an individual who is an unemployment insurance claimant at the time of the work refusal. A person who has neither applied for nor is receiving benefits is not considered by the department to be in "claimant" status. Therefore, the department will not consider the refusal of work as a factor in determining a person's later qualification for benefits when the person was not a claimant at the time the person declined the offer of work. Conversely, a claimant who has applied for or is receiving benefits must accept any valid offer of suitable work as a condition of maintaining benefit eligibility.

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) The department shall determine a claimant left work with good cause attributable to employment when:

(a) the claimant had compelling reasons arising from the work environment that caused the claimant to leave; and the claimant:

(i) attempted to correct the problem(s) in the work environment; and

(ii) informed the employer of the problem(s) and gave the employer reasonable opportunity to correct the problem(s);

(b) the claimant left work that the department determines to be unsuitable ~~under 39-51-2304, MCA , and~~ pursuant to ARM 24.11.485; or

(c) the claimant left work within 30 days of returning to state-approved training, in accordance with ARM 24.11.475.

(2) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2304, 39-51-2307, MCA

REASON: The department considers a person to have good cause to leave work when the person demonstrates that the work was not suitable, as outlined by ARM 24.11.485. The department proposes to eliminate the reference to 39-51-2304, MCA, to avoid an implication that the rule is limited in its application to the adjudication of a claimant's decision to leave work during the period the claimant is qualified for or receiving unemployment insurance benefits. Because the department determines work suitability or unsuitability when adjudicating a claimant's separation from employment, the rule amendment is necessary to remove an implied constriction in the rule's application. The proposed amendment clarifies that the department's determination of whether work is suitable for a claimant may be applied to work the claimant accepts or is offered at any time pertinent to the adjudication of a claim.

24.11.475 APPROVAL OF TRAINING BY THE DEPARTMENT

(1) through (5) remain the same.

6) Upon the department's written approval of a claimant for a state-approved training program, the department shall notify the claimant of the availability of additional training benefits, pursuant to ARM ~~24.7.320~~ 24.11.476.

(7) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, 39-51-2307, 39-51-2401, MCA

REASON: The proposed amendment is reasonably necessary to correct an erroneous reference to the administrative rule regarding the additional training benefits available to qualified claimants, while other unemployment rules are being amended.

24.11.485 SUITABLE WORK (1) and (2) remain the same.

(3) To determine whether ~~employment constitutes~~ a claimant has refused an offer of suitable work, pursuant to ARM 24.11.455, the department shall consider factors including, but not limited to:

(a) through (i) remain the same.

(4) Work that was once suitable for claimant may become unsuitable due to circumstances beyond the claimant's or employer's control. When adjudicating a work refusal, pursuant to ARM 24.11.455, or a separation from work, pursuant to ARM 24.11.457, ~~The~~ the department shall consider previously suitable work as not suitable when:

(a) claimant has made a good faith effort to comply with licensing requirements or governing regulations but has failed to pass the required course(s) or licensing exam;

(b) claimant ~~is unable to meet certain occupational requirements due to claimant's physical or mental condition~~ has submitted to the department an individualized determination of work unsuitability due to claimant's physical or mental disability, certified and signed by a health care provider; or

(c) employer has unreasonably altered hours, terms of employment, working conditions, or claimant's wage by reducing the wage by 20% or more, as described by ARM 24.11.457.

(5) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2112, 39-51-2115, 39-51-2304, MCA

REASON: The proposed amendment provides a reasonable and necessary distinction between the criteria for a determination of work suitability during the adjudication of a work refusal from the criteria used in the adjudication of a separation from employment. The department will apply (3) only when adjudicating a claimant's refusal to work, pursuant to ARM 24.11.455, while the department will apply (4) when adjudicating either a work refusal or a separation from work, pursuant to ARM 24.11.457. The proposed amendment explicitly outlines the medical proof required by the department to determine when a claimant's physical or mental condition caused work that was once suitable to become unsuitable.

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

NEW RULE I PENSION BENEFIT REDUCTION (1) For purposes of this rule, a "pension" means pension payments, retirement benefits, retirement pay, annuity, or similar periodic payment made to an individual based on previous work. Severance or separation pay is not a "pension" payment.

(2) The department shall reduce a claimant's weekly unemployment benefit by the amount claimant receives or constructively receives from a pension plan that was maintained or contributed to by a base period employer.

(3) When no base period employer contributed to claimant's pension plan, the department shall not reduce a claimant's weekly unemployment benefit by the pension payment.

(4) The department shall presume a claimant made no monetary contribution to claimant's pension plan. A claimant may overcome this presumption by providing written proof to the department demonstrating that claimant made an actual monetary contribution to the pension plan. When a claimant made direct monetary contribution to the pension plan, the department shall not reduce a claimant's weekly unemployment benefit by the pension payment.

(5) The claimant must promptly provide to the department all information requested by the department. Within eight days of claimant's receipt of correspondence from the pension plan administrator concerning claimant's pension entitlement or the amount of claimant's pension payments, claimant must provide the department with copies of the correspondence.

(6) Claimant's base period employer must promptly furnish information related to claimant's pension plan when requested by the claimant, claimant's representative, or the department.

(7) A claimant "constructively" receives a pension payment when:

(a) the claimant or another on behalf of the claimant files an application for pension payments; or

(b) the claimant receives notice from the pension plan administrator of claimant's entitlement to and the amount of pension payments.

(8) The department shall allocate the pension payment, which is actually or constructively received by a claimant, by attributing a fraction of the payment to each week in the following manner:

(a) amount of a monthly pension payment is multiplied by 12 (months) and the result is divided by 52 (weeks);

(b) amount of a quarterly pension payment is multiplied by 4 (quarters) and the result is divided by 52 (weeks); or

(c) amount of an annual pension payment is divided by 52 (weeks).

(9) Social security retirement and social security disability payments are not deductible from unemployment benefits under this rule.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2203, MCA

REASON: To maintain substantial conformity with the federal laws and regulations related to unemployment insurance program, the Montana Legislature amended 39-51-2203, MCA (Sec. 12, Ch. 195, L. 1995), to clarify the requirements for pension payment off-set. Recently, the First Judicial District Court affirmed that a claimant's weekly unemployment insurance benefit must be reduced by the amount of a weekly pension payment received by the claimant under a plan maintained or contributed to by a base period employer or chargeable employer. *DOLI v. BOLA, Gunderson, Aronson, BDV 2011-503, January 6, 2012.* Proposed New Rule I is necessary to clarify how the department will investigate and determine whether benefit reduction due to pension off-set is appropriate and determine the correct amount of that reduction. The proposed new rule reasonably places the burden of demonstrating the claimant made a direct financial contribution to the pension plan upon the claimant, who has easier access to the necessary proof.

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: Don Gilbert, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail at dgilbert@mt.gov and must be received no later than 5:00 p.m., January 23, 2013.

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

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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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 December 10, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.405, 32.3.435, 32.3.1303, 32.3.1308, 32.18.101, 32.18.109, 32.22.101, 32.22.102, 32.22.103, 32.22.104, and 32.22.105 pertaining to testing within the DSA, Department of Livestock miscellaneous fees, hot iron brands required, freeze branding, aerial hunting, identification, and identification methodology	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

1. On January 22, 2013, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 10, 2013 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:

32.2.405 DEPARTMENT OF LIVESTOCK MISCELLANEOUS FEES

(1) through (13) remain the same.

(14) Estray sale cost and disposition of animals if no bid is offered as required by 81-4-603(4):

(a) cost for estray sale 100.00

(b) cost if owner claims before sale 50.00

(c) should no bids be received, the department may re-offer for sale or give the animal to an individual or rescue facility in the area, or if there are no other options, condemn and destroy or otherwise dispose of it.

(15) A research/copy-scan fee may be charged for livestock inspection lookups in the country and/or markets based on MDOL Public Records Request Guidelines.

AUTH: 81-1-102, 81-22-102, MCA
IMP: 81-3-107, 81-3-205, 81-3-211, 81-8-304, 81-9-112, MCA

32.3.435 TESTING WITHIN THE DSA (1) remains the same.

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

(2) remains the same.

(a) A change of ownership test is required on all cattle and domestic bison regardless of age intended to be used for breeding.

(3) remains the same.

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

32.3.1303 IDENTIFICATION (1) ~~All animals one year of age or older shall be identified. All animals less than one year of age must be identified upon change of ownership unless moving to slaughter. Identification shall consist of a tamper proof eartag and either an electronic implant, a flank tattoo or an ear tattoo all of which provide a unique identification number in accordance with the instructions of appropriate authorities.~~ Official identification is required for qualifying animals involved in the following:

(a) importation;

(b) entry into interstate marketing channels;

(c) change of ownership; or

(d) exhibition.

(2) Official identification must be made to the flock of birth or the flock of origin.

(3) The following groups of animals are required to be officially identified:

(a) sexually intact sheep and goats, regardless of age;

(b) all sheep over 18 months of age;

(c) all scrapie-suspect and test-positive animals;

(d) all scrapie-exposed or scrapie high-risk animals; and

(e) all animals in scrapie-source, scrapie-infected, scrapie-exposed, or scrapie-non-compliant flocks.

(4) Animals that are exempt from the individual official identification requirement are:

(a) sheep and goats under 18 months of age in recognized slaughter channels;

(b) wethers for exhibition;

(c) low-risk commercial goats as defined in the Scrapie Eradication Uniform Methods and Rules;

(d) sheep and goats moved for grazing purposes with no change of ownership; and

(e) animals from a registered premises and moved as a group lot directly to an approved slaughter facility or to an approved market and accompanied by an owner's statement as defined in the Scrapie Eradication Uniform Methods and Rules.

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

32.3.1308 IDENTIFICATION METHODOLOGY (1) ~~All high risk mutton breeds and goats associated with these flocks sold or used for breeding purposes must be identified as to the flock of origin by a tamper proof ear tag and at least one of the following (electronic implant, flank tattoo or ear tattoo). This information must be on the certificate of veterinary inspection and/or import permit.~~ Approved methods of official identification include:

(a) electronic implants;

(b) official eartags provided by or approved by USDA;

(c) legible official breed registry tattoo; or

(d) premises identification eartags.

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

32.18.101 HOT IRON BRANDS REQUIRED (1) Under the brand laws of the state~~, with the following exceptions~~ only hot iron brands will be recognized by the Department of Livestock, Brands Enforcement Division on all livestock for sheep, goats, and swine ~~and~~ with the following exceptions: ~~that~~

(a) freeze brands may be applied to horses, mules, or asses;

(b) freeze brands on cattle are allowed only as provided in ARM 32.18.109.

(2) remains the same.

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

32.18.109 FREEZE BRANDING (1) through (1)(c) remain the same.

(d) the freeze brand will be issued on ~~a separate~~ the same certificate and except on a new recording will not be charged an additional recording fee;

(e) through (g) remain the same.

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

32.22.101 PURPOSE AND SCOPE (1) This ~~sub-~~chapter ~~implements~~ provides a system for the issuance of aerial hunting permits to protect livestock from predatory animals, and establishes the duties of permittees under the provisions of Chapter 704, Laws of Montana 1979. ~~, which provides for a permit system for the aerial hunting of predatory animals. Under legislative directive~~

(2) ~~t~~These rules are:

(a) not to interfere with the needs of livestock producers protecting their livestock from predation~~,~~; but are

(b) to assist in the prevention and/or reduction of livestock loss from

predatory animals.; and

(c) They are also to protect landowners, administrators, or leasees lessees who do not wish aerial hunting to occur over land under their ownership, management, or control. This sub-chapter provides a system for the issuance of aerial hunting permits to protect livestock from predatory animals, and establishes the duties of permittees.

AUTH: 81-7-502, MCA
IMP: 81-7-502, MCA

32.22.102 ISSUANCE OF PERMITS (1) A person desiring Applicants for an aerial hunting permit shall apply for the permit by completing application and aerial hunting request forms provided by the department of livestock must complete an aerial hunting application form prior to January 31 and submit with the appropriate fee. After January 31, applicants may apply under the same guidelines with no proration of fee.

(a) Application and aerial hunting request forms are available upon request from the vertebrate pest control bureau, dDepartment of lLivestock, capitol station P.O. Box 202001, Helena, MT 59601 59620-2001 or at www.liv.mt.gov.

(2) Permits will be issued only to persons currently licensed as pilots by the federal aviation administration, who have a private pilot's license as a minimum rating. An applicant must have at least 200 total flying hours. Applicants and their aircraft must also meet federal aviation administration and Montana aeronautics division, department of commerce requirements for aircraft and pilots. Applicants must provide a current certification from the Montana Aeronautics Division, Department of Transportation (AD, DOT) as proof of having met the following requirements:

(a) possessing a current pilot license from the Federal Aviation Administration (FAA), with a private pilot's license as a minimum rating;

(b) having at least 200 total flying hours;

(c) having met FAA and AD, DOT requirements for aircraft and pilots.

(3) Permits will be issued only to individuals resident and domiciled in Montana Applicants must be residents of and domiciled in Montana.

(a) Nonresident permits may be authorized by the Board of Livestock The board of livestock may authorize non-resident permits when adequate service cannot be provided by Montana permittees.

(4) The department may refuse the issuance of to issue a permit, or revoke an already issued existing permit, if information contained in the permit application for a permit is found to be false contains false information.

(5) Individuals not employed by the fish and wildlife service, U.S. department of interior who engage in aerial hunting for the fish and wildlife service on a contract basis do not require a permit under these rules for those portions of the aerial hunting performed under contract with the fish and wildlife service. Any person under contract with the fish and wildlife service who engages in aerial hunting in addition to that performed under contract with the fish & wildlife service must comply with these rules for those portions of the aerial hunting not performed under contract.

Montana aerial hunting permits are not required under the following:

(a) Individuals have contracted with U.S.D.A, A.P.H.I.S., Wildlife Services to provide aerial hunting services in Montana.

(b) Said contractors must obtain a permit and comply with MDOL rules when engaging in any aerial hunting not performed under the W.S. contract.

AUTH: 81-7-502, MCA
IMP: 81-7-502, 81-7-504, MCA

32.22.103 DURATION OF PERMITS - FEE (1) Permits will be valid for a ~~period to be determined by the department not exceed 3 years~~ 12-month period from February 1 through January 31.

(a) Permittees must renew their permit each year as provided in ARM 32.22.102;

(b) permittees must be in compliance with the rules of the department, and state and federal law;

(c) renewal will be denied if noncompliance is not corrected prior to the renewal date.

(2) The ~~F~~fees~~:~~ for permits will be~~:~~ $50 per year or part of a year.

(a) ~~$30.00 for a permit issued for less than 1 year~~ Fees will not be prorated for applicants applying for less than the 12 month permit year.

~~(b) $40.00 for a permit issued for 1 year to 2 years.~~

~~(c) $50.00 for a permit issued for 2 years to 3 years.~~

~~(3) The department may issue self-renewing multiple year permits dependent upon compliance with the rules of the department and state law. Noncompliance will halt renewal if not corrected prior to the annual self-renewal date.~~

AUTH: 81-7-502, MCA
IMP: 81-7-503, MCA

32.22.104 RESTRICTIONS UPON USE OF PERMIT (1) A permittee may engage in aerial hunting only over areas ~~specifically approved for him to hunt~~ authorized by the ~~d~~Department of ~~l~~Livestock.

(a) ~~Such approval will be given only upon a showing~~ The permittee must:

(i) show that livestock depredation has occurred or is likely to occur in the area requested ~~to be approved,~~ in the application or ~~in~~ an ~~area~~ adjacent area ~~thereto,~~; and

(ii) ~~that~~ provide a signed authorization for aerial hunting from the landowner, administrator, lessee, or their agent ~~has given written approval for the aerial hunting to take place~~.

(2) Only coyotes and/or foxes may be hunted as set forth in the permit.

(a) ~~The~~ Hunting or harassment of any other animal will result in revocation of the permit.

(b) Aerial hunting of coyotes and/or foxes may occur only for the protection of livestock, domestic animals, or human life.

(c) ~~For extraordinary reasons, the~~ A permit may be modified to allow the

aerial hunting of other predatory animals not protected by federal law only under extraordinary circumstances.

(3) ~~No permittee may engage in aerial hunting who is not in full compliance with all applicable rules and regulations governing pilots and aircraft issued by the federal aviation administration or the Montana aeronautics division, department of commerce.~~

~~(4) a permittee may not u~~Use of an aircraft in aerial hunting is prohibited until the permittee has notified the department ~~has been notified~~ of that use and has ~~received~~ provided adequate ~~identifying information about the~~ aircraft identification.

AUTH: 81-7-502, MCA
IMP: 81-7-502, MCA

32.22.105 REPORTING REQUIREMENTS (1) All permittees shall file semi-annual reports with ~~the vertebrate pest control bureau of~~ the ~~d~~Department of ~~l~~Livestock on forms supplied by the ~~bureau~~ department.

(a) The reports are due ~~no more than 30 days after the end of each half year. For purposes of these reports half years shall end on~~ within 30 days after June 30 and December 31 of each year.

(2) The department may ~~require such~~ request other information or reports ~~of permittees as it may from time to time need~~ as needed.

AUTH: 81-7-502, MCA
IMP: 81-7-502, MCA

32.22.106 REVOCATION, SUSPENSION, OR MODIFICATION OF PERMIT

(1) Failure to comply with th~~ese~~ rules or statutes governing aerial hunting will result in ~~the~~ suspension or revocation of the permit.

(2) ~~Upon the written refusal of the landowner, administrator or lessee, or their agent to allow further aerial hunting, sent to the department of livestock, the department shall close such areas to aerial hunting and modify any permits issued for such areas accordingly.~~ The department shall close an aerial hunting area upon receipt of written request from the landowner, administrator or lessee, or their agent.

(3) remains the same.

AUTH: 81-7-502, MCA
IMP: 81-7-502, 81-7-511, MCA

REASON: The USDA brucellosis program review generally gave the state of Montana very high marks. However, two recommendations were made that would require an ARM rule change to be implemented. These include: 1) testing of breeding cattle at any age, and 2) testing pre-slaughter cattle because of the decrease in national MCI testing. The proposed changes in ARM 32.3.435 reflect those recommendations.

To be considered a Scrapie consistent state, Official Order 00-01-GF of the Montana Department of Livestock, Animal Health Division was implemented in 2000

with the intent of updating the ARM. The department is proposing amendments to update current and outdated rules ARM 32.3.1303 and 32.3.1308 pertaining to scrapie identification and methodology. The rule changes allow the rescinding of the official order from year 2000.

The brands division proposes to establish new estray fees and disposition of estrays not claimed or sold in ARM 32.2.405. Section 81-4-603, MCA requires that department district inspectors take possession of any estray in their district, ship said animal(s) to a licensed livestock market, investigate, hold and care for, advertise and sell any unclaimed animals. The owner of the estray may appear and claim it at any time before the sale or shipment, upon payment of the cost of caring for the estray as determined by the department. Such fees must, by statute, be set at levels commensurate with the costs of performing the services listed. Historically no fee has been charged for this service except for feed costs for animals held prior to sale. The proposed fees were evaluated by determining the cost of the man hours, mileage, feed, market and advertising costs per estray to assure department fair reimbursement. The proposed fees were adjusted to offset inflationary costs. The brands division must continue to provide this service to the Montana livestock industry in order to assure that this vital function and the mission of the department continue to meet producer needs. The proposed estray fees will potentially affect approximately five people who may have estrayed animals. The cumulative amount of the fee increase will be $500.00 based on the proposed fees.

The proposed changes in aerial hunting rules are to eliminate confusion, simplify the application process, and improve compliance. The fee will change to an annual fee replacing the variable three-year process wherein permittees were allowed to choose from one- to three-year permits for a cost of $30 to $50. Permittees are required to provide proof of current FAA certification annually. Annual recertification under the old fee system was cumbersome and difficult to assure compliance. The proposed fee will affect approximately 13 present permit holders. The cumulative fee is $650 based on the proposed change.

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., January 22, 2013.

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. January 22, 2013.

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

public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected have been determined to be more than 25, based upon the population of the state.

7. 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 December 10, 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 through III, the amendment of ARM 37.106.1902, 37.106.1906, 37.106.1916, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965, and the repeal of ARM 37.86.2224 and 37.86.2225, pertaining to comprehensive school and community treatment program (CSCT)	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On January 9, 2013, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 2, 2013, 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 adopted provide as follows:

NEW RULE I COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REFERRALS (1) Comprehensive school and community treatment (CSCT) services must be provided as set forth in ARM 37.106.1916, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965 in order to receive payment under this program.

(2) Youth referred to the CSCT program must be served in the priority order below based upon acuity and need, regardless of payer:

(a) the youth is at risk of self-harm or harm to others;

(b) the youth requires support for transition from intensive out-of-home or community-based services;

(c) the youth meets the serious emotional disturbance criteria;

(d) the youth has not responded to positive behavior interventions and supports;

(e) the youth is not attending school due to the mental health condition of the youth; or

(f) effective July 1, 2014, the needs and strengths of the youth identified by the child and adolescent needs and strengths (CANS) assessment are such that without mental health services the youth will not be able to make positive behavioral changes.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

NEW RULE II COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: CONTRACT REQUIREMENTS (1) The licensed mental health center providing a comprehensive school and community treatment (CSCT) program must have a written contract with the school district.

(2) The mental health center must identify each school in which CSCT services will be provided, including:

(a) specific services to be provided;

(b) staffing by position and minimum qualifications; and

(c) a description of the mental health services provided by the mental health center during and outside of normal classroom hours.

(3) The school must identify:

(a) the provision of transportation and classroom space during nonschool days as described in ARM 37.106.1956(1)(i);

(b) the role of the school counselor and the school psychologist, as appropriate, in the provision of mental health services and supports to youth including coordination with the CSCT program; and

(c) the space provided and program supports, including telephone, computer access, locking file cabinet(s), and copying, that the school will make available to CSCT staff while providing services within the school. The treatment space provided must be adequate and appropriate for confidentiality, privacy, and the services provided.

(4) The school and mental health center must specify a referral process to the CSCT program that ensures youth have access to services prioritized according to acuity and need as specified in [NEW RULE I].

(5) The school must describe the implementation of a schoolwide positive behavior intervention and supports program, including, at a minimum, the following procedures:

(a) identifying youth who exhibit inappropriate behaviors to the degree that a positive behavior intervention plan is needed and youth at risk of, or suspected to have need of, mental health services;

(b) implementing and monitoring the progress of a positive behavior intervention plan for its effectiveness; and

(c) referring youth to the CSCT program when positive behavior interventions and supports have not resulted in significant positive behavioral change or when a youth may have a clinical condition and may be in need of mental health services.

(6) The school and mental health center must describe annual training offered to school personnel, parents, and students concerning the following:

(a) CSCT program and services;

(b) CSCT referral process and criteria;

(c) signs and symptoms that indicate a need for mental health services for a youth; and

(d) confidentiality requirements under the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA) Privacy and Security, and the Health Information Technology for Economic and Clinical Health Act (HITECH).

(7) The contract must identify program data and information which will be shared between the school district and the licensed mental health center to evaluate program effectiveness to include ARM 37.106.1956(9).

(8) The contract must include record keeping and management, billing procedures, and must state which party is responsible for each requirement.

(9) In the circumstance in which a school district is the licensed mental health center providing a CSCT program, the school district must adopt an operational plan that is substantially similar to the contractual requirements set forth in this rule. This operational plan must be kept on file and made available to the department upon request.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

NEW RULE III COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REIMBURSEMENT (1) Comprehensive school and community treatment (CSCT) services provided by a licensed mental health center with an endorsement under ARM 37.106.1955 must be billed under the school district's provider number. Mental health services that are provided concurrently with CSCT are billed under the mental health center's provider number. Outpatient therapy codes may not be billed to Medicaid by CSCT staff concurrent with Medicaid for CSCT.

(2) CSCT services may be provided to:

(a) youth ages three through five who are receiving special education services from the public school in accordance with an individualized education program (IEP) under the Individuals with Disabilities Education Act (IDEA); and

(b) youth ages six up to age 20, if they are enrolled in a public school.

(3) One team with two full-time employees may bill no more than 720 billing units per team per month. Services must be billed in the month the service is provided. The licensed or in-training mental health professional must provide at least half of the units billed by the team each month.

(4) Up to 20 CSCT units may be billed for a brief intervention, assessment, or referral for youth referred to the CSCT program, regardless of the diagnosis of the youth.

(5) For a youth to qualify for more than 20 units of CSCT, a full clinical assessment is required and the youth must meet the SED criteria in ARM 37.87.303.

(6) The school district as a Medicaid provider of CSCT is subject to all Medicaid state and federal billing rules and regulations. The school district must:

(a) use a sliding fee schedule for youth not eligible for Medicaid;

(b) bill all available financial resources for support of services including third party insurance and parent payments, if applicable; and

(c) document services to support the Medicaid reimbursement received.

(7) The school district must meet the certification of match requirements.

(8) The school district must provide to the department:

(a) a copy of the certification of match documentation, annually;

(b) a copy of the contract for services with the mental health center, annually;

(c) updates of all information in the MMIS billing system using the form provided in the youth mental health services manual by July 15, 2013; and

(d) updates of all information in the MMIS billing system using the form provided in the youth mental health services manual when there is a change in contracted mental health center, location of team(s), contact information or a new team.

(9) Failure to provide documentation to the department in accordance with reporting requirements in (8) may result in:

(a) suspension of CSCT services or termination of the CSCT program for the following school year; or

(b) cost recovery.

(10) The school must submit to the department an annual report regarding the effectiveness of the CSCT program as determined in ARM 37.106.1956(9).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

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

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (3) remain the same.

~~(4) "Child and adolescent" means a person 17 years of age or younger and includes students up to 21 years of age who still attend a secondary public school.~~

~~(5) "Child and adolescent day treatment" means a program which provides an integrated set of mental health, education and family intervention services to children or adolescents with a serious emotional disturbance.~~

(6) through (8) remain the same, but are renumbered (4) through (6).

~~(9)~~ (7) "Comprehensive school and community treatment program (CSCT)" means a comprehensive, planned course of community mental health outpatient treatment provided in cooperation and under written contract with the school district where the ~~child or adolescent~~ youth ~~with a serious emotional disturbance (SED) resides~~ attends school. The program must be provided by a licensed mental health center with an endorsement under ARM 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965.

(10) and (11) remain the same, but are renumbered (8) and (9).

~~(12)~~ (10) "Individualized education program" (IEP) means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.~~341~~ 320 through 300.~~350~~ 325 ~~as revised~~ amended as of ~~July 1, 1995~~ October 30, 2007. The department adopts and incorporates by reference 34 CFR 300.~~341~~ 320 through 300.~~350~~ 325. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(13) through (17) remain the same, but are renumbered (11) through (15).

~~(18)~~ (16) "Licensed mental health professional" means:

(a) remains the same.

(b) an occupational therapist licensed to practice in Montana who has had at least three years' experience dedicated substantially to serving persons with serious mental illnesses and is working in a ~~child and adolescent~~ youth day treatment program or adult day treatment program; or

(c) remains the same.

(19) through (25) remain the same, but are renumbered (17) through (23).

~~(26)~~ (24) "Seclusion" means staff initiating or escorting a ~~child or adolescent~~ youth to a seclusion time-out room to calm down and appropriately manage their behavior.

(27) remains the same, but is renumbered (25).

~~(28)~~ (26) "Serious emotional disturbance" means, with respect to a youth, that the youth meets the requirements defined in ARM ~~37.86.3702~~ 37.87.303.

(29) remains the same, but is renumbered (27).

~~(30)~~ (28) "Time-out" means staff~~, child or adolescent~~ or youth initiating a time-out generally away from the group activity to enable the ~~child or adolescent~~ youth to calm down and appropriately manage their behavior.

(29) "Youth" means a person 17 years of age or younger and includes students up to 20 years of age who still attend a secondary public school.

(30) "Youth day treatment" means a program which provides an integrated set of mental health, education, and family intervention services to youth with a serious emotional disturbance.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

37.106.1906 MENTAL HEALTH CENTER: SERVICES AND LICENSURE

(1) Each applicant for licensure ~~shall~~ must submit a license application to the department requesting approval to provide the services in (3) and may request approval to provide one or more of the services in (4).

(2) and (3) remain the same.

(4) A mental health center, with the appropriate license endorsement, may provide one or more of the following services:

(a) ~~child and adolescent~~ youth intensive case management;

(b) remains the same.

(c) ~~child and adolescent~~ youth day treatment;

(d) through (i) remain the same.

(5) Each service listed in (4) that is endorsed by the department ~~shall~~ must be recorded on the mental health center's license.

(6) and (7) remain the same.

(8) A mental health center must report to the department, in writing, any of the following changes within at least 30 days before the planned effective date of the change:

(a) through (c) remain the same.

(d) a change in the name of the agency; ~~or~~

(e) the addition of any endorsement service site; or

~~(e)~~ (f) the discontinuation of providing a service for which the mental health center has an area of endorsement.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

37.106.1916 MENTAL HEALTH CENTER: INDIVIDUALIZED TREATMENT PLANS (1) Based upon the findings of the assessment(s), each mental health center ~~shall~~ must establish an individualized treatment plan for each client within 24 hours after admission for crisis stabilization program services and within five contacts, or 21 days from the first contact, whichever is later, for other services. The treatment plan must:

(a) through (d) remain the same.

(e) include the client's or parent/legal representative/guardian's signature and date indicating participation in the development of the treatment plan. If the client's or parent/legal representative/guardian's participation is not possible or inappropriate, written documentation must indicate the reason;

(f) through (4) remain the same.

(5) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted face-to-face and include:

(a) remains the same.

(b) the client's legal representative/guardian if applicable;

(c) the client's parents or legal representative/guardian if the client is a youth and the involvement by the parent or legal representative/guardian is clinically appropriate;

(d) through (7) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

37.106.1955 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT) ENDORSEMENT REQUIREMENTS (1) and (2) remain the same.

(3) ~~The program must assess the needs of a child or adolescent with a serious emotional disturbance and the appropriateness of the CSCT program to meet those needs.~~ As of July 1, 2014, the child and adolescent needs and strengths (CANS) assessment must be initiated for each youth with serious emotional disturbance (SED) referred to the CSCT program within fourteen calendar days of

receipt of a referral cosigned by a parent or legal representative/guardian. The CANS must be:

(a) finalized prior to the completion of the individualized treatment plan for the youth;

(b) updated a minimum of every 90 days while the youth continues to receive CSCT services; and

(c) completed upon the discharge of the youth from the program.

(4) ~~Individuals enrolled in public school remain eligible for the CSCT program through the age of 20.~~ The mental health center must have a written contract with the school district in accordance with [NEW RULE II].

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1956 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT), SERVICES AND STAFFING

(1) The CSCT program must be able to provide the following services, as clinically indicated, to ~~children or adolescents with serious emotional disturbance, as that term is defined at ARM 37.86.3702~~ youth as outlined in the individualized treatment plan (ITP):

(a) and (b) remain the same.

(c) other evidence and research-based practices effective in the treatment of ~~children or adolescents~~ youth with a serious emotional disturbance;

(d) direct crisis intervention services during the time the ~~child or adolescent~~ youth is present in a school-owned or operated facility;

(e) ~~crisis intervention services by telephone during the time the child or adolescent is not present in a school-owned or operated facility~~ a crisis plan that identifies a range of potential crisis situations with a range of corresponding responses including physically present face-to-face encounters and telephonic responses 24/7, as appropriate;

(f) treatment plan coordination with ~~addictive~~ chemical dependency and mental health treatment services the ~~child or adolescent~~ youth receives outside the CSCT program;

(g) remains the same.

(h) referral and aftercare coordination with inpatient facilities, psychiatric residential treatment ~~programs~~ facilities, or other appropriate out-of-home placement programs; and

(i) continuous treatment that ~~includes services during nonschool days, integrated in a manner consistent with the child or adolescent's treatment plan~~ must be available twelve months of the year. The program must provide a minimum of four hours per week of CSCT services in summer months and during winter and spring break.

(2) CSCT services for youth with serious emotional disturbance (SED) must be provided according to an individualized treatment plan designed by a licensed mental health professional who is a staff member of a CSCT program team.

(3) The CSCT ITP team must include:

(a) licensed mental health professional;

(b) school administrator or designee;

(c) parent(s) or legal representative/guardian;

(d) the youth, as appropriate; and

(e) other person(s) who are providing services, or who have knowledge or special expertise regarding the youth, as requested by the parent(s), legal representative/guardian, or the agencies.

(4) Providers must inform the youth and the parent(s)/legal representative/guardian that Medicaid requires coordination of CSCT with home support services and outpatient therapy.

(5) The CSCT program must employ sufficient qualified staff to deliver all CSCT services to youth as outlined in the ITP for the youth and in accordance with the contract between the school and mental health center.

(6) The CSCT program must employ or contract with a program supervisor who has daily overall responsibility for the CSCT program and who is knowledgeable about the mental health service and support needs of the youth. The program supervisor may provide direct CSCT services, but this position may not fill the functions of the staff positions described in (6) and (7) for more than three months.

(7) Each CSCT team must include a mental health professional, who may be an in-training mental health professional, as defined in ARM 37.87.702(3). In-training mental health professionals must be:

(a) supervised by a licensed mental health professional; and

(b) licensed by the last day of the calendar year following the state fiscal year (July 1 through June 30) in which supervised hours were completed.

(8) Each CSCT team must include a behavioral aide. A behavioral aide must work under the clinical oversight of a licensed mental health professional and provide services for which they have received training that do not duplicate the services of the mental health professional. All behavioral aides initially employed after July 1, 2013 must have a high school diploma and at least two years:

(a) experience working with emotionally disturbed youth;

(b) providing direct services in a human services field; or

(c) post-secondary education in human services.

~~(3)~~ (9) The licensed mental health center CSCT program supervisor and an appropriate school district representative must meet at least every 90 days during the time period CSCT services are provided to mutually assess program effectiveness utilizing~~, but not limited to,~~ the following indicators:

(a) ~~child or adolescent~~ progress on ~~his or her~~ the individual treatment plan of each youth receiving CSCT services;

(b) remains the same.

(c) ~~discipline~~ program referrals;

(d) contact with law enforcement; ~~and/or~~

(e) referral to a higher level of care~~.~~; and

(f) discharges from the program.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1960 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, ~~STAFFING AND~~ PERSONNEL TRAINING (1) ~~The licensed mental health center's CSCT program must be provided through a program of services delivered by a team or teams.~~ The CSCT program must be delivered by adequately trained staff. Training should be competency-based and must be documented and maintained in personnel files.

(2) ~~Each team must consist of a full-time equivalent licensed mental health professional, as that term is defined in ARM 37.106.1902, and an aide. An in-training mental health practitioner pursuant to ARM 37.88.901 may be a team member. Full-time equivalent is defined in ARM 37.27.102.~~ All CSCT program staff are required to receive a minimum of 18 hours of orientation training during the first three months of employment which addresses all of the following:

(a) certified de-escalation training inclusive of physical and nonphysical methods;

(b) child development;

(c) behavior management;

(d) crisis planning;

(e) roles and responsibilities of CSCT staff in the school setting;

(f) school culture;

(g) confidentiality requirements;

(h) staff and program supervision; and

(i) CSCT program procedures.

~~(3) A full-time equivalent team is limited to the billing amounts as set forth in ARM 37.86.2225.~~

~~(4) A CSCT program must employ or contract with a program supervisor who is knowledgeable about the service and support needs of children and adolescents with serious emotional disturbances. The program supervisor may be a member of a team providing direct services.~~

~~(5) This rule is not intended to prevent the use of part-time staff to provide CSCT services throughout the year, including school vacation periods. If a child or adolescent receives CSCT services during time periods when school is not regularly in session, then part-time staff may be used and billed as set forth in ARM 37.86.2225.~~

~~(6) The licensed mental health center's CSCT program must be delivered by adequately trained staff. Training must be documented and maintained in the personnel files.~~

~~(7) If a nonlicensed team member is employed, that individual must have a high school diploma or a general education degree (GED) and one year of relevant experience.~~

~~(a) The nonlicensed team member must receive ten hours of training during the first three months of employment that includes de-escalation training, child development, and how and when to implement behavior management. The ten hours of initial training may be combined with the required 18 hours of annual training mandated for all team members.~~

~~(8)~~ (3) All ~~team members~~ program staff are required to receive a minimum of 18 hours training per year in behavior management strategies that focus on the

prevention of behavior problems for ~~children or adolescents~~ youth with serious emotional disturbance (SED). Training must include:

(a) remains the same.

(b) classroom and ~~child or adolescent~~ youth behavior management techniques that include ~~nationally~~ certified de-escalation training inclusive of physical and nonphysical methods;

(c) evidence and research-based behavior interventions and practices; and

(d) ~~therapeutic de-escalation of crisis situations for the protection and safety of the clients and staff; and~~ progress monitoring techniques to inform treatment decisions.

~~(e) physical and nonphysical methods of managing children and adolescents.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1961 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, ~~CLIENT~~ RECORD REQUIREMENTS (1) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, the licensed mental health center's CSCT program must maintain the following ~~client~~ records for youth with serious emotional disturbance (SED):

(a) ~~progress notes for each individual therapy and other direct services~~ a written referral cosigned by the parent(s) or legal representative/guardian, which documents the reason for the referral;

(b) ~~monthly overall progress notes; and~~ a copy of the clinical assessment which documents the presence of SED;

(c) ~~individual outcomes compared to baseline measures and established benchmarks.~~ the individualized treatment plan for CSCT;

(d) progress notes for each individual therapy session and other direct services provided to the youth and family;

(e) 90-day treatment plan reviews; and

(f) discharge plan.

(2) In addition to (1), beginning July 1, 2014, youth records must also include the child and adolescent needs and strengths (CANS) assessment results.

(3) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, records for youth referred to CSCT regardless of their diagnosis as described in [NEW RULE III(4)] must include the following:

(a) a written referral, cosigned by the parent(s)/legal representative/guardian, which documents the reason for the referral;

(b) progress notes for each individual therapy session and other direct services provided to the youth and family; and

(c) discharge plan with referral to additional services, if appropriate.

(4) Records for youth referred to CSCT and denied acceptance into the program must include the following:

(a) a written referral with the reason for the referral; and

(b) documentation detailing the reason for the denial.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1965 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, SPECIAL EDUCATION REQUIREMENTS (1) The licensed mental health center's CSCT program must be coordinated with the ~~child or adolescent's~~ special education program of the youth, if ~~any~~ the youth is identified as a child with a disability and is receiving special education services under the individuals with disabilities education act (IDEA).

(2) ~~If a client has a child study team (CST), as that term is used in Title 20, MCA, the CSCT team assigned to the child or adolescent must attend CST meetings and individualized education plan (IEP) meetings when clinically indicated and permitted under state and federal law.~~ The licensed mental health professional or behavioral aide, as appropriate, must attend the individualized education plan (IEP) meeting when requested by the parent/legal representative/guardian or the school.

~~(3) A copy of the IEP must be included in the child or adolescent's treatment plan.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

5. The department proposes to repeal the following rules:

37.86.2224 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICE (EPSDT), COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT, is found on page 37-20331 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2225 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT), CSCT PROGRAM BILLING, is found on page 37-20332 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes to adopt New Rules I through III, amend ARM 37.106.1902, 37.106.1906, 37.106.1916, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965, and repeal ARM 37.86.2224 and 37.86.2225 pertaining to the comprehensive school and community treatment program (CSCT).

The current CSCT rules were last amended in May of 2006. With the CSCT Program moving to the children's Mental Health Bureau (CMHB) from the Health Resources Division (HRD), substantial changes to the current language are needed. The proposed new rules provide more specificity to reflect the move from HRD to CMHB and to align them with recommendations from the multidisciplinary workgroup tasked with evaluating the rules. Rule amendments are being proposed in Title 37, chapter 86, and chapter 106 and new rules are being adopted in chapter 87 in cooperation between the Quality Assurance Division and the Children's Mental Health Bureau.

New Rule I

The department is proposing New Rule I which adds the requirements for a referral system that would prioritize caseload by acuity. These requirements are necessary to ensure that the neediest youth are served first.

New Rule II

The department is proposing New Rule II to require certain elements to be in place in contracts between schools and mental health centers. These elements include: staffing, space, roles, referral process, implementation of a positive behavior intervention and supports program, and provision for data collection and records management. This rule is necessary to ensure that an understanding exists between schools and mental health centers about the services to be provided through the CSCT program and to promote program uniformity statewide.

ARM 37.106.1956(3) is being renumbered to ARM 37.106.1956(9) because new text has been added to this section of rule.

New Rule III

The department is proposing New Rule III to contain provisions requiring providers to meet certain conditions in order to be reimbursed by Medicaid for services. This rule is necessary because it would provide eligibility criteria for youth and providers.

New Rule III also introduces a new option for schools choosing to include it in their array of CSCT services: an intervention, assistance, and referral program for youth without serious emotional disturbance. This option was included at the request of schools where CSCT is either the sole access point for mental health services or the least intimidating access point for families.

ARM 37.106.1956(3) is being renumbered to ARM 37.106.1956(9) because new text has been added to this section of rule.

ARM 37.106.1902

The department is proposing to amend this rule to remove reference to "child or adolescent," replacing with "youth" to be consistent with the department's preferred language. It revises the definition of comprehensive school and community treatment to include the need for a contract, the addition of tribes as providers, to clarify that CSCT takes place where a youth attends school, and updates the reference to the code of federal regulations pertaining to individualized education plans.

ARM 37.106.1906

The department is proposing amending this rule to replace "child or adolescent" with "youth" and add a requirement that mental health centers inform the department, in writing, upon addition of any CSCT service site. Informing the department of service site additions is necessary as without the information quality assurance activities are not possible.

ARM 37.106.1916

The department is proposing amending this rule to add the term "legal representative" in order to align this rule with the language being used in the children's mental health bureau rules. This is necessary to maintain consistency.

ARM 37.106.1955

The department is proposing amending this rule to include a specific requirement after July 1, 2014 that the child and adolescent needs and strengths (CANS) assessment be conducted for each youth with a serious emotional disturbance referred to the program. This is necessary so that the department can begin to collect data on the population served to improve programs and also to improve on-the-ground treatment planning. The proposed rule also references contract requirements in Title 37, chapter 87 and removes eligibility criteria which have more appropriately been placed in New Rule III.

ARM 37.106.1956

The department is proposing amending this rule to specify services and staffing requirements that have previously been unclear to providers. The proposed rule specifies that crisis services must be provided to youth in and outside of school. This is necessary in order to ensure that CSCT is truly a comprehensive service. The amended rule also requires minimal contact for breaks and holidays, again ensuring that CSCT is truly a comprehensive service. The proposed rule language specifically states who is required to attend treatment plan meetings to ensure representation from both the school and the mental health centers. This is important because CSCT is a school-based service. In order to improve program performance, the proposed rule is more specific than rules have been in the past regarding the experience requirements of CSCT team members and the supervisor.

ARM 37.106.1960

The department is proposing amending ARM 37.106.1960 to remove staffing requirements from the rule as they are more appropriately covered in ARM 37.106.1956. The proposed changes also specify training requirements at orientation and for ongoing staff. Systematic training requirements are necessary in order to ensure that CSCT staff persons are delivering quality programs to youth.

ARM 37.106.1961

The department is proposing amending ARM 37.106.1961 to specify records requirements for youth's CSCT files. This rule change is necessary to be consistent with treatment plan requirements.

ARM 37.106.1965

The department is proposing amending ARM 37.106.1965 to make a wording change that explains that coordination with special education is required if a youth has both an individualized education plan (IEP) and a CSCT individualized treatment plan. This change is necessary because the previous version of the rule seemed to indicate that a youth would have both as a matter of course. The rule change would also make clear that a member of the CSCT team would attend the IEP meeting if requested by the parent or legal representative. This change is necessary in many instances to foster coordination.

ARM 37.86.2224 and 37.86.2225

The department is proposing to repeal these rules because the proposed new rules and the rule amendments to Title 37, chapter 106 now provide the guidance regarding CSCT.

Fiscal Impact

The proposed rule amendments will not impact the state general fund. The CSCT program is funded by Medicaid with the public schools providing the certified match monies. However, there would be a federal fiscal impact if the change allowing for 20 units of CSCT for youth not diagnosed with a serious emotional disturbance results in an increase in the total number of CSCT teams. This change to the program has the potential to cost up to $3.9 million over the next two state fiscal years (SFY). The federal portion of this will depend on the federal medical assistance percentages (FMAP), but currently the federal component makes up about two-thirds of the total expenditures. Schools would have to be able to meet the certification of match requirements for the remaining third. The increase in matching dollars provided by schools could be up to $1.3 million more than currently provided over the next two SFYs.

CSCT currently serves more than 4,000 youth per year.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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., January 17, 2013.

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

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

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

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

/s/ Kurt R. Moser
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State December 10, 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, the amendment of ARM 37.79.101, 37.79.102, 37.79.120, 37.79.201, 37.79.206, 37.79.207, 37.79.501, 37.79.503, 37.79.505, 37.79.602, and 37.79.801, and repeal of 37.79.301, 37.79.303, 37.79.307, 37.79.308 37.79.309, 37.79.312, 37.79.313, 37.79.316, 37.79.317, and 37.79.325 pertaining to the healthy Montana kids coverage group of the healthy Montana kids plan	))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On January 9, 2013, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 2, 2013, 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 rule as proposed to be adopted provides as follows:

NEW RULE I SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated October 1, 2012, which is available on the department's web site at www.hmk.mt.gov.

(2) The HMK Evidence of Coverage describes the health care benefits available to an HMK coverage group enrollee if the service is medically necessary. Prior authorization may be required and copayments may apply.

AUTH: 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1005, 53-4-1109, MCA

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

37.79.101 HEALTHY MONTANA KIDS (HMK) PLAN (1) The rules in this ~~sub~~chapter implement the Healthy Montana Kids Plan to provide comprehensive health care coverage to Montana residents who are 18 years of age or younger residing in households with a combined family income at or below 250% of the ~~2009~~ federal poverty level (FPL). There is no resource test, as that term is used in 53-6-113 and 53-6-131, MCA, to qualify to participate in the Healthy Montana Kids Plan.

(2) remains the same.

(a) Qualified residents residing in households with income at or below 250% of the ~~2009~~ FPL but greater than 133% of the ~~2009~~ FPL qualify for the HMK coverage group. The HMK coverage group is a public benefit program administered by the department through a third party administrator. HMK enrollees have health care coverage to the extent described in this chapter. HMK providers are members of a provider network reimbursed at rates agreed to by contract. The provisions of this chapter apply to HMK enrollees. The provisions of 42 USC § 1396d(r) (5) regarding services provided for early and periodic screening, diagnosis and treatment (EPSDT) purposes do not apply to the HMK coverage group.

(b) Qualified residents residing in households with income at or below 133% of the ~~2009~~ FPL qualify for the HMK Plus coverage group. The HMK Plus coverage group is the term used to identify the Montana Medicaid program for Montana residents 18 years of age or younger. HMK Plus enrollees have health care coverage to the extent provided by Montana Medicaid. HMK Plus providers are reimbursed at Montana Medicaid rates. The provisions of this chapter and Title 37, chapters 82, 83, 85, 86, and 88 apply to HMK Plus.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, 53-4-1110, MCA

37.79.102 DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) "Advanced practice registered nurse (APRN)" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the Board of Nursing in ARM ~~Title 8, chapter 32, subchapter 3~~ 24.159.1414.

(2) and (3) remain the same.

(4) "Benefits" means the services an enrollee is eligible ~~for as outlined in this subchapter~~ to receive. The HMK coverage group benefits are stated in its Evidence of Coverage. All benefits are provided to an enrollee through the department.

(5) "Benefit year" means the period from October 1st through September 30th for those enrolled in the HMK coverage group. If an individual is enrolled in the HMK coverage group after October 1st, the benefit year is the period from the date of enrollment through the following September 30th.

(6) through (9) remain the same.

(10) "Enrollee" means an individual who is eligible ~~to receive HMK Plan benefits as determined by the department under this subchapter~~ and ~~is~~ enrolled in

the HMK coverage group ~~program~~. ~~An individual is not an enrollee while on a waiting list or pending issuance of a hearing decision or during any period a hearing officer determines the individual was not eligible for the HMK coverage group benefits.~~ The term "enrollee" and "member" are synonymous.

(11) through (13) remain the same.

(14) "Federal poverty level (FPL)" means the poverty guidelines for ~~2011~~ 2012 for the 48 contiguous states and the District of Columbia as published under the "Annual Update on the HHS Poverty Guidelines" ~~76 Federal Register 13, pp 3637 - 3638, January 20, 2011~~ 77 Federal Register 17, pp 4034-4035, January 26, 2012.

(15) through (38) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, 53-4-1108, MCA

37.79.120 MOVEMENT BETWEEN HMK AND HMK PLUS (1) The HMK Plan is available to all Montana residents who are 18 years of age or younger and live in households with a combined family income at or below 250% of the ~~2009~~ federal poverty level (FPL). The HMK Plan provides for two coverage groups, HMK and HMK Plus. The HMK coverage group is available to qualified residents who reside in households with a combined family income between 134% and 250% of the ~~2009~~ FPL. A waiting list may apply to this program. The HMK Plus coverage group is available to qualified residents who reside in households with a combined family income between 0 and 133% of the ~~2009~~ FPL.

(2) The HMK and HMK Plus coverage groups provide an eligible enrollee 12 months continuous coverage~~. An eligible HMK coverage group enrollee's coverage begins on the first day of the month following the date the application is received. An eligible HMK Plus coverage group enrollee's coverage~~ that begins on the first day of the month in which the application is received. ARM 37.79.503 states eligibility determination procedures for the HMK coverage group. ARM 37.82.204 states eligibility determination procedures for the HMK Plus coverage group.

AUTH: 53-4-1105, MCA
IMP: 53-4-1104, 53-4-1105, 53-4-1110, MCA

37.79.201 ELIGIBILITY (1) through (6) remain the same.

(7) Applicants who are losing HMK Plus coverage or who were denied HMK Plus coverage for a reason other than the family withdrew their application or failed to comply with HMK Plus requirements ~~will be referred to the~~ are evaluated for HMK coverage group via an electronic report. The HMK coverage group eligibility will be determined and applicants will be enrolled in the HMK coverage group or placed on the HMK coverage group's waiting list.

(8) and (9) remain the same.

(10) The HMK coverage group eligibility is redetermined within one year after the initial eligibility period, and annually thereafter. ~~A renewal application must be completed, signed, dated and returned by a specified date for purposes of eligibility~~

~~redetermination.~~ Prior eligibility for HMK does not guarantee continued eligibility or enrollment.

(11) and (12) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.206 ELIGIBILITY REDETERMINATION, NOTICE OF CHANGES

(1) Eligibility determinations ~~shall~~ will be effective for a period of 12 months unless one or more of the following changes occurs:

(a) through (2) remain the same.

(3) ~~An HMK renewal application must be completed and eligibility redetermined every 12 months. If the renewal application is not returned before the HMK coverage group enrollment is scheduled to end, benefits will terminate. A new application may be completed at a later date but, if the children are determined eligible, they may be placed on the waiting list if one exists.~~ A prepopulated HMK renewal application with household composition and income information is mailed to each family a month prior to the end of the existing family span. If there are changes to household composition, annual income, or health insurance coverage the family must complete, sign, date, and return the renewal application by a specified date or benefits will terminate. If there are no changes to household composition, annual income, or health insurance coverage the family is not required to respond or fill out the renewal application and the children are redetermined as eligible and are enrolled in the program for a new 12-month span. If enrollment ends, a new application may be completed and, if the children are determined eligible, they may be placed on the waiting list if one exists.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.207 TERMINATION OF ELIGIBILITY AND GUARDIAN LIABILITY

(1) remains the same.

(2) The HMK coverage group eligibility terminates at the end of the month the department becomes aware:

(a) through (e) remain the same.

(f) the ~~applicant~~ enrollee has moved without providing a new address and the department is unable to locate the ~~applicant~~ enrollee; or

(g) ~~a completed renewal application~~ information requested by the department to redetermine eligibility has not been received ~~by the department~~.

(3) Termination of eligibility, based on insufficient funding at the department may not be effective earlier than the end of the month notice of termination is given to the enrollee or the enrollee's parent or guardian. Disenrollment for provisions of (2), except for (2)(a), will be effective subject to ten-day notification per ARM 37.79.505.

(4) remains the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.501 COST SHARING PROVISIONS (1) remains the same.

(2) No copayment ~~shall~~ will apply to:

(a) through (d) remain the same.

(e) extended mental health services for children with a serious emotional disturbance ~~as stated in ARM 37.79.316(4)~~.

(3) The total copayment for each family shall not exceed $215 per family per benefit year.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.503 ENROLLMENT (1) remains the same.

(2) ~~The enrollment date will always be the first day of the enrollment month. An eligible child will be enrolled~~ Except for a newborn child, a child's HMK enrollment begins the later of:

(a) the first day of the month ~~following the month the~~ an application is received ~~if the family is determined eligible; or~~ so long as the child is determined to meet all eligibility criteria;

(b) ~~the month funding is sufficient to enroll the applicant from the waiting list.~~ the first day of the month the family reports a new child, who meets all HMK eligibility criteria, joined the family;

(c) the first day of the month after an insurance delay period has ended; or

(d) the month funding is sufficient to enroll the applicant from the waiting list.

(3) A newborn will be enrolled effective:

(a) the date of birth when the child's birth is reported during the birth month;

(b) the date of birth when the birth is reported the following month, but within ten days of birth;

(c) if not reported within ten days, the first of the month the child's birth is reported; or

(d) the month funding is sufficient to enroll the applicant from the waiting list.

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

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1007, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, MCA

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

(b) Good cause ~~shall be~~ is defined as provided in Montana insurance law and rules and does not include an adverse change in health status.

(2) and (3) remain the same.

(4) Notice of disenrollment will be mailed at least ten days prior to the time the proposed disenrollment or adverse action is to become effective.

(5) Notice is adequate if it includes:

(a) a statement of the proposed adverse action;

(b) the reason for the proposed adverse action;

(c) the specific regulations supporting the proposed adverse action;
(d) a statement of the claimant's right to a hearing;
(e) how to obtain a hearing;
(f) telephone number to call for additional information;
(g) the right to be represented by legal counsel, friend, relative, or other spokesman;
(h) the availability of free legal assistance if such assistance is known to the department program manager involved in the denial of the claim;
(i) if applicable, whether or not benefits are to be continued and the liability of the claimant for benefits received pending hearing if the hearing decision is adverse; and
(j) any other information as specifically required by applicable law, including department rule.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, MCA

37.79.602 PROVISION OF BENEFITS (1) through (3) remain the same.
(4) The department will deny payment to any entity located outside of the United States (U.S.) for any items or services provided to an enrollee.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.801 GRIEVANCE AND APPEAL PROCEDURES (1) through (4) remain the same.
(5) Continuation of HMK benefits during an appeal process will be applied as specified in ARM 37.5.316(3) through (15).

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

5. The department proposes to repeal the following rules:

37.79.301 COVERED BENEFITS, is found on page 37-17625 of the Administrative Rules of Montana.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.303 BENEFITS NOT COVERED, is found on page 37-17627 of the Administrative Rules of Montana.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.307 INPATIENT HOSPITAL BENEFITS, is found on page 37-17633 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

37.79.308 OUTPATIENT HOSPITAL BENEFITS, is found on page 37-17634 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

37.79.309 PHYSICIAN AND ADVANCED PRACTICE REGISTERED NURSE BENEFITS, LIMITATIONS, AND EXCLUSIONS, is found on page 37-17635 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

37.79.312 PRESCRIPTION DRUG BENEFITS, is found on page 37-17639 of the Administrative Rules of Montana.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.313 LABORATORY AND RADIOLOGY BENEFITS, is found on page 37-17640 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

37.79.316 MENTAL HEALTH BENEFITS, is found on page 37-17645 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

37.79.317 SUBSTANCE USE DISORDER BENEFITS, is found on page 37-17646 of the Administrative Rules of Montana.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.325 AUDIOLOGY BENEFITS, is found on page 37-17657 of the Administrative Rules of Montana.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) administers the Healthy Montana Kids (HMK) Plan, which is a health care coverage plan for low income Montana children that includes two coverage groups: the HMK Plus coverage group and the HMK coverage group. The department is proposing to adopt, amend, and repeal rules pertaining to the HMK coverage group.

The following statement for each rule explains why the changes are necessary and what the changes mean for enrolled members or for those applying for HMK.

New Rule I

The department is proposing to adopt a new rule that will incorporate by reference the HMK coverage group's current Evidence of Coverage. New Rule I will become the department's statement in administrative rule of the HMK coverage group's benefits. The Evidence of Coverage is the document used by the department's third party administrator. It is available on the internet or in hard copy form. This change will make it easier for parents, guardians, and providers to determine what health care services are paid for by the HMK coverage group.

Effective October 1, 2012, the following services are added as a covered benefit: chiropractic services; cochlear implants and associated components; durable medical equipment, prosthetic devices and medical supplies; home health services; hospice services; nutrition services; transplants, organ, and tissue; and transportation and per diem. Effective January 1, 2013, the following services are added as a covered benefit: chiropractic services and durable medical equipment. The department is adding these services to align benefits more closely with benefits covered by HMK Plus

ARM 37.79.101

The Federal Poverty Level (FPL) is defined in ARM 37.79.102 and the current FPL (the 2012 FPL) is adopted. The reference to 2009 is removed from this rule because it is not the current FPL.

Language stating that EPSDT does not apply to the HMK coverage group is being added to this rule. This is not a substantive change because EPSDT has always only applied to the HMK Plus coverage group. This amendment is proposed because ARM 37.79.101 describes differences between the HMK and HMK Plus coverage groups and EPSDT is a difference.

ARM 37.79.102

The definition of "Benefits" is being amended to refer to the HMK coverage group Evidence of Coverage that is being adopted in New Rule I. This change is necessary to accurately define benefits.

The definition of "Advanced Practice Registered Nurse (APRN)" is being amended to correct the cross reference to Department of Labor rules.

The definition of "Benefit Year" is amended to agree with the changes to ARM 37.79.120 and 37.79.206.

The definition of "Federal Poverty Level (FPL)" is being amended to adopt the current FPL, which is calculated by the federal government on an annual basis. This change is necessary for the HMK coverage group rules to accurately state what income levels currently qualify for services.

The definition of "Enrollee" is being amended to remove unnecessary verbiage.

ARM 37.79.120

FPL is defined in ARM 37.79.102 and the current FPL is adopted. The reference to 2009 in this rule is removed because it is incorrect.

The coverage period for the HMK coverage group is changed to begin on the first day of the month in which the application is received. This is a substantive change made to align the HMK Plus and HMK coverage groups. This change will simplify administration of the program and assists parents, guardians, and providers.

ARM 37.79.201

In (7) the department is proposing to clarify that HMK plan eligibility is completed simultaneously for both programs.

The department changed its procedures for eligibility redetermination on April 1, 2012 for both Medicaid and the HMK Plan (see ARM 37.79.206 below). The changes in (10) conform to this change in procedure.

ARM 37.79.206

In April 2012 the department modified its annual eligibility redetermination process for the HMK plan. A prepopulated application is now mailed to every participating family. If there are no changes to household composition, income, or health insurance coverage, the parent or guardian is not required to respond and coverage is automatically extended for an additional 12 months. The application must be completed and returned to the department by the parent or guardian if there are changes. This modification of the renewal process simplifies program administration and assists program participants.

ARM 37.79.207

The department is amending the language in this rule to be consistent with the changes in ARM 37.39.206. A new application is no longer required every twelve months but, if the department determines additional information is needed, it may request the information. Enrollment may be terminated if the parent or guardian does not provide the requested information. The term applicant is changed to enrollee for consistency.

ARM 37.79.501

This rule is being amended to remove the cross reference to ARM 37.79.316 which is being repealed.

ARM 37.79.503

The department is proposing the changes to this rule to accurately state that enrollment in the HMK coverage group for an eligible child begins the first day of the month an application is received. This change occurred November 1, 2011. The rule changes also specify the language for adding a newborn to an existing family span. A parent or guardian must send notification to the HMK Plan during the birth month or within ten days of the date of birth for enrollment to be effective as of the child's date of birth.

ARM 37.79.505

The department is proposing to amend this rule to state the requirements of a notice of disenrollment. These changes reflect alignment with Medicaid rules for notice of disenrollment.

ARM 37.79.602

The department is proposing this amendment because the HMK coverage plan will not pay for services or items provided outside the United States (U.S.). This change is required by Section 6505 of the Affordable Care Act. This amendment will provide direction for members who receive services outside of the U.S.

ARM 37.79.801

The proposed amendments clarify policy and are not substantive changes in law. The department is proposing to amend this rule to specify that HMK coverage benefits continue during an appeal as stated in Title 39, chapter 5.

Repeal of ARM 37.79.301, 37.79.303, 37.79.307, 37.79.308, 37.79.309, 37.79.312, 37.79.313, 37.79.316, 37.79.317, and 37.79.325

The department is proposing to repeal these rules and replace them with new Rule I, which is described above. This is an editing change to improve the clarity of these rules. Except for the addition of services described above, this is not a substantive change in the medically necessary health care services that are covered for an enrollee in the HMK coverage group.

The department is repealing these rules and adopting by reference HMK coverage group's Evidence of Coverage document to more accurately describe what health care services are covered. The rules that are being repealed do not provide a complete list of what benefits are or are not covered.

Fiscal Impact

The definition of "Federal Poverty Level (FPL)," which changes when FPL is updated in the Federal Register (usually on an annual basis) will have a fiscal impact. New 2012 FPL levels impact all applicants for HMK because the income levels for program eligibility are higher than the previous year, thereby allowing more applicants access to coverage. The minimal change in FPL income levels represents very little impact to program funds.

The total fiscal impact for the additional covered benefits is projected to be $1,448,752 federal funding and $452,498 state special revenue for state fiscal year (SFY) 2013. Projected costs for the new benefits to HMK were derived from state fiscal year (SFY) 2010 and 2011 Montana Medicaid data for children between the ages of 0 through 18 years. HMK enrollment is anticipated to average 23,000 members per month.

7. The department intends to apply New Rule I retroactively to October 1, 2012 except for chiropractic services and durable medical equipment, which will be applied retroactively to January 1, 2013. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

8. 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., January 17, 2013.

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

10. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 8 above or may be made by completing a request form at any rules hearing held by the department.

11. 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.

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

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State December 10, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.9.101, 42.9.104, 42.9.105, 42.9.106, 42.9.111, 42.9.201, 42.9.401, 42.9.501, 42.9.510, 42.9.520, and 42.9.530 relating to pass-through entities	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 14, 2013, at 2 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., January 4, 2013, 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:

42.9.101 DEFINITIONS The following definitions apply to this chapter:

(1) "Eligible participant" means a partner of a partnership or a shareholder of an S corporation that is a nonresident individual, estate, or trust, a foreign C corporation, or a pass-through entity whose only Montana source income for the tax year is from partnerships or S corporations electing to file composite returns and pay composite taxes on their behalf.

(2) and (3) remain the same.

AUTH: ~~15-30-305~~ 15-30-2620, ~~15-30-1112~~ 15-30-3312, MCA
IMP: ~~15-30-1111~~ 15-30-3311, ~~15-30-1112~~ 15-30-3312, ~~15-30-1113~~ 15-30-3313, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.101 to update the authoritative and implementing statutes based on recodification. The department is further proposing to add estates and trusts to the definition of "eligible participant," to correspond with proposed amendments to other rules in this subchapter. Amendments to the authorization and implementing citations are necessary because

of recodification of these statutes by Ch. 147, L. 2009.

42.9.104 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS WHO ARE NONRESIDENT INDIVIDUALS, ESTATES, OR TRUSTS (1) A partnership and S corporation with one or more nonresident individual, estate, or trust owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual, estate, or trust:

(a) file a composite return as provided in ARM 42.9.202 and include the nonresident individual, estate, or trust in the filing;

(b) obtain from the nonresident individual, estate, or trust and file ~~with its information return the pass-through entity owner tax agreement~~ Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana individual or fiduciary income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction ~~on Form PT-AGR (Montana Pass-through Entity Owner Agreement)~~; or

(c) remit an amount on the ~~individual's~~ partner's or shareholder's ~~account~~ behalf, determined as provided in ~~(4)~~(5), with the ~~Pass-through~~ Pass-Through Entity Information Return, ~~forms~~ Forms CLT-4S or PR-1~~;~~ and

~~(d)~~ provide ~~form PT-WH or~~ Montana Schedule K-1 to the nonresident individual, estate, or trust. The Montana Schedule K-1 must ~~setting~~ set forth the amount of withholding remitted to the department which can be used as a ~~withholding payment~~ refundable credit against the tax liability of the nonresident individual, estate, or trust upon filing a ~~form 2,~~ Montana individual or fiduciary income tax return.

(2) A disregarded entity with one or more nonresident individual, estate, or trust owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual, estate, or trust:

(a) obtain from the nonresident individual, estate, or trust and file ~~with its information return the pass-through entity owner tax agreement~~ Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana individual or fiduciary income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction ~~on form PT-AGR, Montana Pass-through Entity Owner Agreement~~; or

(b) remit an amount on the ~~individual's~~ partner or shareholder's ~~account~~ behalf, determined as provided in ~~(4)~~(5), with ~~form~~ Form DER-1, Disregarded Entity Information Return~~;~~ and

~~(c)~~ provide ~~form PT-WH or~~ Montana Schedule K-1 to the nonresident individual, estate, or trust. The Montana Schedule K-1 must ~~setting~~ set forth the amount of withholding remitted to the department which can be used as a ~~withholding payment~~ refundable credit against the tax liability of the nonresident individual, estate, or trust upon filing a ~~form 2,~~ Montana individual or fiduciary income tax return.

(3) The pass-through entity is not required to ~~attach~~ file new agreements each year, but must ~~attach~~ file a currently effective agreement for each new nonresident individual, estate, or trust owner that does not elect to be included in a composite return or choose to have the pass-through entity remit tax on their behalf.

(4) A nonresident owner may file Form PT-AGR with the department directly. The nonresident owner must notify and provide a copy of the completed Form PT-AGR to the partnership, S corporation, or disregarded entity. The Form PT-AGR is due on or before the due date, including extensions, of the pass-through entity's return. If the nonresident owner files Form PT-AGR, the partnership, S corporation, or disregarded entity is still subject to the filing requirements as provided in (1).

~~(4)~~(5) The amount that must be remitted by the due date described in ~~(5)~~(6) is the highest marginal rate in effect under 15-30-2103, MCA, multiplied by the share of Montana source income of the nonresident individual, estate, or trust reflected on the pass-through entity's information return.

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

AUTH: 15-30-2620, MCA
IMP: 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.104.

The department has received questions from fiduciaries regarding the filing requirements of nonresident estates and trusts that are partners or shareholders of pass-through entities. The proposed amendments will affirm that a nonresident estate or trust, if eligible, can elect to participate in a composite tax return. The proposed amendments will also provide additional information to fiduciaries about pass-through withholding requirements for nonresident estates and trusts.

Beginning with tax year 2012, Form PT-WH (Montana Income Tax Withheld for a Nonresident Individual, Foreign C Corporation, or Second-Tier Pass-Through Entity) has been discontinued to eliminate duplicated reporting of pass-through withholding. Form PT-WH is an informational form that pass-through entities could use to report to partners or shareholders the amount of pass-through withholding paid on behalf of an owner. However, this information is also reported on Montana Schedule K-1. Because the Montana Schedule K-1 is a required schedule and it provides more tax information to owners, the Form PT-WH was eliminated. The proposed amendments update the rule language to delete references to Form PT-WH.

The department is proposing amendments to the rule to reflect a filing requirement change for Form PT-AGR (Pass-Through Entity Owner Tax Agreement). Beginning with tax year 2012, filers of Form PT-AGR will not attach the form to a pass-through information return. Instead the form will be separately filed with the department. By receiving the Form PT-AGR separately, the department will be able to more effectively process the forms and ensure that the owners identified on the form file income tax returns.

Additionally, the department is proposing language in the rule that allows owners of pass-through entities to file Form PT-AGR directly with the department instead of sending Form PT-AGR to a pass-through entity and then the pass-through entity files the Form PT-AGR. Not only does the proposal make the paper filing process more efficient for the taxpayer and the department, it will allow the department to develop an electronic filing option for Form PT-AGR. It is important to

note that nothing about this additional language shifts responsibility from an entity to an owner to file a Form PT-AGR. The entity is responsible for ensuring that a Form PT-AGR is filed for each nonresident owner not included in a composite return and for whom tax was not withheld.

The department also proposes to consolidate and simplify the language explaining the pass-through entity's consent and withholding requirements in (1) and (2) to add clarity and improve understanding. The proposed amendments to this language will not change the substance of the provisions. The department further proposes to make capitalization revisions and add the words "estates or trusts" to the rule title to correspond with the proposed amendments to the rule text.

42.9.105 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE FOREIGN C CORPORATIONS (1) A partnership with one or more foreign C corporation owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation:

(a) file a composite return as provided in ARM 42.9.202 and include the foreign C corporation in the filing;

(b) obtain from the foreign C corporation and file ~~with its information return the pass-through entity owner tax agreement~~ Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana corporate license tax or corporate income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction ~~on the Montana pass-through entity owner tax agreement, form PT-AGR, Montana Pass-through Entity Owner Tax Agreement~~; or

(c) remit an amount on the foreign C corporation's ~~account~~ behalf, determined as provided in ~~(4)~~(5), with the ~~Pass-through~~ Pass-Through Entity's Information Return, Form PR-1~~;~~ and

~~(d)~~ provide ~~form PT-WH or~~ Montana Schedule K-1 to the foreign C corporation. The Montana Schedule K-1 must ~~setting~~ set forth the amount of withholding remitted to the department which can be used as a withholding payment against the tax liability of the foreign C corporation upon filing a Montana corporation license tax return or income tax return.

(2) A disregarded entity with one or more foreign C corporation owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation:

(a) obtain from the foreign C corporation and file ~~with its information return the pass-through entity owner tax agreement~~ Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana corporate license tax or corporate income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on the Montana pass-through entity owner tax agreement, ~~form~~ Form PT-AGR, Montana ~~Pass-through~~ Pass-Through Entity Owner Tax Agreement; or

(b) remit an amount on the foreign C corporation's account, determined as provided in ~~(4)~~(5), with the ~~form~~ Form DER-1, Disregarded Entity Information Return~~;~~ and

~~(c)~~ provide ~~form PT-WH or~~ Montana Schedule K-1 to the foreign C

corporation. The Montana Schedule K-1 must ~~setting~~ set forth the amount of withholding remitted to the department which can be used as a withholding payment against the tax liability of the foreign C corporation upon filing a Montana corporation license tax return or income tax return.

(3) The pass-through entity is not required to ~~attach~~ file new agreements each year, but must ~~attach~~ file a currently effective agreement for each new foreign C corporation owner that does not elect to be included in a composite return or choose to have the pass-through entity remit tax on their behalf.

(4) A foreign C corporation may file Form PT-AGR with the department directly. The foreign C corporation must notify and provide a copy of the completed Form PT-AGR to the partnership, S corporation, or disregarded entity. The Form PT-AGR is due on or before the due date, including extensions, of the pass-through entity's return. If the foreign C corporation files Form PT-AGR, the partnership, S corporation, or disregarded entity is still subject to the filing requirements as provided in (1).

~~(4)~~(5) The amount that must be remitted by the due date described in ~~(5)~~(6) is the tax rate in effect under 15-31-121, MCA, multiplied by the foreign C corporation's share of Montana source income reflected on the pass-through entity's information return.

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

AUTH: 15-30-2620, MCA
IMP: 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.105.

Beginning with tax year 2012, Form PT-WH (Montana Income Tax Withheld for a Nonresident Individual, Foreign C Corporation, or Second-Tier Pass-Through Entity) has been discontinued, to eliminate duplicated reporting of pass-through withholding. Form PT-WH is an informational form that pass-through entities could use to report to partners or shareholders the amount of pass-through withholding paid on behalf of an owner. However, this information is also reported on Montana Schedule K-1. Since the Montana Schedule K-1 is a required schedule and it provides more tax information to owners, the Form PT-WH was eliminated. The proposed amendments update the rule language to delete references to Form PT-WH.

The department is proposing amendments to the rule to reflect a filing requirements change for Form PT-AGR (Pass-Through Entity Owner Tax Agreement). Beginning with tax year 2012, filers of Form PT-AGR will not attach the form to a pass-through information return. Instead the form will be separately filed with the department. By receiving the Form PT-AGR separately, the department will be able to more effectively process the forms and ensure that the owners identified on the form file income tax returns.

Additionally, the department is proposing language in the rule that allows owners of pass-through entities to file Form PT-AGR directly with the department instead of sending Form PT-AGR to a pass-through entity and then the pass-through

entity files the Form PT-AGR. Not only does the proposal make the paper filing process more efficient for the taxpayer and the department, it will allow the department to develop an electronic filing option for Form PT-AGR. It is important to note that nothing about this additional language shifts responsibility from an entity to an owner to file a Form PT-AGR. The entity is responsible for ensuring that a Form PT-AGR is filed for each foreign C corporation owner not included in a composite return and for whom tax was not withheld.

The department also proposes to consolidate and simplify the language explaining the pass-through entity's consent and withholding requirements in (1) and (2) to add clarity and improve understanding. The proposed amendments to this language will not change the substance of the provisions. The department further proposes to make capitalization revisions in the rule.

42.9.106 COMPOSITE RETURN, WITHHOLDING, OR WAIVER FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES (1) Except as provided in (2), a first-tier pass-through entity with one or more owners that are also pass-through entities (second-tier pass-through entities), during any part of the tax year for which an information return is required by this chapter, must for each second-tier pass-through entity:

(a) file a composite return as provided in ARM 42.9.202 and include the second-tier pass-through entity in the filing; or

(b) do each of the following:

(i) remit to the department an amount equal to the highest marginal rate in effect under 15-30-2103, MCA multiplied by the second-tier pass-through entity's share of Montana source income with the ~~forms~~ Forms CLT-4S, PR-1, or DER-1 Pass-Through Entity's Information Return; and

(ii) provide ~~Form PT-WH or~~ Montana Schedule K-1 to the second-tier pass-through entity setting forth the amount remitted to the department that may be claimed as a refundable credit against the Montana income tax liability of the owners who file individual, corporation license, or other income tax returns as explained in ~~(7)~~(8).

(2) The department may waive the requirements to remit tax or pay composite tax on behalf of the second-tier pass-through entity for the current tax year as set forth in (1) if the first-tier pass-through entity:

(a) ~~completes and submits the~~ obtains from the second-tier pass-through entity a completed Form PT-STM for the year ~~to~~ and files it with the department at least 45 days before the original due date of the first-tier pass-through entity's tax return; and

(b) establishes to the satisfaction of the department that the second-tier pass-through entity's distributive share of Montana source income for the current year will be fully accounted for in individual income, corporation license, or other income tax returns filed with the state.

(3) remains the same.

(4) A second-tier pass-through entity may file Form PT-STM with the department directly. The second-tier pass-through entity must notify and provide a copy of the completed Form PT-STM to the first-tier pass-through entity. The Form

PT-STM is due at least 45 days before the original due date of the first-tier pass-through entity's tax return. If the second-tier pass-through entity files Form PT-STM, the first-tier pass-through entity is still subject to the filing requirements as provided in (1) and (2).

(4) through (8) remain the same, but are renumbered (5) through (9).

AUTH: 15-1-201, 15-30-2620, MCA
IMP: 15-1-201, 15-30-2620, 15-30-3302, 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.106.

The proposed amendments will update the language to reflect changes in how the department accounts for and administers pass-through withholding requirements. Current language in the rule indicates that the first-tier pass-through entity is responsible for completing Form PT-STM (Second-Tier Pass-Through Entity Owner Statement and Waiver Request). The proposed amendments explain that a second-tier pass-through entity is responsible for completing this form.

The department is proposing language in the rule that allows owners of pass-through entities to file Form PT-STM directly with the department instead of sending Form PT-STM to a pass-through entity and then the pass-through entity files the Form PT-STM. Not only does the proposal make the paper filing process more efficient for the taxpayer and the department, it will allow the department to develop an electronic filing option for Form PT-STM. It is important to note that nothing about this additional language shifts responsibility from an entity to an owner to file a Form PT-STM. The entity is responsible for ensuring that a Form PT-STM is filed for each pass-through entity owner not included in a composite return and for whom tax was not withheld.

Beginning with tax year 2012, Form PT-WH (Montana Income Tax Withheld for a Nonresident Individual, Foreign C Corporation, or Second-Tier Pass-Through Entity) has been discontinued to eliminate duplicated reporting of pass-through withholding. Form PT-WH is an informational form that pass-through entities could use to report to partners or shareholders the amount of pass-through withholding paid on behalf of an owner. However, this information is also reported on Montana Schedule K-1. Since the Montana Schedule K-1 is a required schedule and it provides more tax information to owners, the Form PT-WH was eliminated. The proposed amendments update the rule language to delete references to Form PT-WH. The department further proposes to make a capitalization revision.

42.9.111 PASS-THROUGH ENTITIES – STATUTE OF LIMITATIONS FOR AUDIT ADJUSTMENTS (1) through (6) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-30-2605, 15-30-2606, 15-30-2607, 15-30-3302, 15-30-3312, 15-31-509, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.9.111 to add 15-30-3312, MCA as an implementing statute. The statute was inadvertently omitted when the rule was adopted earlier this year.

42.9.201 COMPOSITE RETURN - ELECTION (1) through (4) remain the same.

(5) Eligible participants who are nonresident individuals, estates, trusts, or foreign C corporations, and consent to be included in a composite filing, are consenting to such filing in lieu of filing a Montana income or corporate license tax return. The department will not accept Montana income or corporate license tax returns filed by an eligible participant for any tax year the eligible participant made a composite election.

(6) Eligible participants who are second-tier pass-through entities and consent to be included in a composite filing are consenting to such filing in lieu of filing a Montana partnership or S corporation information and composite tax return. The department will not accept Montana partnership or S corporation information and composite tax returns filed by an eligible participant for any tax year the eligible participant made a composite election.

AUTH: ~~15-30-1112~~ 15-30-3312, MCA
IMP: ~~15-30-1112~~ 15-30-3312, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.201.

The proposed amendments will better convey that when the composite election has been made, a consenting, eligible participant is not responsible for filing a Montana return, nor will such a return be accepted by the department. A partner or shareholder of a pass-through entity may elect to be included on a composite return or file their own return, but not both. Additionally, the proposed amendments update the history and implementing statute references based on recodification.

42.9.401 PASS-THROUGH ENTITY INFORMATION RETURNS FOR S CORPORATIONS (1) Every S corporation that has Montana source income must file a ~~form~~ Form CLT-4S, Montana S Corporation and Composite Information Return, on or before the 15th day of the third month following the close of its annual accounting period.

(2) and (3) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.401 to make a capitalization revision.

42.9.501 PASS-THROUGH ENTITY INFORMATION RETURNS FOR SINGLE-MEMBER LLC TREATED AS DISREGARDED ENTITY

(1) through (13) remain the same.

AUTH: 15-1-201, ~~15-30-305~~ 15-30-2620, ~~15-30-1102~~ 15-30-3302, 15-31-501, MCA

IMP: ~~15-30-142~~ 15-30-2602, ~~15-30-143~~ 15-30-2603, ~~15-30-1102~~ 15-30-3302, ~~15-30-1111~~ 15-30-3311, ~~15-30-1112~~ 15-30-3312, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.501 to update the history and implementing statute references based on recodification.

42.9.510 PASS-THROUGH ENTITY INFORMATION RETURNS FOR PARTNERSHIPS ELECTING IRC 761 (1) through (4) remain the same.

AUTH: 15-1-201, ~~15-30-305~~ 15-30-2620, ~~15-30-1102~~ 15-30-3302, 15-31-501, MCA

IMP: ~~15-30-142~~ 15-30-2602, ~~15-30-143~~ 15-30-2603, ~~15-30-1102~~ 15-30-3302, ~~15-30-1111~~ 15-30-3311, ~~15-30-1112~~ 15-30-3312, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.510 to update the history and implementing statute references based on recodification.

42.9.520 PASS-THROUGH ENTITY INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES (1) through (4) remain the same.

AUTH: 15-1-201, ~~15-30-305~~ 15-30-2620, ~~15-30-1102~~ 15-30-3302, 15-31-501, MCA

IMP: ~~15-30-142~~ 15-30-2602, ~~15-30-143~~ 15-30-2603, ~~15-30-1102~~ 15-30-3302, ~~15-30-1111~~ 15-30-3311, ~~15-30-1112~~ 15-30-3312, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.520 to update the history and implementing statute references based on recodification.

42.9.530 PASS-THROUGH ENTITY INFORMATION RETURNS FOR QUALIFIED REIT SUBSIDIARIES

(1) and (2) remain the same.

AUTH: 15-1-201, ~~15-30-305~~ 15-30-2620, ~~15-30-1102~~ 15-30-3302, 15-31-501, MCA

IMP: ~~15-30-142~~ 15-30-2602, ~~15-30-143~~ 15-30-2603, ~~15-30-1102~~ 15-30-3302, ~~15-30-1111~~ 15-30-3311, ~~15-30-1112~~ 15-30-3312, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.9.530 to update the history and implementing statute references based on recodification.

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 January 22, 2013.

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 "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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 particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. The written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

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

Certified to Secretary of State December 10, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment ARM 42.5.201, 42.5.202, and 42.5.213 relating to electronic payment and return filing	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 15, 2013, at 2 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, in 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 p.m., January 4, 2013, 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:

42.5.201 ELECTRONIC PAYMENT (1) The department's ability to accept electronic payments is ~~constantly~~ evolving. Taxpayers should check the department's web site at ~~www.mt.gov/revenue~~ www.revenue.mt.gov to determine which types of electronic payments the department will accept and the electronic submission options available.

(2) A taxpayer with a tax liability of $500,000 or greater must make payment to the department ~~electronically:~~

~~(a) if~~ by electronic funds transfer~~, to the Montana state treasurer; and~~

~~(b) if by other method accepted by the department, to the department~~. If a check, draft, or similar paper instrument is received in the amount of $500,000 or greater, it shall constitute nonpayment and be returned to the taxpayer. Applicable late payment penalties and interest shall be applied until such time as the payment is remitted by electronic funds transfer, as required by 15-1-802, MCA.

(3) ~~The tax return or report must be filed and the electronic payment initiated by the tax due date or the appropriate late filing and late payment penalties, and interest will be applied. If an electronic payment is initiated by the due date but either the department does not receive payment or credit, or the payment or credit is charged back, the tax liability is not discharged, the tax is not paid, and appropriate late payment penalties and interest will be applied.~~ If the department does not

receive the funds submitted via an electronic funds transfer by the payment submission due date, the department shall assess any applicable penalties and interest as required by 15-1-216, MCA.

(4) remains the same.

(5) ~~If a paper return or report is filed and payment made electronically, the taxpayer shall place on the tax return or report a notation, stamp, or other indication informing the department that payment was made electronically.~~ In cases of an emergency, a taxpayer that would be required to transmit funds electronically may apply for an exception as provided in ARM 42.5.213.

AUTH: 15-1-803, MCA
IMP: 15-1-216, 15-1-231, 15-1-801, 15-1-802, 15-1-803, 15-30-2510, 30-18-117, 32-6-103, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.5.201.

The proposed amendments will update the department's web site address, add language to inform taxpayers where to locate information about the various electronic payment options available to them, and remove obsolete language.

The department continues to make technological advancements within its electronic payment system. The improvements have introduced efficiencies and made it easier than ever for taxpayers to pay their taxes electronically, and the proposed amendments to this rule will provide helpful guidance to taxpayers.

The proposed amendment of (2) is necessary to advise taxpayers how tax liability payments of $500,000 or greater received in the form of a check, draft, or similar paper instrument will be handled by the department. Section 15-1-802, MCA requires such payments to be submitted through an electronic transfer process rather than on a written paper document. The rules are necessary to ensure compliance with this long-standing statute requiring electronic payments under certain circumstances.

The department further proposes to update the implementing citations to include all statutes that support the rule currently and as amended.

42.5.202 ELECTRONIC RETURNS~~, REPORTS,~~ AND SIGNATURES

(1) The department's ability to accept electronic returns ~~and reports~~ is ~~constantly~~ evolving. Taxpayers should check ~~www.mt.com/revenue,~~ the department's web site at www.revenue.mt.gov, to determine which types of returns ~~and reports~~ the department will accept electronically and the electronic submission options that are available.

(2) An electronic return ~~or report~~ is not complete unless all requested information is provided and it is signed by the taxpayer or the taxpayer's authorized representative as provided in this rule.

(3) Providing ~~a personal identification number (PIN) or~~ an electronic signature as part of an electronic filing is the filer's declaration, under the penalty of false swearing, that:

(a) the filer is the taxpayer identified in the ~~report or~~ return; and

(b) the information in the ~~report or~~ return is true, correct, and complete.

(4) The department is part of a federal-state joint-filing program that allows taxpayers to electronically file certain federal and state tax returns ~~together~~ at the same time. If a taxpayer files an electronic Montana return as part of the federal-state joint-filing program, the taxpayer's federal signature or pin is considered the taxpayer's signature or PIN on the Montana ~~electronic~~ return.

(5) If the department permits a taxpayer to file a ~~report or~~ return electronically outside the federal-state joint-filing program, ~~including by telephone, without providing a PIN or an electronic signature,~~ the act of filing the return ~~or report~~ electronically constitutes the filer's declaration, under the penalty of false swearing, that:

(a) the filer is the taxpayer identified in the ~~report or~~ return; and

(b) the information in the ~~report or~~ return is true, correct, and complete, and constitutes the taxpayer's signature.

(6) ~~Except as permitted in the federal-state joint-filing program described in (4), a~~ A return ~~or report~~ may ~~not~~ be made electronically for a taxpayer unable to make the taxpayer's own return by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer as provided in ARM 42.15.303.

(7) The act of electronically filing a return on behalf of a taxpayer constitutes a declaration by the filer, under penalty of false swearing, that the information in the return is true, correct, and complete, and that the person is authorized to act on behalf of the taxpayer.

(8) A return that is submitted electronically is subject to the same filing deadlines as a paper return.

AUTH: ~~15-1-803~~ 15-1-201, MCA
IMP: 15-1-231, ~~15-1-801, 15-1-802, 15-1-803,~~ 15-30-2602, 15-30-2620, 30-18-102, 30-18-105, 30-18-106, 30-18-110, 30-18-113, 30-18-117, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.5.202.

The proposed amendments will update the department's web site address, add language to inform taxpayers where to locate information about the various electronic filing options available to them, and remove obsolete language.

The department continues to make technological advancements within its electronic filing system. The improvements have introduced efficiencies and made it easier than ever for taxpayers to file returns electronically, and the proposed amendments to this rule will provide helpful guidance to taxpayers.

The department further proposes to update the authorization and implementing citations to include all statutes that support the rule currently and as amended.

42.5.213 BACKUP SITUATION (1) ~~With prior approval of~~ In an emergency situation, the department~~, for those taxpayers that are required to make electronic payments whenever the amount due is~~ has the discretion to allow a taxpayer with a

tax liability of $500,000 or greater~~, as stated in 15-1-802, MCA, the department will allow, in an emergency situation, fed wire fund transfers or paper bank drafts (checks)~~ to submit payment in the form of a check, draft, or similar paper instrument.

(2) An emergency situation is considered on a case-by-case basis and includes, but is not limited to, a natural disaster, hospitalization, physical illness, infirmity, or mental illness.

(3) The department will consider a written request to submit payment in the form of a check, draft, or similar paper instrument when the request is supported by:

(a) statement explaining the circumstances; and

(b) documentation substantiating the circumstances.

(4) Exception requests should be mailed, postage prepaid by U.S. Postal Service to:

Montana Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805

AUTH: 15-30-2620, MCA
IMP: 15-1-802, 15-30-2510, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.213 to inform taxpayers paying a liability of $500,000 or more what might constitute an emergency that would prohibit the taxpayer from paying the tax liability through an electronic funds transfer, and provide information on how to apply for such an exception.

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 January 22, 2013.

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 "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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 particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

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

Certified to Secretary of State December 10, 2012

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.12.204 pertaining to the payment threshold--inflation adjustment for lobbyists	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 25, 2013 the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on January 17, 2013, to advise us of the nature of the accommodation that you need. Please contact James W. Murry, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail mabaker@mt.gov.

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

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2009 and 2010 is $2,400~~ 2013 and 2014 is $2,450.

AUTH: 5-7-111, MCA
IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because section 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to James W. Murry, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail mabaker@mt.gov, and must be received no later than 5:00 p.m., January 24, 2013.

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 to James W. Murry at the above address no later than 5:00 p.m., January 24, 2013.

6. 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 50 persons based on the 500 lobbyists who registered to lobby in 2009-2010.

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

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

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

/s/ Jim Scheier
Jim Scheier
Rule Reviewer
Assistant Attorney General

/s/ James W. Murry
James W. Murry
Commissioner

Certified to the Secretary of State December 10, 2012.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.6.202, 2.6.203, and 2.6.209 pertaining to state vehicle use	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 11, 2012, the Department of Administration published MAR Notice No. 2-6-472 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1897 of the 2012 Montana Administrative Register, Issue Number 19.

2. The department has amended ARM 2.6.203 as proposed. The department has amended ARM 2.6.202 and ARM 2.6.209 with the following changes from the original proposals, new matter underlined, deleted matter interlined:

2.6.202 DEFINITIONS As used in this subchapter, the following definitions apply:

~~(1) "Measurable amount of alcohol" means the alcohol concentration of the person's breath or blood is .02 or more~~.

(2) through (4)(d) remain as proposed, but are renumbered (1) through (3)(d).

(4) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a state vehicle has been diminished.

AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, 2-17-424, MCA

2.6.209 ALCOHOL AND DRUGS (1) No person may be under the influence while on state business ~~may drive a vehicle for state business who has a measurable amount of alcohol, illegal drugs, or improperly used prescription drugs in their system~~.

~~(2) No person may drive a vehicle for state business who has taken any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.~~

(3) remains as proposed, but is renumbered (2).

AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, 2-17-424, MCA

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses follow:

COMMENT #1: The Department of Corrections (DOC) provided written comments addressing the definition of "state vehicle." The DOC commented that since the definition already includes any machinery or apparatus attached to a state vehicle, keeping the word "trailer" in the definition as proposed is redundant.

RESPONSE #1: The department thanks DOC for its comments. However, since on occasion state employees drive their personal vehicles (which are not state vehicles) while pulling state trailers, keeping the word "trailer" in the definition is appropriate.

COMMENT #2: DOC also provided written comments regarding the definition of "measurable amount of alcohol." DOC believes that this definition will not provide adequate guidance to those driving state vehicles and that the .02 standard does not apply to adults. Instead, DOC suggests the following standard: "No state employee may drive a vehicle for state business after having consumed alcohol, illegal drugs, improperly used prescription drugs or any legally prescribed drug, if that drug affects the person's ability to safely operate the vehicle."

RESPONSE #2: The department appreciates the DOC's comments. The department agrees with the comments and has amended the rule to essentially reflect the DOC's recommendation. The department has adopted the definition of "under the influence" from 61-8-401(3)(a), MCA, which is a traffic regulation statute. Since this definition also encompasses the consumption of legally prescribed drugs when driving a state vehicle, the department has deleted ARM 2.6.209(2).

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

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

Certified to the Secretary of State December 10, 2012.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3727 pertaining to the administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 25, 2012, the Department of Commerce published MAR Notice No. 8-94-105 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2102 of the 2012 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

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

/s/ Dore Schwinden
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State December 10, 2012.

BEFORE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.111.602 and 8.111.603 pertaining to the low income housing tax credit program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 8, 2012, the Department of Commerce published MAR Notice No. 8-111-106 pertaining to the proposed amendment of the above-stated rules at page 2231 of the 2012 Montana Administrative Register, Issue Number 21.

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

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

As a preliminary matter, all of the comments received by the board regarding the proposed rule amendments were submitted by the law firm of Crowley Fleck, PLLP, on behalf of Ft. Harrison Veterans Residence, L.P. (FHVR). FHVR applied for but was not awarded 2012 low income housing tax credits and subsequently filed a lawsuit against the board challenging the board's 2012 tax credit award determination. The lawsuit is pending and FHVR's comments repeat several of its allegations in the pending litigation. The board disputes these allegations and the Court has not made a determination regarding these issues. In addition, a representative of FHVR appeared at the board's October 15, 2012 meeting and presented the same or similar comments to the board at that time.

COMMENT #1: The commenter opposes adoption of the 2013 Qualified Allocation Plan (the QAP), proposed to be incorporated by reference into ARM 8.111.602, because the commenter alleges that Evaluation Criteria no. 7, regarding Montana Presence, unconstitutionally discriminates against out-of-state developers and professionals. The commenter alleges that there is no evidence to support the stated basis for this provision that inclusion of these criteria results in a better quality product or assures the ability of the development team to successfully plan, permit, develop, construct and bring a project into service in the local Montana building environment.

RESPONSE #1: The board disagrees with the comment. The board does not believe that the Montana Presence provision discriminates against out-of-state developers and professionals. The provision does not require an applicant, developer, or professional to be a Montana business, entity, or resident. It merely considers whether the applicants and its team members have familiarity and experience with development or project operation in Montana, as demonstrated by

owning an affordable housing project in Montana or by maintaining an office, operation, or other presence in Montana. This provision is only one of many considerations involved in selecting projects for an award of tax credits and does not deprive out-of-state applicants from consideration for or receiving an award of tax credits. Out-of-state applicants may receive points for Montana Presence and may receive tax credits.

The board believes that Montana Presence as defined in the QAP provision is a proper and relevant consideration. Conditions faced by developers and professionals, the particular legal, regulatory, political, environmental hurdles, and other requirements that must be addressed in developing, permitting, constructing, and operating a project vary from state to state. It is self-evident that having experience and familiarity with planning, permitting, developing, constructing, and operating projects in Montana is beneficial and desirable in applicants seeking to complete a quality project within time limits and in compliance with all requirements. Again, this is only one of many factors considered, but the board believes it is proper and relevant to consider such experience in selecting projects to receive tax credit awards. The QAP's Montana Presence will be adopted as proposed.

COMMENT #2: The commenter also opposes adoption of the 2013 Qualified Allocation Plan (the QAP), proposed to be incorporated by reference into ARM 8.111.602, because the commenter alleges that the QAP as adopted includes vague and ambiguous evaluation criteria which implicitly vest discretion in board staff to make scoring decisions. The commenter alleges that, in past allocations, the staff have negated or ignored scoring criteria without notice to or review by the board. The commenter states that the QAP does not address these issues.

RESPONSE #2: In developing the adopted 2013 QAP, board staff and the board considered FHVR's various allegations regarding both the 2012 and the proposed 2013 QAP language. The board disagrees that the adopted QAP does not address alleged vagueness and ambiguities pointed out by FHVR. Although the board and staff did not and do not agree with many of FHVR's allegations in this regard, the QAP evaluation criteria language was substantially revised in many areas to address such alleged ambiguities, vagueness and other matters. This includes many of the areas that FHVR alleged were deficient.

The board disagrees that the QAP improperly vests discretion in the staff. The board has tasked the staff with reviewing, evaluating, and scoring the tax credit applications. What FHVR refers to as the exercise of "discretion" is, in the board's view, merely construction, interpretation, and application of the QAP language, activities properly within the role of board staff in carrying out its authorized tasks. The QAP language does not authorize board staff to negate or ignore scoring criteria and the board does not believe it is necessary to include any language to address such unauthorized action by staff. The board will adopt the QAP as proposed.

COMMENT #3: The commenter opposes the proposed amendment to ARM 8.111.603(5), alleging that it attempts to deny applicants important due process protections. The commenter requests that the board amend the rule to provide a right to request a full Montana Administrative Procedure Act (MAPA) contested case hearing and review by the board. The commenter states that these protections at the agency level would give applicants who did not receive a tax credit award an opportunity to resolve the issues before the tax credits are allocated. The commenter states that the board would also be able to consider the applicant's position without the expense and time required by formal litigation. If the process was litigated despite the hearing, complying with MAPA provides the reviewing court with the appropriate record, which would likely accelerate the litigation.

RESPONSE #3: The board disagrees with the comment. The proposed amendment to ARM 8.111.603(5) is not a substantive change, but merely clarifies the rule language to address FHVR's argument that the reference to a "hearing" triggers a MAPA contested case hearing. There is no legal requirement that requires a contested case hearing or any similar litigation-style hearing for making the tax credit award determination. Moreover, there is no property interest in an award of low income housing tax credits and, therefore, there are no due process requirements that the board adopt or follow such formal procedures. The board does not believe that adoption of formal contested case procedures would result in quicker disposition of any litigation, but likely would create considerable additional expense and delay for applicants and the board, and, ultimately, for the low income Montanans who are the intended beneficiaries of tax credit projects. The current process allows for informal consideration of issues and positions, and the board does not believe that formal litigation procedures are required or appropriate. The board declines to adopt such litigation procedures in the tax credit award process and will adopt the rule as proposed.

COMMENT #4: The commenter states that it supports the proposed amendment to ARM 8.111.603(6), "except to the extent it implicitly allows the board to comply with the requirements to hold a full hearing before awarding credits."

RESPONSE #4: As indicated in response to Comment 3, there is no legal requirement for a "full" contested case hearing as part of the tax credit award process. The proposed amendment is designed to assure that, at the tax credit award meeting, applicants are provided with an opportunity to respond to any negative comments regarding their respective projects or applications. This response opportunity is not a "hearing" right or a right to additional or formal procedure. It simply provides an applicant an opportunity to address the board at the meeting in response to any negative comments. This amendment does not otherwise change the award process, and neither establishes any hearing requirement or eliminates any (nonexistent) hearing right. The board will adopt the rule as proposed.

/s/ Marty Tuttle
MARTY TUTTLE
Rule Reviewer

/s/ Dore Schwinden
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State December 10, 2012.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I (12.6.1203) regarding shooting preserve applications	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 25, 2012 the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-383 on the proposed adoption of the above-stated rule at page 2105 of the 2012 Montana Administrative Register, Issue Number 20.

2. The department has adopted NEW RULE I (12.6.1203) as proposed.

3. No comments or testimony were received.

/s/ Mike Volesky
Mike Volesky, Deputy Director
Department of Fish, Wildlife and Parks

/s/ Aimee Fausser
Aimee Fausser, Legal Counsel
Rule Reviewer

Certified to the Secretary of State December 10, 2012

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On August 9, 2012, the Board of Environmental Review published MAR Notice No. 17-337 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1554, 2012 Montana Administrative Register, issue number 15.

2. The board has amended the rule exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, December 10, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.1304, 17.30.1310, and 17.30.1322 pertaining to Montana pollutant discharge elimination system permits, permit exclusions, and application requirements and repeal of ARM 17.30.1303 pertaining to incorporations by reference	NOTICE OF AMENDMENT AND REPEAL (WATER QUALITY)

TO: All Concerned Persons

1. On August 9, 2012, the Board of Environmental Review published MAR Notice No. 17-338 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1556, 2012 Montana Administrative Register, issue number 15.

2. The board has amended and repealed the rules exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, December 10, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to nutrient trading	)	NOTICE OF ADOPTION
	)	(WATER QUALITY)

TO: All Concerned Persons

1. On October 11, 2012, the Board of Environmental Review published MAR Notice No. 17-339 regarding a notice of public hearing on the proposed adoption of the above-stated rule at page 1902, 2012 Montana Administrative Register, issue number 19.

2. The board has adopted New Rule I (17.30.1701) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

NEW RULE I (17.30.1701) NUTRIENT TRADING (1) and (2) remain as proposed.

(3) An owner or operator of a point source discharge may submit an application for nutrient trading to the department prior to or concurrent with an application for a new, ~~or~~ renewed, or modified MPDES permit. The application must include the information specified in Montana's Policy for Nutrient Trading and be consistent with the guidelines and requirements contained in that policy.

(4) through (5) remain as proposed.

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

COMMENT NO. 1: We would ask the department to consider including metals trading as quickly as possible. While we realize, as per other comments, the department wishes to implement nutrient trading before taking up other pollutants but very stringent metals limits are now showing up in municipal permits. These limits require very costly technologies which generally have not been adapted to traditional wastewater treatment processes. Implementing controls of metals, typically caused by historical mining activity, through non-point source controls could be very cost-effective versus removal in the wastewater plant.

RESPONSE: Currently trading is allowed for many pollutants in addition to nutrients pursuant to 75-5-703(2), Montana Code Annotated (MCA). The new rule and Circular DEQ-13 focus on nutrients because they are some of the most common pollutants in surface waters and because the department is developing numeric nutrient standards that will require many point source discharges to reduce their nutrient discharges. Even though metals are not specifically addressed in Circular DEQ-13, metals trading is currently allowed and may be proposed by a discharger for incorporation into their Montana Pollution Discharge Elimination System (MPDES) permit. Circular DEQ-13 may be used as a guideline for non-nutrient trades with changes made where necessary to address the particular issues

associated with other pollutants. Circular DEQ-13 can be updated as needed for improvements to nutrient trading and to possibly include other pollutants as the need for that arises.

COMMENT NO. 2: The notice for this hearing on the new rules indicates that proposals for nutrient trading credits will only be considered during or before the application for renewal of a MPDES discharge permit. We hope that there is some flexibility when the department considers a request for nutrient trading, particularly given what can be a long period of time between when a permit is applied for and ultimately reissued in final form. Could the reopener provision of the discharge permit be used for consideration of a nutrient trading proposal?

RESPONSE: Section (3) of the new rule has been modified to specifically allow a trade to be incorporated during a permit modification.

COMMENT NO. 3: II Definitions (1) Baseline: The definition of baseline needs to be clarified. Although several instances are called out, the term is used to define an effluent limit (as described in a discharge permit) and also to describe numeric criteria for receiving water. Baseline also needs to be defined for instances before numeric criteria for nutrients are adopted (i.e., to achieve variance levels).

RESPONSE: For the case where a TMDL has been established (or is scheduled to be completed) in the absence of a numeric standard, the TMDL will have a waste load allocation defined for each point source discharge. That waste load allocation becomes the baseline for the point source discharger. For cases where a TMDL is not needed and there are no numeric standards, the department can work with a discharger to interpret the narrative standards into a value to be used to develop a baseline.

COMMENT NO 4: II Definitions (2) Credit: Further clarification of credits in the context of baseline is required. Perhaps the department can generate guidance with examples to clarify what would constitute a credit verses achieving baseline conditions.

RESPONSE: The definition of credit expresses the concept in relation to baseline in the first and third sentence of the definition. The board believes that existing definition is adequate to explain the concept that the seller needs to meet its applicable baseline before it can generate saleable credits.

COMMENT NO. 5: II Definitions (7) Trading Ratios: Delivery Ratios as described is a nebulous term that could equate to anything or nothing. If natural attenuation is used to discount credits removed from the receiving water, then the actual condition of the receiving water at the point of discharge should be used to determine the baseline condition to establish the evaluation. Please define the criteria used to define delivery ratios to prevent arbitrary assignments.

RESPONSE: Circular DEQ-13 does not specify a particular method for deriving trading ratios for each potential trade scenario, but simply explains what these ratios are and how they are typically applied in the calculation of a credit. This allows the department to rely on the experiences derived from other federal and state agencies when determining site-specific trading ratios. However, based on

previous public input to the department, the board did include Appendix A in Circular DEQ-13. It provides trade ratios and/or delivery ratios for common nonpoint source BMPs and for septic system connections. The board believes that these examples will cover a significant portion of future nutrient trades.

The existing condition of the receiving surface water has no bearing on the calculation of the delivery ratio between the source of nutrients and the surface water. Thus, it is not factored into the delivery ratio analysis as the comment suggests it should be.

COMMENT NO. 6: II Definitions (7) Trading Ratios: Uncertainty Ratios need to be defined. Criteria used to establish uncertainty ratios must be expressed and defined.

RESPONSE: Circular DEQ-13 does not specify a particular method for deriving uncertainty ratios for each potential trade scenario, but simply explains what these ratios are and how they are typically applied in the calculation of a credit. The department will rely on the experiences derived from other federal and state agencies when determining site-specific trading ratios, as is already provided for some best management practices in Appendix A of Circular DEQ-13.

COMMENT NO. 7: III Key Principles (2) Trading in an impaired waterbody…: Variance is used as an exemption to TMDL loads, but the term is not defined in the policy. Please define the application of variances in context of the trading.

RESPONSE: This section is referring to nutrient standards variances, which are defined in 75-5-103(22), MCA. Circular DEQ-13 has been amended to clarify this throughout the document.

The department believes that Circular DEQ-13 adequately addresses variances in the context of trading. Variances are also discussed throughout I, in II 2., and in III 2. (a).

COMMENT NO. 8: III Key Principles (3) …enforced via MPDES permit: The draft policy places the burden for compliance on the MPDES permittee for their trading partner's actions. This is not reasonable or equitable action. The DEQ must develop enforceable mechanisms applicable to both trading partners.

RESPONSE: Assurance that the trade will remain viable through the term of the permit will be provided through the contractual obligations that will be required between the permittee and their trade partner (see V. 3. of Circular DEQ-13). The permittee is responsible to maintain water quality, and the permit holder can best monitor compliance with the agreement. Furthermore, holding the permittee responsible will give the department a single entity responsible for all permit terms.

COMMENT NO. 9: III Key Principles (4) What may be traded: The DEQ should open up trading options for other parameters which are resulting in the same economic hardships to dischargers (e.g. metals and other conventional/ nonconventional pollutants). Most municipal WWTP cannot effectively control metals removal and must upgrade their facilities to meet WQBEL for metals placed in their discharge permits.

RESPONSE: See Response to Comment No. 1.

COMMENT NO. 10: V Implementation (3) Trading Application: The draft policy lists general details needed to evaluate the generation and use of credits to be incorporated into a discharge permit. However, the specific requirements needed to determine completeness for an application to trade is lacking. Also, one item on the list is outside the regulatory purview of the department (e.g., general contractual arrangements).

RESPONSE: The information required for each trade is anticipated to vary based on the specifics of the trade. Rather than include a defined set of requirements that may or may not be applicable or useful in assessing a specific trade proposal, Circular DEQ-13 allows that information to be flexible to meet the needs of the trade. As trading is a new tool to both permittees and the department, the board expects and encourages that permittees contemplating a trade will meet with the department early on in the permit application process to decide many of the details and information that need to be supplied to incorporate the proposed trade into the permit.

Requiring evidence of a contract to support the trade is within the board's and department's authority. The department is required to insure that conditions of a MPDES permit will not result in pollution of state waters and must have reasonable expectation that the permittee can and will meet those conditions.

COMMENT NO. 11: P. 1, I. Introduction: The document states: "Trading under this policy may take place under a variety of conditions that may arise after or before the adoption of numeric criteria for nutrients, including circumstances where trading is used to: (1) comply with an approved total maximum daily load (TMDL) for nutrients; (2) offset a new or increased discharge of nutrients; (3) comply with water quality-based effluent limits for nutrients; or (4) offset a new or increased discharge of nutrients into 'high quality' waters." It is unclear how (4) above would work with the State's nondegradation rule, and feel that the trading policy should include a brief section on how nondegradation rules would apply with respect to nutrient trading.

RESPONSE: Details of a trade would be the same regardless of whether the permittees effluent limit is based on nondegradation, water quality standards, variance, or a TMDL load allocation as they all result in a numeric limit. A numeric limit based on the nondegradation rule is no different than a numeric limit based on another method. The board believes that I of Circular DEQ-13 already addresses this comment in the section that is quoted in the comment.

COMMENT NO. 12: P. 1, I. Introduction: The document states: "All trades that involve point source discharges will be monitored and enforced under a Montana Pollutant Discharge Elimination System (MPDES) permit, except those that involve only nonpoint source trading partners." Maintaining the monitoring requirements through the MPDES permit is good for the point source discharge, but it's unclear whether the non-point source credit would be verified by on-the-ground monitoring. And it raises the question of how nonpoint to nonpoint source trades would be monitored. We feel strongly that monitoring and verification of real nutrient reduction is critical for the credit side of the trade equation.

RESPONSE: Many trades involving nonpoint sources are difficult to verify by in-stream monitoring due to the multiple and variable sources of nutrients into most

surface waters, and due to natural in-stream variation in nutrient concentrations. The examples of nonpoint trade ratios provided in Appendix A use conservative assumptions or values derived from other states/federal agencies that have measured load reductions associated with a particular best management practice (BMP).

When the specific conditions of the trade warrant periodic verification, each permit will require the permittee to annually verify that the conditions of the trade are being adequately met and maintained to meet the enforcement provision of (5) of the rule (enforcement and compliance are also addressed in III. 3. and IV. 3. of Circular DEQ-13). For example, verifying that connection of a septic system is being maintained is not necessary, nor practical, but verifying that fencing along a stream is maintained is a reasonable requirement. III. 3. of Circular DEQ-13 will be modified to include the following language: "When specific conditions of the trade need to be verified over time, the permit will require that the permittee submit an annual update to the department verifying that the conditions of the trade are being complied with."

The DEQ, however, will have the right to audit and inspect sites to ensure that statements made in the reports are accurate. In addition, Circular DEQ-13 states that the trade credit can be changed or terminated in the permit if the conditions of the trade are not being met. Nonpoint to nonpoint trades will not be enforced by the department as there is no regulatory authority to require reporting to the department. The phrase "except those that involve only nonpoint source trading partners" has been deleted because the sentence applies only to trades that involve point sources.

COMMENT NO. 13: P. 3, II. Definitions 1. (a): "A nonpoint source may not, however, terminate an existing Best Management Practice (BMP) to reduce the baseline requirement in order to generate credits for future trading purposes." We believe this is a good and important requirement, but we're not convinced that it can be effectively enforced. The department needs to develop a set of verifiable criteria to ensure that existing BMPs aren't terminated.

RESPONSE: The potential for misuse of the trading program can be minimized through the public comment that is incorporated into every trade involving a point source discharger through the MPDES permit public comment period. Persons with local knowledge of existing BMPs that have been terminated and subsequently re-instated to provide credits for trading can provide that information to the department during the public comment period. The department will then be able to address those comments accordingly to insure the trade complies with Circular DEQ-13. As necessary, the department may also use other methods to insure BMPs have not been terminated. One example would be analysis of historic air photography to document past practices that are being proposed for trade credits.

COMMENT NO. 14: P. 3 II. Definitions 2(b): "A nonpoint source may generate credits by achieving nutrient reductions greater than required by a regulatory requirement applicable to that source." We don't fully understand this statement, because most nonpoint sources have no applicable regulatory requirement. If this refers to the TMDL, then it should be stated as such.

RESPONSE: Circular DEQ-13 has been amended to include nonpoint sources not subject to regulatory requirements. For these sources nutrient

reductions achieved by changing existing practices or conditions will qualify for credits.

COMMENT NO. 15: P. 5, II. Definitions 7. Trading Ratios: "Once a trading ratio has been established for a specific BMP DEQ cannot change the ratio unless the BMP is not maintained as originally proposed." We suggest that changes to ratios should be considered on a regular basis (permit cycles) if observation and/or monitoring indicates that the trading ratio is either not realistic or performing as expected. Again, this is why we feel that ongoing monitoring of nonpoint source credits (by monitoring stream water quality) is important.

RESPONSE: Based on experiences in other states and discussions with experts in trading policies across the country, if the agreed upon trade ratios are periodically reviewed and changed it will effectively kill any incentive for trading to occur. Permittees must have confidence that the resources spent to incorporate trades into the permit will remain valid and consistent from permit cycle to permit cycle. However, as allowed in II. 7. (b) of the permit, the trade ratio can be changed if the BMP is not maintained as it is described in the permit.

COMMENT NO. 16: P. 8, IV. Fundamentals, 4. Where Trading May Occur (Boundaries): "Geographical boundaries for trading will be based on watershed boundaries." The watershed scale needs to be better defined, perhaps using HUC or stream order.

RESPONSE: It is necessary to limit trading to a specific HUC (hydrologic unit code) level or stream order because all trades will be reviewed for their site-specific impacts on water quality. For example, if the location of a trade is relatively far from the location where water quality needs to be improved the department can apply a delivery ratio to account for pollutant attenuation if applicable. Maintaining the trade boundary at a watershed scale allows more flexibility and thus more incentive for trading to occur.

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, December 10, 2012.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.129.2101 continuing education requirements	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 12, 2012, the Board of Clinical Laboratory Science Practitioners (board) published MAR notice no. 24-129-14 regarding the public hearing on the proposed amendment of the above-stated rule, at page 1316 of the 2012 Montana Administrative Register, issue no. 13.

2. On August 3, 2012, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the August 13, 2012, deadline.

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

COMMENT 1: One commenter opposed the proposed changes in their entirety.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: Three commenters opposed the elimination of continuing education (CE) carryover, stating the change would impose a hardship on licensees.

RESPONSE 2: The board is not proposing to increase the 14 hours of CE required annually, but only amending the rule to no longer allow licensees to carry over excess hours from one year to the next.

COMMENT 3: One commenter strongly opposed eliminating the carryover of excess CE hours, stating that attending conferences is expensive and requires use of vacation. The commenter acknowledged that internet courses are allowed, but noted that high-speed internet is not always available.

RESPONSE 3: The board concluded that since all CE can be obtained online, it is not necessary to use vacation time and expenses can be minimized.

COMMENT 4: One commenter asked the board to reduce the annual CE requirement to ten credits if carryover is eliminated, since licensees usually have to pay for all CE without help from their employers. The commenter also asked where to send requests for course provider approval.

RESPONSE 4: The board notes that 14 credit hours have been required for many years and the board is not increasing the cost of acquiring those hours. Provider approval requests should be submitted to the board at the address provided on the board web site.

COMMENT 5: Two commenters disagreed with the proposed rule change because carryover provides a cushion for licensees who are short one or two hours in a year. The commenters suggested annual submission of credits to prevent "cheaters" from escaping an audit, and stated that carryover elimination will discourage licensees from acquiring extra CE when an opportunity arises.

RESPONSE 5: The board agrees that a cushion may be attractive to licensees, but points out that the required annual CE remains the same. With the availability of online courses, a licensee should be able to plan to acquire the requisite number of credits, without having to resort to carryover. The board agrees that licensees should always be encouraged to take all courses that are of interest and available.

COMMENT 6: One commenter disagreed with the elimination of carryover and suggested the board instead allow up to five carryover credits.

RESPONSE 6: The board concluded that allowing any amount of carryover will defeat the intended purposes of simplifying CE reporting and ensuring that courses are current.

COMMENT 7: A commenter asked if the board would not audit CE for the next year or so, since new licensees are usually the ones accruing carryover. The commenter stated that CLS licensees have greater CE requirements than doctors and nurses, and questioned whether CE courses completed six months earlier would be truly out-of-date.

RESPONSE 7: The board notes that the CE requirements do not apply to the first year of licensure and is not aware of the CE requirements for physicians and nurses.

COMMENT 8: One commenter stated that the board's web site is difficult to navigate and asked where to find acceptable CE organizations and credentials.

RESPONSE 8: The board will update the web site when the final rule is published and effective.

COMMENT 9: One commenter asserted that CLS course content is not like the tax code and does not change annually. The commenter argued that it is expensive and time consuming for rural licensees to get coverage to travel to attend CE courses.

RESPONSE 9: The board notes that online courses are always available for all credits and reminds licensees that carryover elimination will simplify CE reporting.

COMMENT 10: A commenter asked if the amendment will require all CE providers to submit paperwork for course and provider approval.

RESPONSE 10: Noting that the web site will include all previously approved CE providers, the board points out that new providers have always been required to submit requests for approval.

COMMENT 11: One commenter asked that the board allow carryover of up to three or four credits due to the difficulty in acquiring CE in rural Montana.

RESPONSE 11: The board notes that all courses may be taken via the Internet, so even in rural Montana, courses are available. The board is eliminating carryover to simplify CE reporting.

4. The board has amended ARM 24.129.2101 exactly as proposed.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
ALISON MIZNER, CHAIRPERSON

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

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

Certified to the Secretary of State December 10, 2012

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

In the matter of the amendment of ARM 24.207.501 examination, 24.207.504 qualifying education requirements, 24.207.517 trainee requirements, 24.207.518 mentor requirements, 24.207.2102 continuing education noncompliance and the adoption of NEW RULE I complaints involving appraisal management companies	))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 9, 2012, the Board of Real Estate Appraisers (board) published MAR notice no. 24-207-35 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1591 of the 2012 Montana Administrative Register, issue no. 15.

2. On August 31, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the September 10, 2012, deadline.

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

New Rule I General Comment

COMMENT 1: One commenter suggested the board postpone adopting New Rule I until the board holds additional discussions.

RESPONSE 1: The board is proceeding to adopt the new rule at this time, but will be considering rules regarding complaints against appraisal management companies (AMC) in the next six months. The board will seek additional input from the public when those rules are proposed.

New Rule I (1)

COMMENT 2: A commenter requested more clarity on how confidentiality will be maintained when the board shares information with other regulators or individuals as proposed in (1).

RESPONSE 2: The board will ensure that it complies with public record laws, including those found in Title 2, chapter 1 of the Montana Code Annotated and in the

Montana Constitution, when sharing information with individuals and other regulators. The board may provide further guidance in the future if necessary.

COMMENT 3: One commenter asked whether complaints against appraisers who work for an AMC would be shared with other regulators, as well as complaints filed solely against an AMC.

RESPONSE 3: The board will consider complaints against appraisers and AMCs independently and will then determine if records can be released based on the individual facts and circumstances of each case.

COMMENT 4: A commenter stated that the new rule fails to address whether an AMC must receive notice when a complaint it has responded to is shared with another regulatory agency.

RESPONSE 4: Generally, the board informs all parties to a complaint of the board's decision on a matter. However, because such decisions are made on a case-by-case basis, the board prefers not to adopt a categorical rule to apply in all instances.

New Rule I (2)

COMMENT 5: One commenter asked the board to amend (2) and give AMCs a reasonable time longer than 30 days to notify the board regarding an appraiser's possible USPAP violation.

RESPONSE 5: The board agrees that the 30-day reporting period may be insufficient in many cases. Therefore, the board is amending (2) to allow AMCs up to 90 days from the discovery of a potential violation to report it to the board.

COMMENT 6: A commenter asked the board to clarify that the ASC is required to report only material USPAP violations pursuant to the definition of "material" in the Interim Final Rule of the Board of Governors of the Federal Reserve System (Interim Final Rule).

RESPONSE 6: The board acknowledges that the Interim Final Rule only requires that AMCs report apparent violations that "significantly affect[s] the value." The board also notes that, under the Appraisal Subcommittee's Policy Statement 10E, it cannot consider absence of harm when determining whether to pursue a complaint.

The board is not amending the new rule as suggested at this time, but will continue to monitor the development of new regulations and guidance at the federal level. When conducting compliance reviews of AMCs, the board will be mindful that not all appraisal errors are material violations of the USPAP.

4. The board has amended ARM 24.207.501, 24.207.504, 24.207.517, 24.207.518, and 24.207.2102 exactly as proposed.

5. The board has adopted NEW RULE I (24.207.1508) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I COMPLAINTS INVOLVING APPRAISAL MANAGEMENT COMPANIES (1) remains as proposed.

(2) An appraisal management company shall report a potential Uniform Standards of Professional Appraisal Practice (USPAP) violation to the board within ~~30~~ 90 days of discovering the potential violation.

BOARD OF REAL ESTATE APPRAISERS
TOM STEVENS, 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 December 10, 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 through IV, the amendment of ARM 37.34.1401, 37.34.1402, 37.34.1404, 37.34.1418, and 37.34.1420, and the repeal of ARM 37.34.1403, 37.34.1408, 37.34.1409, 37.34.1410, 37.34.1415, 37.34.1419, 37.34.1421, 37.34.1426, 37.34.1427, and 37.34.1428 pertaining to positive behavior support	)))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-599 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1741 of the 2012 Montana Administrative Register, Issue Number 17.

2. The department has adopted New Rule I (37.34.1405) and II (37.34.1411), as proposed.

3. The department has amended ARM 37.34.1402, 37.34.1418, and 37.34.1420 as proposed and repealed ARM 37.34.1403, 37.34.1408, 37.34.1409, 37.34.1410, 37.34.1415, 37.34.1419, 37.34.1421, 37.34.1426, 37.34.1427, and 37.34.1428 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 III (37.34.1412) POSITIVE BEHAVIOR SUPPORT: BEHAVIOR SUPPORT PLAN (1) through (3) remain as proposed.

(4) Use of the person's behavior support plan requires prior written consent from the following for approval:

(a) the person;

~~(b) the person's planning team;~~

~~(c)~~ (b) the person's parent(s) if the person is under 18 years of age; and

~~(d)~~ (c) the legal ~~guardian~~ representative, if one has been appointed by the court.

(5) The person's planning team and the person's providers are responsible for the implementation of the person's behavior support plan.

(6) A behavior support plan must include appropriate measures for training and monitoring staff performance throughout the implementation of the behavior support plan.

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-203, MCA

NEW RULE IV (37.34.1422) POSITIVE BEHAVIOR SUPPORT: RESTRICTED PROCEDURES (1) The following restricted procedures may be used for up to 90 calendar days as part of a behavior support plan that is developed ~~and approved~~ in accordance with ARM 37.34.1412 and approved in accordance with (2):

(a) through (k) remain as proposed.

(2) A behavior support plan that includes the use of restrictive procedures must be approved by:

(a) through (c) remain as proposed.

(d) a person with a degree in applied behavior analysis, psychology, or special education ~~and~~ who has provided documentation of training and experience in the use of the principles of applied behavior analysis in the habilitation of person(s) with developmental disabilities and the development of behavior support plans to the developmental disabilities program director.

(3) A copy of the behavior support plan incorporating restricted procedures as listed in (1) must be sent to the developmental disabilities program director within three working days ~~from~~ after approval as required in (2).

(4) and (5) remain as proposed.

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-203, MCA

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

37.34.1401 POSITIVE BEHAVIOR SUPPORT: PURPOSE (1) The purpose of the rules under this subchapter is to require the use of positive behavior supports intended to encourage individual growth, improve quality of life, and reduce the use of unnecessary intrusive measures for persons funded through the department. Positive behavior support focuses on what is important to the person as well as what is important for the person when encouraging growth and change. This rule prohibits the use of seclusion or the use of ~~aversive,~~ abusive or demeaning procedures, or procedures that cause pain or discomfort except as provided for in the emergency procedures allowed for in ARM 37.34.1420. This subchapter applies to persons receiving services from community-based providers that are funded entirely or in part by the department.

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-203, MCA

37.34.1404 POSITIVE BEHAVIOR SUPPORT: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Advocate" is defined in ARM 37.34.102.

(2) "Alternative behavior" means a behavior that can, but is not likely to occur at the same time as a challenging behavior.

~~(3) "Aversive" means any stimulus or event from which a person will seek to escape, avoid, or terminate, if given an opportunity to do so.~~

(4) through (21) remain as proposed, but are renumbered (3) through (20).

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-203, 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: One commenter suggested changing the language of proposed New Rule III (37.34.1412) to include reference to physical restraint.

RESPONSE #1: While the department appreciates the suggestions to change the language, the language will remain the same because ARM 37.34.1420 already addresses physical restraint. It is the department's intention to make sure the rules are clear while not being repetitive. If the language needs to be changed in the future, it would require the department to open multiple rules rather than one rule.

COMMENT #2: A commenter suggested that the department change (4) in proposed New Rule III (37.34.1412), to add some language to clarify that consent equals approval of this behavior support plan.

RESPONSE #2: The department agrees and will add the suggested language to New Rule III (37.34.1412).

COMMENT #3: A commenter stated that in (4)(a) through (d) in New Rule III (37.34.1412), it is unclear if all parties listed are required to consent to the behavior support plan. They also requested the department clarify who must consent prior to approval. The commenter also wanted to know if there is an appeal process.

RESPONSE #3: The department reviewed the proposed rule and has removed (4)(b) from the proposed language in New Rule III (37.34.1412), and has renumbered the remaining items. The department's appeal process is located in Title 37, chapter 5, subchapter 3.

COMMENT #4: A commenter recommended changing (6) in New Rule III (37.34.1412) because there is an apparent typo, and also adding the phrase, "during the implementation" of the behavior support plan, would clarify the intent of the rule.

RESPONSE #4: The department will correct the typing error by changing "or" to "for", and added the suggested language.

COMMENT #5: One commenter stated that (1) in New Rule IV (37.34.1422) is confusing. The commenter suggested changing the proposed rule to show that the behavior support plan be approved in accordance with (2) of this rule.

RESPONSE #5: The department agrees and has amended the rule language to specify that behavior support plan must be approved in accordance with rule.

COMMENT #6: One commenter suggested an amendment to (2) in New Rule IV (37.34.1422) to expand the qualifications and scope of the rule.

RESPONSE #6: The department agrees to specify that the documentation of the advanced training and experience be submitted to the DDP director. The department does not agree with the suggested changes to the requirements in (d). The department maintains that a person with a degree in applied behavior analysis must also present documentation to the department of advanced training and experience in order to develop behavior support plans.

COMMENT #7: One commenter recommended replacing "from approval" in (3) of New Rule IV (37.34.1422) with "after approval as required in (2) of New Rule IV (37.34.1422)."

RESPONSE #7: The department will make the recommended change to New Rule IV (37.34.1422).

COMMENT #8: One commenter suggested the department remove the word "aversive" in ARM 37.34.1401 and add a reference in New Rule IV (37.34.1422) to restricted procedures.

RESPONSE #8: The department agrees and has made the suggested changes. The department also removed the word "aversive" from the definitions because with the above referenced change, the word is no longer used in this rule set.

COMMENT #9: A commenter asked that the definitions for aversive procedures be noted as such in the definitions. The commenter also requested the definitions for physical restraint and physical enforcement be reworded. The commenter expressed concern that the current definitions are not distinct from each other and the term "physical enforcement" be discarded and be replaced with positive physical redirection.

RESPONSE #9: The department will keep the definitions as proposed. The department intends to define the words and terms within this subchapter in accordance with their commonly accepted definitions in the field of developmental disabilities.

COMMENT #10: One commenter asked that the sentence, "The person may not be placed in a locked room or restricted to a room or area from which egress is prevented," be added to the definitions for exclusion time out.

RESPONSE #10: The commenter's suggestion appears to apply to seclusion time out and is not applicable to exclusion time out. Seclusion time out is also defined in this rule so the department will not make the recommended change.

COMMENT #11: One commenter requested the adoption of MAR 37-599 be postponed until the rules for MAR 37-608 may be adopted simultaneously. The commenter expressed that the proposed changes to MAR 37-608 have substantial oversight to MAR 37-599 and therefore need to be in place.

RESPONSE #11: The department appreciates the concern expressed by this commenter and understands the importance of making sure the rules are correlated. The department weighed the possible options and believes it is important that MAR 37-599 be adopted as soon as possible because this set of rules is very outdated and does not reflect current practice. Therefore, the department will not postpone the adoption of MAR 37-599.

COMMENT #12: One commenter expressed concerns over the applicability of these rules to children's services. The commenter states that while positive behavior supports are a component of applied behavior analysis that interventions often used with children are not included.

RESPONSE #12: After consideration of these comments the department determined there is insufficient justification to adopt a separate set of positive behavior support rules for children. The restrictive procedures allowed in rule for 90 days with the caveat for a longer period if needed and approved, are sufficient for both children and adults to learn the appropriate skills.

/s/ Cary Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State December 12, 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 through IV pertaining to discontinuation of services	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 11, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-606 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1978 of the 2012 Montana Administrative Register, Issue Number 19.

2. The department has adopted New Rule I (37.34.2001) and IV (37.34.2007) as proposed.

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

NEW RULE II (37.34.2003) DISCONTINUATION OF SERVICES: PROVIDER INITIATED (1) through (4) remain as proposed.

(5) The purpose of the meeting is to review the basis for the notice and determine if a change in the configuration of the current services or additional supports may assist the person to remain in or return to services with the current provider and, if so, identify those services or supports. ~~The~~ If the planning team determines ~~if~~ additional services or supports may assist the person to remain with the current provider, the planning team must develop a supplemental plan of care which identifies the actions to implement the determination for the person's services.

(6) through (8) remain as proposed.

~~(9) If it is determined that it is appropriate and an alternative placement has not been located within 90 days, the discontinuation of services process must be extended for a second 90 days to allow additional time to pursue an alternative placement. The regional manager or the regional manager's designee, the members of the person's plan of care team, the provider, and a designee from the state facility, if applicable, must reconvene to review the actions taken to locate an alternative provider and to identify the mechanisms needed to continue to pursue an alternative provider. If at the end of the second 90 days an alternative provider has not been located, the discontinuation of services process may proceed.~~

(10) remains as proposed, but is renumbered (9).

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-205, MCA

NEW RULE III (37.34.2005) DISCONTINUATION OF SERVICES: PART C AND FAMILY EDUCATION AND SUPPORT (1) Each contractor providing Part C services or family education and support (FES) must have a written policy covering discontinuation of Part C or FES services.

(2) Prior to providing Part C or FES services to a family, the contractor will have each family read the discontinuation of services policy referenced in (1), or will read the policy to the family, and have the family acknowledge receipt of the discontinuation criteria by their signature.

(3) The contractor must have documentation in each family's file that confirms the following:

(a) remains as proposed.

(b) for Part C, notification provided to the family of the pending discontinuation of services in accordance with the requirements of CFR Section 303.421; and

(c) through (4)(g) remain as proposed.

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-205, 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: One commenter suggested adding family education and support to New Rule III (37.34.2005). The commenter stated that DDP forgot to address discontinuation of services for family education and support since it is their understanding New Rule II (37.34.2003) only applies to those enrolled in the Medicaid Waiver Program.

RESPONSE #1: The department agrees with the comment and will add Family Education and Support to New Rule III to address this concern.

COMMENT #2: One commenter requested that New Rule II (37.34.2003)(3)(a)) have a requirement to describe the issues the provider contends to be occurring in measurable terms.

RESPONSE #2: The department reviewed the proposed requirement and determined that not every issue that arises is measurable and that describing the issue is sufficient. The department will not make the requested change.

COMMENT #3: A commenter stated that in the second sentence of New Rule II (37.34.2003)(5)) the word "if" should be removed and placed in front of the sentence. The commenter states this will clarify the rule.

RESPONSE #3: The department agrees with the comment and will make this change.

COMMENT #4: A commenter recommended the department substitute the word "required" in New Rule II (37.34.2003)(8)) with "desired" stated it provides a more accurate description.

RESPONSE #4: The department does not agree with this recommendation. In the event the planning team determines an alternative provider is necessary based on New Rule II(5), an alternative provider is, in fact, required.

COMMENT #5: One commenter stated that in New Rule II (37.34.2003)(9)), the department should replace the word "it" with "an alternative provider". The commenter states this change will clarify the rule.

RESPONSE #5: The department agrees with the comment and will make changes to the rule language to specify that it is an alternative provider.

COMMENT #6: One commenter expressed that the additional 90-day requirement in New Rule II (37.34.2003)(9)) obligating the provider to continue the assume liability and risk for a failed placement is unreasonable. The commenter stated that it seems that if the person's health and safety cannot be managed by the provider it would be in the best interest of the person, the state, and the provider to find an alternative placement as soon as possible.

RESPONSE #6: The department agrees with the commenter that once it is established that a person's health and safety cannot be managed by the provider, it is in the best interest of all parties to find an alternative placement as soon as possible. However, it is important to undertake any change in circumstances in a deliberative, well-planned manner, so as to assure the success of the person's move and limit the risk of harm to the person and others. The department has reevaluated this matter and believes that 90 days is adequate to obtain an alternative placement. The department has removed the additional 90-day requirement in New Rule II (37.34.2003(9)).

/s/ Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State December 10, 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 (37.86.1201) and amendment of ARM 37.85.207, 37.85.220, 37.85.905, 37.86.101, 37.86.104, 37.86.105, 37.86.202, 37.86.205, 37.86.501, 37.86.1401, 37.86.1701, and 37.86.3201 pertaining to primary care service enhanced reimbursement and birth attendant services	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 25, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-609 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2131 of the 2012 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 37.85.207, 37.85.220, 37.85.905, 37.86.105, 37.86.501, 37.86.1401, 37.86.1701, and 37.86.3201 as proposed.

3. As a result of comments, the department has adopted the following rule:

NEW RULE I (37.86.1201) BIRTH ATTENDANT SERVICE (1) "Birth Attendant" means a person that is licensed as a direct entry midwife as defined in Title 37, chapter 27, MCA and ARM Title 24, chapter 111, subchapter 6.

(2) Birth attendants may only provide prenatal labor and delivery or postpartum care in a birthing center as defined at ARM 37.86.3001.

(3) Reimbursement for birth attendants will be determined in accordance with ARM 37.85.212 for allied service providers.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, MCA

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

37.86.101 PHYSICIAN SERVICES, DEFINITIONS (1) through (5) remain as proposed.

(6) A "primary care physician" for purposes of this rule means a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine and all subspecialties of these three specialties recognized by the

American Board of Medical Specialties, American Board of Physician Specialties, and American Osteopathic Association.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.104 PHYSICIAN SERVICES, REQUIREMENTS (1) through (12) remain as proposed.

(13) The department will confirm the self-attestation of the physician. Providers that are found to be eligible for this program are eligible to receive additional reimbursement commencing from the date of confirmation. Confirmation consists of:

(a) verification of board certification by the American Board of Medical Specialties, American Board of Physician Specialties, and American Osteopathic Association as a primary care physician as defined in ARM 37.86.101(6); or

(b) remains as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.202 MID-LEVEL PRACTITIONER SERVICES, DEFINITIONS For the purpose of these rules, the following definitions will apply:

(1) remains as proposed.

~~(2) "Birth Attendant" means a person that is licensed as a direct entry midwife as defined in Title 37, chapter 27, MCA and ARM Title 24, chapter 111, subchapter 6 and is providing prenatal labor and delivery or postpartum care in a birthing center as defined in ARM 37.86.3001.~~

(3) through (5) remain as proposed, but are renumbered (2) through (4).

~~(6)~~ (5) "Mid-level practitioner" means the following professionals:

(a) advanced practice registered nurse; and

(b) physician assistant~~; and~~

~~(c) birth attendant~~.

~~(7)~~ (6) "Mid-level practitioner services" means those services provided by mid-level practitioners in accord with the laws and rules defining and governing through licensing and certification the practices of advanced practice registered nurses~~,~~ and physician assistants~~, and birth attendants~~.

(8) through (16) remain as proposed, but are renumbered (7) through (15).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, MCA

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) through (6) remain as proposed.

(7) Mid-level practitioners under the supervision of a primary care physician and performing primary care services as defined in ARM 37.86.101 and 37.86.104 qualify for enhanced reimbursement as defined at ARM 37.86.105 except that reimbursement must be reduced in accordance with provisions in this rule.

(7) through (9) remain as proposed, but are renumbered (8) through (10).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, MCA

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

COMMENT #1: Several commenters noted that proposed rule amendments concerning primary care physicians are appreciated by the provider community and will permit them to better serve the primary care needs of Montanans.

RESPONSE #1: The department agrees and appreciates the comments.

COMMENT #2: A commenter suggests that the department should amend the proposed rule amendment at ARM 37.86.101(6) which states "A "primary care physician" for purposes of this rule means a physician with a specialty designation of family medicine, general medicine, or pediatric medicine and all subspecialties of these three specialties recognized by the American Board of Medical Specialties." The commenter suggests striking "family medicine, general medicine, or pediatric medicine" and inserting "family medicine, internal medicine or pediatrics."

RESPONSE #2: The language in the proposed rule amendment mirrors the federal rule. Although the comment has merit, the department will not stray from the federal terminology for purposes of adopting this rule amendment.

COMMENT #3: Two comments stated that the proposed rule amendment at ARM 37.86.101(6) uses the term "general medicine" as one of the physician specialties recognized in the rule. The final federal rule uses the term "general internal medicine". The department should amend their rule to reflect this.

RESPONSE #3: The purpose of this rule amendment is to implement federal rules concerning the Affordable Care Act. ARM 37.86.101(6) will be amended to use the term "general internal medicine" to mirror the final federal rule.

COMMENT #4: A commenter noted that physicians with specialties of obstetrics and gynecology should be allowed to participate in this program.

RESPONSE #4: The department will mirror the federal rule which provides enhanced federal participation to state Medicaid programs when enhancing reimbursement to primary care physicians as defined by federal rule. This permits physicians with specialties of family medicine, general internal medicine or pediatric medicine, or any subspecialty thereof to participate. Physicians who do not qualify for enhanced reimbursement under the federal rule will not receive enhanced reimbursement as a result of these rule amendments.

COMMENT #5: A commenter stated that the rule amendment should require qualifying providers to become Passport providers.

RESPONSE #5: The purpose of the rule amendment is to implement requirements of the Affordable Care Act. Although the suggestion has merit, the department will not require qualifying providers to become Passport providers at this time.

COMMENT #6: A commenter noted that under the final federal rule state Medicaid programs may enhance the reimbursement to mid-level practitioners that are supervised by physicians who qualify for this program. They expressed concern about how the department will interpret this requirement. The commenter requests the department provide guidance.

RESPONSE #6: The department shares this concern. State Medicaid programs have asked the Centers for Medicare and Medicaid Services for guidance concerning supervision requirements. We are waiting for a response from them and will share it once guidance is received. Because the final federal rule requires mid-level practitioners under the supervision of a qualifying physician to receive enhanced reimbursement, the department will amend ARM 37.86.202 as described below:

"Mid-level practitioners under the supervision of a primary care physician and performing primary care services as defined in ARM 37.86.101 and 37.86.104 qualify for enhanced reimbursement as defined at ARM 37.86.105 except that reimbursement must be reduced in accordance with provisions in this rule."

COMMENT #7: A commenter stated that the department should add additional accreditation bodies to the administrative rule so they mirror those listed in the final federal rule.

RESPONSE #7: The proposed rule amendments at ARM 37.86.101(6) and 37.86.104(13)(a) permit certification exclusively by the American Board of Medical Specialties. This was the only board allowed for certification purposes in the proposed federal rule which the department's proposed rule amendments are based on. The final federal rule requires state Medicaid programs to allow accreditation from the American Osteopathic Association and American Board of Physician Specialties in addition to the American Board of Medical Specialties. The department agrees with this comment and will add the additional accreditation bodies to the final rule at ARM 37.86.101(6) and 37.86.104(13)(a).

COMMENT #8: Two commenters stated that because this program will have an effective date of January 1, 2013 and an implementation date some time thereafter, they are concerned that a mass adjustment of claims will create an administrative burden. They prefer a lump sum payment.

RESPONSE #8: The department will attempt to keep the administrative burden as low as possible. The department will consult with its fiscal intermediary to determine

the least administratively burdensome solution. Providers will be apprised of how the department will make these payments.

COMMENT #9: Several commenters opposed proposed amendments to define and reimburse birth attendants as mid-level practitioners at ARM 37.86.202. They contend the rules in place presently governing mid-level practitioners are appropriate and should not be amended. They urge the department to only allow advanced practice registered nurses and physician assistants to be considered mid-level practitioners.

RESPONSE #9: Due to the concern voiced by the provider community in opposition to adding birth attendants to the mid-level rules, the department removes the proposed amendments at ARM 37.86.202. The department will instead create a New Rule I (37.86.1201) for birth attendants defining and reimbursing them as allied service providers. The text in New Rule I (37.86.1201) was originally proposed in ARM 37.86.202.

6. These rule amendments are effective January 1, 2013.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State December 12, 2012

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

In the matter of the amendment of ARM 37.34.2301 and repeal of 37.34.2302, 37.34.2306, 37.34.2307, 37.34.2308, and 37.34.2309 pertaining to residential facility screening	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 25, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-610 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2140 of the 2012 Montana Administrative Register, Issue Number 20.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State December 10, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.301, 42.11.305, 42.11.306, 42.11.307, 42.11.309, and 42.11.310, and the repeal of ARM 42.11.308 relating to operating agency liquor stores	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 25, 2012, the department published MAR Notice Number 42-2-882 regarding the proposed amendment and repeal of the above-stated rules at page 2149 of the 2012 Montana Administrative Register, Issue Number 20.

2. A public hearing was held on November 15, 2012, to consider the proposed amendment and repeal. Mark Kohoutek, Owner, Great Falls Agency Liquor Store #140, appeared and testified at the hearing. Jacque Thomas, CEO, Krisco Liquor, Missoula, Montana, submitted written comments. The oral and written comments received are summarized as follows, along with the responses of the department:

COMMENT NO. 1: Mr. Kohoutek commented that he was on both the committee that worked on these rules and on the original committee that met in 1998 that adopted the original rules. He stated he was appearing to make references for future consideration on some issues and commented that he is aghast at some of the language in the initial paragraphs that make reference to serious deficiencies, which create inequities, and refer to evolutions. He asked "what serious deficiencies exist, and what inequities are created?"

Mr. Kohoutek further commented that none of this language was brought up to the committee or was a part of the original final report that went to the director. All of this language is new. He further commented that he is unsure how the notices go on up through the chain, but it seems a more prudent method would be to draft the report that goes with it and provide that to the committee to sign off on too. He stated that, in his view, the committee is okay with the proposed rules, but nobody from the committee has ever seen the first page and a half [of the rule notice]. It comes from the department. Perhaps the standard process is that a committee changes rules or amends rules, and then the department adds what it wants. He further commented that he wants to state for the record that those kinds of serious deficiencies and inequities, whatever they are, have never been discussed or defined and he finds the language to be vague innuendo and somewhat offensive.

RESPONSE NO. 1: The department appreciates Mr. Kohoutek's comments.

The department is required by statute, 16-2-203, MCA, which it has complied with, to utilize a negotiated rulemaking process for rules related to the operation of the agency liquor stores. Following the conclusion of the committee meetings, the

department considers the recommendations of the committee's final report to the director (which has first been seen by all of the committee members) when preparing the proposed rule notice to be filed with the Secretary of State. The proposed amendments to the rule language published in the proposal notice were intended to match those agreed to by the committee.

Mr. Kohoutek is correct that the preamble, or introduction, to the rules that appeared in the notice was written by the department and was not part of the negotiated rulemaking process. Under law, the rules notice is the responsibility of the department and is issued under its authority. The Negotiated Rulemaking Committee does not have authority over the rules notice. The department, in fact, is not even legally bound to propose the content of the Negotiated Rulemaking Committee in the content of the rule, but in fact chose to do so in this case. The department is well within its prerogatives to include preamble language addressing the Legislature in the proposal notice. The language respectfully asks the Legislature to department to review the law and work towards a viable solution for the future.

Mr. Kohoutek further commented that the language in the preamble was the first the committee had heard mention of inequities. However, when the Negotiated Rulemaking Committee convened and assembled together for its first meeting on November 1, 2010, Director Bucks addressed the committee and talked about those inequities.

In addition to expressing his appreciation to those on the committee for their willingness to serve, the director expressed some of his overall concerns. Among other things, he talked about the inequities of commission rates, especially in cases where stores are located in areas where the population has significantly increased since privatization, and how those stores continue to be guaranteed the same commission rate structure as stores in remote areas who have not seen similar growth in their populations or economies. Yet, even though those small stores now effectively compete in and enjoy the benefits of a larger urbanized market, they continue to retain the higher commission rate intended for small, isolated markets and enjoy a competitive advantage over other agency store in the same market.

The director asked the committee to look at the current inequities that exist and try to find efficiencies in the retail system that would control costs and avoid the trend of agency store commission costs as a percentage of sales increasing continuously. He explained that the current commission structure does not appear to provide incentives to benefit the citizens of Montana in the form of greater agency store efficiencies (i.e. stable or declining costs as a percentage of sales). The director noted that the central state warehouse has been successful in reducing its costs as a percent of sales, which provides a benefit to the public.

Privatization is frequently justified on the basis of bringing the benefits of market competition to government activities to reduce costs to the public. In the case of liquor store privatization, there are no effective mechanisms in the current law to bring the benefits of competition to the public in the form of reduced costs. Instead, there is a system that guarantees that not just the dollar amount, but the rate of agency stores commissions will increase. The irony is that the government owned and operated portion of Montana's liquor system has been cutting its costs as a share of sales, while the privately owned portion of the system has continually

increased its costs as a share of sales.

Again, the director brought this concern to the Negotiated Rulemaking Committee at the outset of its proceedings and asked for its help in finding a way to help control rising agency store costs. Despite the fact that the committee did not recommend methods of controlling costs, the department deferred to the committee and proposed the structure of rates it recommended.

COMMENT NO. 2: Mr. Kohoutek also commented that he has some serious issues with ARM 42.11.306(7), the administrative rule that creates a "hybrid" commission percentage. He stated that in essence, what happens is if an agent receives an increase on Part B, they will forever be subject to this hybrid commission percentage. The department has created a fourth commission percentage, for any store who's ever received a Part B increase. There is no statutory authority to back-off Part B increases and, therefore, this creates a new hybrid commission. The statute that is the basis for this administrative rule is 16-2-101(6)(b), MCA, yet nowhere does this statute give any authority to the department or the division to back-off part of their commission increases. In fact, the statute creates three other commission percentages. Section 16-2-101(4), MCA, creates the original, or main commission, 16-2-101(4)(b),MCA, creates the sales volume commission, and 16-2-101(2)(b)(ii)(B),MCA, creates the weighted average discount. There is no statutory authority for this fourth, hybrid, commission to exist at all.

Mr. Kohoutek further commented that the notice makes reference to adding transparency to the rules twice. However, this hybrid commission will never be published. It is only going to be determined every three years and he stated if anything, it takes away from the transparency.

RESPONSE NO. 2: The department appreciates Mr. Kohoutek's comments on this rule. The department is not creating an additional or "hybrid" commission rate through this process. The adjusted commission rate referenced in ARM 42.11.306(7) is used solely for determining the average commission rate for the stores in that particular band with similar sales. If the store's average percentage rate from the banding is greater than their adjusted Part B commission rate, that store's rate will increase to the average for their band. It is not set for the duration of their contract.

The adjusted commission percentage rate is a matter of public record and will be published along with the banding every three years. The department will ensure this is transparent in the banding averages worksheet provided to all agents. The department believes it is operating within the statutory boundaries to remove the Part B adjustment from the calculations for averaging the commission rates. The Negotiated Rulemaking Committee conducted a very thorough review of the process, gave it much consideration, and ultimately agreed to it by way of a consensus vote.

COMMENT NO. 3: Mr. Kohoutek further commented that the hybrid commission percent creates its own deficiencies and inequities. Relative to the example that was provided in the rules to show how it will be used, he commented that the committee either failed to recognize a particular situation that could potentially arise, or else the situation did not come up in the discussions. He explained that the thinking behind backing off Part B increases comes from the idea that Part B increases

are particular to the store that received them, and should not be used to help other stores in that band get an increase via the banding average. He further stated that even if the department felt there was a legal basis to back-off the Part B increases, the rules as written will penalize stores and do more harm than the original intent of just backing off Part B increases that are particular to that store.

Mr. Kohoutek stated that this is where the inequity or deficiency occurs. He explained that any store that has been above a band average will be penalized from here on out. For his example, he described the general makeup of the 2007 bands, including 19 stores that were above their band average in 1997. Assuming any of them received a Part B increase in 2007, when subsequently setting the band averages in 2010 and applying this rule as proposed, the department would back-off any one of those 19 stores not to their commission rate, without Part B included, but to their band's average rate. That goes back lower than what that store has averaged, and penalizes all the stores in that band relative to the new averaging.

Mr. Kohoutek commented that to back those stores off goes against the reasoning for why the department originally intended to back-off Part B, and restated that the statutory authority to back it off doesn't exist and in fact would appear to go against the legislative intent. There has never been anything in the statute that allows for decreasing commission and this part of the rule will never hold up in court. He stated that he cannot imagine any argument that could be used to sway a truly impartial third party, like a judge, he finds it to be totally illegal and statutorily baseless, and further stated it should be deleted.

RESPONSE NO. 3: The department agrees with the need to add details and clarity to the rule language to address the situation Mr. Kohoutek cited in his example. The committee did not specifically deal with this particular situation, and the department appreciates Mr. Kohoutek raising the issue. The department is further amending the rules to address the situation raised in his example.

Again, the department believes it is operating within the statutory boundaries to remove the adjustment to Part B in the calculations for averaging the commission rates. As stated in Response No. 2, the Negotiated Rulemaking Committee also agreed to this after much review and consideration.

COMMENT NO. 4: Mr. Kohoutek commented that he wants to point out that the recent committee looked at the issue of whether or not Part B increases were dependent on getting a Part A increase. He further commented that during a committee teleconference, he shared that the original 1998 committee took up this same issue and rejected it entirely. Consequently, this committee drafted language for ARM 42.11.308(2). He stated that it now appears to be deleted from the rules. He further stated that he wants to make it clear for the record, and for all future considerations, that this committee is not abandoning the idea of the language proposed for ARM 42.11.308(2), and in fact rejected the idea of including language that would make a Part B increase contingent on getting a Part A increase.

RESPONSE NO. 4: Mr. Kohoutek's general understanding in this comment is accurate. The department is repealing ARM 42.11.308, altogether. It was always the intent to repeal the rule and it was flagged as such in all versions of the draft the

committee worked on. It was determined that the relevant language from the rule would be relocated, primarily into ARM 42.11.306, and amended as needed in order to consolidate the commission percentage discount rate review process language into a single rule. Because ARM 42.11.308 is being repealed, it cannot be amended.

However, the department agrees that the committee discussed and rejected the notion that a commission rate increase under 16-2-101(6)(b) Part B would be contingent on getting an increase under 16-2-101(6)(b) Part A. That part of the language from ARM 42.11.308(2) should have also been incorporated elsewhere for better clarity. The department regrets the omission of the committee's agreed to language from that section of the repealed rule. It was not intentional, but rather an oversight that neither the department nor the committee realized when reviewing the final draft of the proposal notice.

To incorporate the relevant language, the department is further amending ARM 42.11.309(1), to capture the committee's intent. ARM 42.11.309 is the rule that specifically addresses the details of qualifying for a Part B commission percentage increase consideration, and is the most appropriate location for the clarification.

COMMENT NO. 5: Ms. Thomas commented, relative to ARM 42.11.305 and 42.11.310, about the reference to removing a public hearing in a community unless percentages are met, and having no clear written deadline for hearings to be completed by or how a store is issued. She stated that there should not be an additional hardship placed on those who protest in a community. If citizens in that community have concerns, it should be the state's obligation, as public servants, to address the concerns as conveniently and timely to those individuals in that community.

Ms. Thomas further commented that it's also unclear in the language if the lowest bidder proposing ownership of a new store gets the bid. In the name of fairness, the lowest bid submitted should be granted the bid for the store.

RESPONSE NO. 5: The department appreciates Ms. Thomas' comments and interest in the rules. There is no intent to create a hardship for persons in a community, but rather to establish criteria for determining when it does or does not make sense to travel and hold a hearing in a community where little or no interest may even exist in a proposed new store. To this point, department staff has diligently traveled to communities to conduct all hearings. However, in some instances there has turned out to be little or no local interest in the content of the hearing and no one from the community attended. Unnecessary travel is clearly not an efficient use of state resources. The proposed amendments to the rules provide for a fair and equitable way to assess local interest relative to a particular hearing in advance, and plan for the location of the hearing accordingly.

New (7) in ARM 42.11.305 is being proposed to specifically address the requirements for the hearing to be held in the community of the proposed location. To create consistency, the requirements will mirror those for other department liquor hearings. If the number of protests received by the department is equal to or greater than the number that is 25 percent of the number of all-beverage licenses determined for that particular community, plus two, the hearing will be held in the community. The department believes this is a fair ratio of the population to

determine if there is more than minimal opposition.

Relative to Ms. Thomas' question about how the winning bidder for a store is selected, ARM 42.11.310(3)(a) states that an agent will be selected according to procedures for competitive sealed bids as defined in ARM 2.5.601. ARM 42.11.310(3)(b) states that the agent's commission percentage discount rate will be initially set at the percentage bid by the lowest responsive bidder. The department will continue to use the procedures for a competitive sealed bid as defined in ARM 2.5.601.

COMMENT NO. 6: Ms. Thomas also commented on ARM 42.11.306. She stated that she has been perplexed since the beginning how the average commission rates can go up. It appears the only way the rate can change is if a store is in a band that changes. She further commented that she is making clear for the record that for 16 years store number 170 has been in the top band, and that has made raises almost impossible at times under the current and proposed system.

Ms. Thomas asked: "What is the purpose of a commission rate review, for a rate change, in a situation like just described?" "Is driving customers away to reduce the sales band the store falls in until the next review the answer for an increase?" When you are in the top band, it is ridiculous to ask someone and base a system for rewards on failures, not merits.

RESPONSE NO. 6: The department thanks Ms. Thomas for her comments on this rule. The commission rate review and application structure is provided for in statute, and provides only for an adjustment in the store's commission rate for those stores below the average of stores with similar sales volume. For additional detail, Ms. Thomas may wish to refer to 16- 2-101(6)(a), MCA.

COMMENT NO. 7: Ms. Thomas commented, relative to ARM 42.11.307, that making the inflation factor based on the top 25 products as the basis of an increase, again sets up a store for little to no rate increase. Assuming those products are low-end, it is the history of those products to increase zero to maybe .30 cents a bottle over the course of a lengthy time frame. In times of inflation, consumers who purchase top-shelf products then reduce their purchases to mid-premium products. Mid-premium product purchasers then reduce to low-end product purchases. There are no incentives for the low-end producers to increase costs, since quantity is a given. Taking that information into account, perhaps the 25 middle products sold could be used as the factor in volume sales discounts instead.

RESPONSE NO. 7: The department appreciates Ms. Thomas' comments on this subject. The Negotiated Rulemaking Committee reviewed and discussed this rule at length to determine the most equitable approach. Based on the information and options reviewed, the proposed method was determined to be the most viable and transparent.

COMMENT NO. 8: Ms. Thomas also commented on ARM 42.11.309, relative to the rental costs for a building. The number the department is trying to arrive at is an inflation-based calculation in that area rather than an actual cost basis. Your

inflationary costs to actual have already been addressed in the volume rate review. Not including autos as an allowable cost of doing business is unrealistic and should be noted. Ms. Thomas asked "When an account purchases $50 thousand or more of goods a month, are you recommending we tell them to pick it up themselves?" "Do we tell them it is not included by the state as a fair cost of doing business?" The state never had to deliver to accounts, or for that matter even came close to the volume in sales that is being done by the stores today.

RESPONSE NO. 8: The department appreciates Ms. Thomas' input on this rule. As written, the rule does provide for other expenses unique to an agent to be considered, through the inclusion of language in (2)(a), which states: "allowable costs include but are not limited to." However, elective or discretionary business decision costs are not considered. Agents making discretionary business decisions are responsible for the costs associated with their choices.

As previously noted, the department worked together with a Negotiated Rulemaking Committee when drafting all of the proposed rule amendments found in proposal notice MAR 42-2-882. Several of the committee members are themselves agency liquor store owners. The committee members were very helpful with identifying and detailing the criteria to include in the proposed amendments to ARM 42.11.309(2).

It is important to remember that the proposed changes to the rules were based on the conversations and work that took place during the committee meetings. Both the department and representatives from the agency liquor stores agreed in principal to the rule changes put forth, and found them to be in the best interest of both the agency liquor stores and the state of Montana.

3. As a result of the comments received, to reinsert language that was inadvertently stricken in the proposal notice, and to remove a repealed implementing citation, the department amends ARM 42.11.306, 42.11.309, and 42.11.310 as follows:

42.11.306 COMMISSION PERCENTAGE DISCOUNT RATE REVIEW

(1) through (6) remain as proposed.

(7) The average commission percentage discount rate for each band will be established by adding the band's agency liquor stores' commission percentage discount rates together and dividing by the number of agency liquor stores in the band. Each agency liquor store's current commission percentage discount rate will be used in the calculation unless the agency liquor store's current commission percentage discount rate reflects an adjustment through ARM 42.11.309 in any previous review period. In that circumstance, and for the purpose of calculating the band average only, ~~the lesser of the agency liquor store's current commission percentage discount rate or~~ the commission percentage used will be the greater of the agency liquor store's band average from the last review period ~~will be used~~ or the agency liquor store's current commission percentage discount rate less the adjustment given through ARM 42.11.309.

(a) Example 1: An agency liquor store has a current commission percentage discount rate of 9.75 percent and it does not reflect an adjustment through ARM

42.11.309 in any previous review period. The rate used for the banding calculation will be 9.75 percent. The band's average for the current review period is calculated to be 9.35 percent. In this example, this agency liquor store's commission percentage discount rate going forward will continue to be 9.75 percent because it is higher than the band average.

(b) Example 2: An agency liquor store has a current commission percentage discount rate of 9.75 percent and it does reflect ~~an~~ a .05 percent adjustment through ARM 42.11.309 in a previous review period. This agency liquor store's band average from the last review period is 9.25 percent. The rate used for the banding calculation will be the ~~lesser~~ greater of the agency liquor store's current commission percentage discount rate less their adjustment through ARM 42.11.309 or the agency liquor store's band average from the last review period. In this example, ~~9.25~~ 9.70 percent will be used for banding calculation purposes. The band's average for the current review period is calculated to be 9.35 percent. In this example, this agency liquor store's commission percentage discount rate going forward will continue to be 9.75 percent, because it is higher than the band average.

(c) Example 3: An agency liquor store has a current commission percentage discount rate of 9.75 percent and it does reflect ~~an~~ a .05 percent adjustment through ARM 42.11.309 in a previous review period. This agency liquor store's band average from the last review period is 9.25 percent. The rate used for the banding calculation will be the ~~lesser~~ greater of the agency liquor store's current commission percentage discount rate less their adjustment through ARM 42.11.309 or the agency liquor store's band average from the last review period. ~~In this example, 9.25 percent will be used for banding calculation purposes.~~ The agency liquor store's rate used to calculate the band's average will be 9.70 percent. The band's average for the current review period is calculated to be 9.80 percent. In this example, this agency liquor store's rate would change from 9.75 percent to 9.80 percent, and their commission percentage discount rate would no longer reflect the adjustment through ARM 42.11.309, because the average of the band it is in is more than the adjusted amount.

(8) through (10) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

42.11.309 AGENT REQUESTED COMMISSION PERCENTAGE DISCOUNT RATE REVIEW (1) ~~An agent~~ All agents who ~~has~~ have been open for business on a regular and continuous basis for the three most recent calendar years may petition the department for an increase to their commission percentage discount rate by sending a completed application and required documentation to the department by May 1, 2013, and by May 1 of every succeeding three years thereafter. Upon review of the application, including any additional information requested, such as the agency liquor store's financial records and supporting documentation, the department may increase the agent's commission percentage discount rate.

(2) ~~The~~ An agent's commission percentage may be increased to a percentage greater than the commission percentage discount rate received under ARM 42.11.306 ~~will apply~~, if the following criteria are met:

(2)(a) through (6) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

42.11.310 SELECTION OF AGENT (1) through (3) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-2-101, 16-2-109, ~~16-2-407,~~ 18-4-303, 18-4-304, MCA

4. Therefore, the department amends ARM 42.11.306, ARM 42.11.309, and 42.11.310 with the amendments shown above; and amends ARM 42.11.301, 42.11.305, and 42.11.307, and repeals ARM 42.11.308, as proposed.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 10, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.17.111, 42.17.134, 42.17.305, 42.17.601, 42.17.602, 42.17.603, 42.17.604, and 42.17.605 relating to withholding and estimated tax payments	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 11, 2012, the department published MAR Notice Number 42-2-884 regarding the proposed amendments of the above-stated rules at page 2029 of the 2012 Montana Administrative Register, Issue Number 19.

2. A public hearing was held on November 19, 2012, to consider the proposed amendments. No one appeared at the hearing to testify and no written comments were received. However, the department is making an amendment to include a previously omitted supportive implementing statute, as follows:

42.17.134 RECIPROCAL AGREEMENT - NORTH DAKOTA (1) through (5) remain as proposed.

AUTH: 15-30-2620, MCA
IMP: 15-30-2502, 15-30-2509, 15-30-2621, MCA

3. Therefore, the department amends ARM 42.17.134 as shown above, and amends ARM 42.17.111, 42.17.305, 42.17.601, 42.17.602, 42.17.603, 42.17.604, and 42.17.605, as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 10, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.18.130), II (42.18.131), III (42.18.132), IV (42.18.133), V (42.18.134), VI (42.18.135), and VII (42.18.136); amendment of ARM 42.18.122, 42.18.124, 42.18.128, 42.20.106, and 42.22.1304; and repeal of ARM 42.18.106, 42.18.109, 42.18.112, 42.18.115, and 42.22.1314 relating to the Montana reappraisal plan	))))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 25, 2012, the department published MAR Notice Number 42-2-885 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 2165 of the 2012 Montana Administrative Register, Issue Number 20.

2. A public hearing was held on November 19, 2012, to consider the proposed adoption, amendment, and repeal. Al Kington, representative for two Montana ranchers, and Chuck Roady, Vice President and General Manager of F.H. Stoltze Land & Lumber Co., appeared and testified at the hearing. Nancy Higgins Schlepp, President of the Montana Taxpayer's Association, submitted written comments. The oral and written comments received are summarized as follows, along with the responses of the department:

COMMENT NO. 1: Mr. Kington commented on New Rule III (42.18.132), relative to the identification of the data sources being used, that he has been involved with the productivity class ever since it was originated and hopes some of the things they've brought up in past committees, and particularly in the last reappraisal cycle, will be considered.

He further commented that they had a problem in the valuation portion of the formula involving the logging costs and asked "when there are several different valuation components, and suddenly one of the components is no longer credible, how do you change it? How does the department plan on addressing that in this rule, and hopefully in the advisory council?" We are at this point in the valuation formula because the state Department of Natural Resources and Conservation data previously used can no longer be applied with any credibility. We want to be confident that this will be addressed in the new system. He further commented that they raised this topic in every meeting they had during the last reappraisal, and brought up the DNRC data.

Mr. Kington further stated that he doesn't want the valuation formula to change much, but there is a need to adjust for credible data in the logging costs. To be fair and equitable, good data is necessary to meet what you want in the new rules. It was left out before, and while we got through that last appraisal because a professor at the

University of Montana (UM) went out of his way to make the state data fit, that won't work this next time around, and there will be appeals if it isn't changed.

RESPONSE NO. 1: The department appreciates Mr. Kington's comments. The Forest Land Taxation Advisory Committee has not had a chance to discuss the valuation impacts for the next reappraisal cycle and will not have the opportunity until the forest land market data becomes available. The department will ensure, however, that Mr. Kington's concerns are brought forward to the advisory committee. The department created a "committee" link on its Department of Revenue web site, at www.revenue.mt.gov, that provides the committee's statutory authority, membership roster, meeting agendas, and meeting minutes. There has been only one meeting since launching the page, however, future meetings and information related to this committee will be posted on the web site, which is available to the public. The department shares Mr. Kington's concerns, that only credible data be used for forest land valuation. The department is committed to ensuring that the most reliable data is used.

COMMENT NO. 2: Mr. Kington recommended that the department contract with the Bureau of Business and Economics at the UM, because they do a lot of forestry research. Mr. Kington stated that the contact he has in mind knows the difference between which costs in forest service wouldn't apply to private land and could extract those costs out. The department might also ask this individual to sit in with the Forestry Advisory Committee and let them figure out what is fair and what is credible. He further commented that he has personally attended appeals hearings, and that it's embarrassing when the department doesn't have the same good data that the landowner has hired a consultant to get.

Mr. Roady also commented on using the same resource at the UM, and provided the individual's name and title. He added that this person would be an excellent source of information because he's knowledgeable on the subject, has a very broad perspective, and also does work in Idaho, Oregon, and Washington, in addition to Montana, and could bring that to the table.

RESPONSE NO. 2: While these comments do not relate to specific issues in the proposed rules, they are nonetheless important to consider. The department agrees that objective and verifiable data is an important requirement in establishing forest land values for the next reappraisal cycle. The department intends to contract with individuals who have the expertise and ability to gather and analyze credible data, and appreciates the recommendation. Those contract decisions, however, have yet to be made.

COMMENT NO. 3: Mr. Roady commented that there should be timelines or timeframes, a formal public review and comment period, set up in this plan for the compilation of this appraisal valuation data and the productivity data, so that the advisory committee and the general public has sufficient time to review and comment on both the productivity, and the valuation specific to forest land taxation data sets once they are established. He emphasized he wants the data set review to occur prior to its use in the reevaluation, and commented that in the last go-around, none of them

ever had a chance to see the evaluations or productivity values until they had already been applied to the reappraisal. He further commented that they went into great detail about this in the last legislature to make sure they would have that opportunity.

Mr. Roady further commented that because this isn't provided for in statute or administrative rule, it would be up to the department to make sure this happens and will be open to the public, and now is the time to get that added to the administrative rule process.

Mr. Kington commented that the committees should remain open, and there should be a record of the discussion for the public. He stated he knows this is not addressed specifically in any of the new rules, but believes that openness and having the stakeholders engaged in that process all of the way through was one of the reasons that they have been able to get the productivity tax in place in both forestry and agriculture over the years. Mr. Kington stated that the rules being laid out here are setting the stage for how the department operates until the next reappraisal cycle and hopes they have that same openness.

Mr. Kington further stated that his understanding is that the procedure for the committees hasn't changed, in that they are strictly advisory. The department doesn't necessarily have to take everything that the committee recommends, and the Governor doesn't have to approve their recommendations and has the final say. He commented that this is in kind with the concern he has on making sure the stakeholders and the public can be involved if they want to be. The relationship between the department people and the stakeholder groups has always been good and worked well over the years since the productivity tax came in.

RESPONSE NO. 3: The department thanks Mr. Roady and Mr. Kington for their interest in these rules, and appreciates their comments. The department is required by law to notify taxpayers of their productivity values through the assessment notice process, and does not have rulemaking authority to change this procedure. However, the property owner is afforded an opportunity, through the appeal process provided for in statute, to obtain the information the department used to value their property once they have received their assessment notice.

The Forest Land Taxation Advisory Committee meetings are open to the public. The Department of Revenue web site will be updated regularly with meeting information as the meetings are scheduled. The public is invited to participate in the discussions and to receive the forest land market data the department is reviewing to establish values. The forest land market data, however, will not be available until the end of 2013 or early 2014.

COMMENT NO. 4: Mr. Roady commented, relative to New Rule VI (42.18.135), that there is no mention in the rules about the role or the consultation of the Forest Land Taxation Advisory Committee, and stated that it needs to be defined when such consultation is specifically called for in 15-44-103(10)(c)MCA.

Mr. Roady stated that the member make-up of the advisory council committee should be taken very seriously by the department, as was the intent of the 2011 Legislature. Better homework should have been done prior to the appointment of the nonindustrial and industrial private landowner members. Perhaps putting in some criteria would be best, such as a nonindustrial private forest land owner would need to

have 15 acres to be classified as forest land.

Mr. Roady further commented that the same thing could be said on the industrial side. One criterion could be that a tree farm needs to have a written land management plan. You don't necessarily need to have a minimum or maximum number of acres to be industrial, but it needs to truly be a business. He stated that he is certain the advisory committee would be more than happy to help the department with those criteria.

RESPONSE NO. 4: The role of the Forest Land Taxation Advisory Committee is clearly established by law, so it is not necessary to further reference that role in these rules. Further, the composition of the Forest Land Taxation Advisory Committee is determined by the Governor and legislative leadership, not by the department. The department is without authority to either appoint committee members or establish specific criteria that would bind the elected officials in making their appointments to the committee. Further, a rule outlining the responsibilities of the advisory committee is not necessary in light of the statutory language and would in fact go against the requirements of the Montana Administrative Procedures Act, which does not allow for repeating statute in rules.

COMMENT NO. 5: Ms. Schlepp commented that the Montana Taxpayers Association believes it is premature to adopt these rules prior to the next session, as it is likely the legislature, through a bill requested by the Revenue and Transportation Interim Committee, is going to address the length of the appraisal cycle in some manner.

Section 15-7-111, MCA, which is used as the reasoning for promulgating these rules states: "A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding six years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase-in for each year is 16.66 percent."

Adopting a new plan within weeks of the 2013 Montana Legislative Session seems counterproductive knowing that changes concerning the appraisal of Classes three, four, and ten may be around the corner. These rules can be addressed adequately to meet all MCA requirements after the 2013 session, within the time frame required by the January 1, 2015 deadline.

RESPONSE NO. 5: The department appreciates Ms. Schlepp's comments and welcomes this opportunity to address them. These rules are mandated by law for the current reappraisal cycle that concludes with the establishment of new valuations as of January 1, 2015. The scope of these rules encompasses valuation activities that occur prior to that date. Those processes are underway, and the public has a right to know what these processes are. Further, these rules do not address the phase-in process for changes in value that commences on January 1, 2015 and that, under current law, extends out six years hence. The current bill request by the Revenue and Transportation Interim Committee does not overlap with

or address the valuation process leading up to the new valuations applied as of January 1, 2015. That bill does address a change to the length of future reappraisal cycles. That bill could affect the phase-in of changes in values that commences on January 1, 2015. However, phase-in is not addressed in these rules, so there is no interaction between these rules and that bill. Thus, the existence of that bill does not provide the department with a reason to fail to comply with the legislative mandate for these rules implementing a reappraisal plan. These rules only seek to provide transparency to the public of the department's valuation objectives and processes for the current reappraisal cycle. If the 2013 Legislature were to enact any legislation affecting the valuation processes for the current reappraisal cycle that required modifications of these rules, the department will propose additional new rules or amendments as required.

3. To insert a missing word and an implementing statute, the department amends New Rule II (42.18.131) as follows:

NEW RULE II (42.18.131) SPECIFIC OBJECTIVES OF THE 2015 REAPPRAISAL (1) Specific objectives for the department's 2015 reappraisal include but are not limited to:

(1)(a) through (1)(i) remain as proposed.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-101, 15-7-111, 15-7-112, 15-9-101, MCA

4. Therefore, the department adopts New Rule II (42.18.131) with the amendments shown above, and adopts New Rule I (42.18.130), III (42.18.132), IV (42.18.133), V (42.18.134), VI (42.18.135), and VII (42.18.136), amends ARM 42.18.122, 42.18.124, 42.18.128, 42.20.106, and 42.22.1304, and repeals ARM 42.18.106, 42.18.109, 42.18.112, 42.18.115, and 42.22.1314, as proposed.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 10, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.13.204) and amendment of ARM 42.13.111, 42.13.201, 42.13.203, and 42.13.401 relating to product approval for beer, wine, and hard cider products	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 25, 2012, the department published MAR Notice Number 42-2-886, regarding the proposed adoption and amendment of the above-stated rules at page 2178 of the 2012 Montana Administrative Register, Issue Number 20.

2. A public hearing was held on November 15, 2012, to consider the proposed adoption and amendment. Tony Herbert, Executive Director of the Montana Brewers Association and representative of the craft beer industry in Montana, appeared and testified at the hearing. Craig Moore, Associate General Counsel for Anheuser Busch, and Katie Jacoy, Western Counsel for the Wine Institute, submitted written comments. The oral and written comments received are summarized as follows, along with the responses of the department:

COMMENT NO. 1: Mr. Herbert commented that the department has done a good job trying to take on a hard subject and that the proposed rules build some good sidebars. He further commented that some beers do not need to have the alcohol content on them per state requirement, and that the department should be consistent with that in the rules. Specifically, in ARM 42.13.201(2)(c), the proposed changes about minimizing or failing to identify make it sound like there is a requirement to always identify the specific alcohol content. Mr. Herbert stated that he doesn't think that is accurate and suggested the department consider revising the language for clarity.

RESPONSE NO. 1: The department appreciates Mr. Herbert's comments. He is correct and makes a good point that not all alcoholic beverages are required by law to state the alcohol content on their labels. The department agrees with his suggestion and is amending ARM 42.13.201 for clarity.

COMMENT NO. 2: Mr. Moore commented, relative to the proposed amendments to ARM 42.13.201, 42.13.203, and 42.13.401, that his organization believes clarification is necessary with respect to the prior approval/submission of packaging. He further stated that they do not believe the intent of the proposed amendments is to impose a dramatic expansion of the current system of review nor the addition of new compliance hurdles, however, they fear an expansive reading of the proposed amendments may unintentionally impose such a burden.

Mr. Moore further commented that the submission of labels and description of

the primary packaging is common practice and consistent with current Montana law and the Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) requirements. However, the advance submission of secondary packaging such as casing for packs of 6, 12, 24, or 30, is not. If the proposed amendments are read to require the prior submission of all secondary packaging, it will increase the potential for delay and add burdens for getting new products approved and available to consumers. He further stated that they don't believe such a reading is intended, and a more appropriate reading of the term packaging would require only a submission of a general description of the primary container. If this reading is adopted, the proposed amendments would be consistent with industry standards and not impact or delay future product approvals.

Mr. Moore asks that the proposed amendments be clarified to ensure that only submission of primary label and/or descriptions of the container type be required during the submission process.

RESPONSE NO. 2: The department appreciates Mr. Moore's comments. The amendments to the rules were proposed with the intent of establishing a fair and equitable product approval process that would protect public health and safety effectively, yet also remain reasonable with regard to minimizing the burden on the alcohol beverage industry.

The department agrees with Mr. Moore that better clarity relative to the term packaging is necessary. The requirement for the approval of beer, wine, and hard cider product packaging does refer only to the primary container which directly surrounds the alcoholic beverage. It does not refer to the secondary packaging, such as the outer casing of a 12-pack or 24-pack. Therefore, the department is further amending ARM 42.13.201, 42.13.203, and New Rule I (ARM 42.13.204), to insert the word "primary" ahead of the word packaging, as needed, to add the missing clarity and is also amending the definitions rule for this chapter, ARM 42.13.111, to add in and define the term "primary packaging."

Furthermore, the department is amending the rules to only require picture copies of the packaging when traditional containers are not being used. The additional rule amendments will include the types of containers that are considered traditional.

COMMENT NO. 3: Ms. Jacoy stated that the Wine Institute (WI) respectfully suggests that the department consider following the lead of many other states and simplify wine label approval processes; and not make them more complicated as proposed in the amendments. The WI advocates for individual states to discontinue wine label approval because the work is duplicative with that of the Alcohol and Tobacco Tax and Trade Bureau (TTB), which requires that all labels for wine products with 7 percent alcohol or more sold in the United States be approved and registered. TTB's online system makes it easy and fast for states to retrieve the Certificate of Label Approval (COLA) for a wine product. States simply need to require each winery or importer to provide their TTB label approval numbers to gain access to the approved COLA. Ms. Jacoy asked that if this type of streamlined procedure is not possible at this time, that the department please consider their additional comments regarding the proposed new and amended rules and the WI's

proposed substitute language.

RESPONSE NO. 3: The department appreciates Ms. Jacoy's comments. While the Alcohol and Tobacco Tax and Trade Bureau (TTB) has a convenient program in place, and the department does utilize it for efficiencies where possible, the TTB approval is not required for all alcoholic beverages. Additionally, in its ongoing effort to protect the public's health and safety, the department feels it is necessary to be directly involved in the product approval process in the state of Montana.

The department currently accepts label approval requests electronically through its Taxpayer Access Point (TAP) program. TAP requests that the user key in specific product information including the Certificate of Label Approval (COLA) identification number. The department then uses this information to retrieve the COLA from the TTB site.

TAP will continue to be available for the alcoholic beverage industry to submit their label requests and the department will continue to work to make it more efficient for users, including expanding the capability to add pictures of the packaging when necessary.

COMMENT NO. 4: Ms. Jacoy commented, regarding New Rule I (ARM 42.13.204), that there is confusion relating to what information must currently be submitted for a wine label approval in Montana. She stated that ARM 42.13.401 currently provides, in part, that each winery or importer desiring to ship table wines to licensed distributors within the state must submit an application for registration, and each application must be accompanied by a registration fee, and a copy of each product label the winery or importer intends to ship into the state. However, the Foreign Winery and Importer Registration form only requires copies of TTB label approvals for each brand of wine. Ms. Jacoy commented that this discrepancy has resulted in wineries providing different information. Some submit only their TTB approved COLAs for department approval, and others submit both the COLAs and copies of each label. She further commented that it would be helpful if the department would clarify what needs to be submitted and how department approval is indicated.

Ms. Jacoy stated that the most significant new requirement is for wineries to provide the department with picture copies of the packaging in order to consider the product for approval. This requirement is troubling since COLA applications are typically submitted in advance of the first bottling. Once the TTB COLA is obtained, then wineries must submit applications in the states that also require label approval. Some states take weeks or months to approve label registrations, so wineries submit applications as early as possible. Early submission ensures that a winery has all necessary approvals to ship the wine once it is bottled. If wineries are required to wait for the first bottling before submitting a picture of the finished product, there would be significant delays in launching new products in Montana, having a negative impact on distributors, retailers and consumers. This delay is compounded by the department's 30-day approval time included in this proposal.

Ms. Jacoy further commented that because almost all wine products are packaged in traditional bottles or boxes, this burdensome requirement doesn't seem

justified. Providing pictures of final wine packaging is not required from any of the other 25 states that require label/brand approval. It is not clear why this is necessary in Montana. Ms. Jacoy stated that for these reasons, the Wine Institute (WI) does not believe that a picture of the packaging should be required for wine products.

Ms. Jacoy commented that proposed New Rule I (ARM 42.13.204) would also require, for the first time, that wineries submit to the department for approval any changes to the label or packaging that requires Alcohol and Tobacco Tax and Trade Bureau (TTB) approval. Approval of label changes is duplicative with TTB and will require additional department personnel time, increasing costs and causing delay in the label approval process.

Ms. Jacoy stated that the WI requests that the department reconsider requiring this new information. If this requirement remains, they respectfully ask for clarification. Since TTB does not review packaging, would any change in packaging require department approval? Would label revisions that fall within the TTB "Allowable Revisions to Approved Labels" guidelines not require submission to the department?

Ms. Jacoy further commented that the 30-day response time is greater than the time it currently takes for wineries to get approval in Montana. Currently, wineries have their indication of label approval from the department in about 14 days. Waiting 30 days for a response would delay product launches and make Montana one of the slowest states in approving labels. Ultimately, this time increase will have a negative impact on distributors, retailers, and consumers in Montana. Most states requiring label approval are working from online submissions to decrease approval times, not to increase the processing time. There are only nine other states that have 30 or more day average turn around for approvals.

Ms. Jacoy stated that the WI respectfully recommends the following language as substitute language to put into rule the current wine label approval process, to place all requirements for wine labeling and packaging in one section, and to set a general standard for appropriate content of labels and packaging in the event enforcement becomes necessary:

(1) A winery or wine importer, before sending a wine product with alcohol content of 7 percent or greater to a licensed distributor, must send the department, electronically or otherwise, a copy of the wine product label and the TTB Certificate of Label Approval (COLA) for approval by the department.

(2) A winery or wine importer, before sending a wine product with alcohol content below 7 percent to a licensed distributor, must send the department, electronically or otherwise, a copy of the wine product label.

(3) The winery or wine importer can begin sending wine products to licensed distributors upon receipt of the department's approval, which can be sent electronically or otherwise.

(4) Wine product labels and packaging must be accurate and truthful, not misleading or designed to target or particularly appeal to persons under the age of twenty-one.

RESPONSE NO. 4: The department appreciates Ms. Jacoy's concerns regarding the requirements for product approvals. The department is further

amending ARM 42.13.201, 42.13.203, and New Rule I (ARM 42.13.204) to clarify the requirements. The department also understands that the department's Foreign Winery and Importer Registration form will need to be updated, and will do so once the rule process is completed, to ensure continuity.

The department understands Ms. Jacoy's concern regarding the new requirement of submitting picture copies of the packaging and is amending ARM 42.13.201, 42.13.203, and New Rule I (ARM 42.13.204), to reduce the burden on manufacturers and to streamline the process. The department will only require picture copies of the packaging when nontraditional containers are used. The department is making further amendments to include the types of traditional containers that would be exempt from this requirement in both ARM 42.13.203, and New Rule I (ARM 42.13.204).

The approval of label changes is a not a new requirement with the addition of New Rule I (ARM 42.13.204). ARM 42.13.203 currently requires all label changes to be approved for in-state and out-of-state brewers or importers. ARM 42.13.401 also currently requires that any changes, additions, or deletions in a winery or wine importers product line be noticed to the department prior to distribution in Montana. The new rule simplifies the process by requiring revised labels only if the Alcohol and Tobacco Tax and Trade Bureau (TTB) requires it. It does not put any additional burden on the department staff or increase any costs associated with the process. The department is further amending ARM 42.13.201, 42.13.203, and New Rule I (ARM 42.13.204), to add clarity to the requirement for package changes.

Ms. Jacoy's concern with regard to a 30-day response time is understandable. The department recognizes the importance of quick turnaround times when approving products, always strives for rapid turnaround, and is not making or proposing a change in this practice. The 30-day response time is not a new requirement in ARM 42.13.203(5). It is a part of the rule only to provide the maximum length of time and account for extreme situations.

The department appreciates Ms. Jacoy's proposed language changes, and has taken them into consideration with the additional amendments being made to ARM 42.13.201, 42.13.203, and New Rule I (ARM 42.13.204).

COMMENT NO. 5: Ms. Jacoy commented, relative to ARM 42.13.201, that if a governmental entity wants to regulate the content of alcohol beverage labels and packaging, it must be very cautious not to violate the First Amendment to the Constitution. Alcohol beverage advertising, including labels and packaging, are protected under the First Amendment as commercial speech. The Federal Trade Commission (FTC) has noted that voluntary self-regulatory advertising codes provide important protections in this area, where government restrictions raise First Amendment issues. Only when such self-regulation fails should the government resort to narrowly tailored action consistent with the First Amendment.

Ms. Jacoy stated that, as referenced in the proposal notice, the WI has adopted such a self-regulatory Code of Advertising Standards (Code) and requires compliance by all its winery members. The Code applies to all advertising, including print and internet advertising, as well as labels and packaging. The Code helps ensure that members' advertising of wine does not target or appeal to underage individuals. The Code also includes a third party review process for wine

advertisements.

Ms. Jacoy further commented that the only limitations on commercial free speech that are constitutionally permitted are those narrowly tailored to achieve an asserted government interest. Underage drinking is a serious public policy issue and alcohol advertising should not target or appeal to those underage. It is not clear however, the specific problems the department is trying to address by these amendments.

Ms. Jacoy asked if there are existing problems with labeling and packaging of wine products in Montana. Has voluntary compliance with our Code not been sufficient to prevent advertising that is targeted to or particularly appealing to those underage? If there are problems, why isn't it sufficient for the department to use its enforcement powers against the bad actors?

Ms. Jacoy further stated that some of the proposed restrictions contained in ARM 42.13.201 are vague and could be interpreted very broadly. They present constitutional issues because they are not narrowly tailored. For example, the restriction on the use of flavors commonly associated with underage persons, such as cotton candy or bubble gum. What makes one flavor more associated with underage persons than another? Would chocolate or fruit flavors be acceptable? The WI does not believe that a product should be banned from sale in Montana based on a flavoring if the packaging is accurate and truthful, and in compliance with Federal law.

Ms. Jacoy commented that another example of a restriction that is too vague is that a wine label or package cannot contain graphics or elements that are most commonly associated with underage persons. This is also vague and raises serious concerns about how it will be interpreted. WI's Code deals with this issue in more specific terms, providing that wine advertising shall not use music, language, gestures, cartoon characters, or depictions, images, figures, or objects that are popular predominantly with children or otherwise specifically associated with or directed toward those below the legal drinking age, including the use of Santa Claus or the Easter Bunny. We are not aware of any problems in Montana with wine products in this regard. She further commented that since they believe the restrictions proposed in ARM 42.13.201 are problematic, they suggest they be deleted. In the alternative, wine products should be exempt from these restrictions for all of the reasons they have stated.

RESPONSE NO. 5: The department appreciates Ms. Jacoy's comments, and acknowledges that it is very helpful when voluntary, self-regulated, advertising codes are employed to aid in the prevention of products from being sold with misleading labeling or packaging. However, as Ms. Jacoy notes, self-regulation does sometimes fail to achieve its goals, and the state must then use narrowly tailored statutes and rules to address the problems which remain. That is precisely the department's purpose here.

While recognizing that alcohol labeling comprises "commercial speech," the Supreme Court has noted that a state government "has a significant interest in protecting the health, safety, and welfare of its citizens" by preventing alcohol manufacturers from engaging in practices "which could lead to greater alcoholism and its attendant social costs." *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 481, 485

(1995). (See also 16-1-101(3), MCA, describing the state's role, acting through the department, to protect "the welfare, health, peace, morals, and safety of the people of the state," by regulating alcoholic beverages in accordance with the Montana Alcoholic Beverage Code). In *Rubin*, the Court struck down a state's ban on certain beer labels describing the strength of the alcohol content of the product, finding that the brewer sought to print "only truthful, verifiable, and non-misleading factual information about alcohol content on its beer labels." (514 U.S. at 483).

Similarly, the Court more recently, in striking down a statute that restricted commercial speech in the context of pharmaceutical information, noted that "the state may not seek to remove a popular but disfavored product from the marketplace by prohibiting truthful, non-misleading advertisements." *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2671 (2011).

In contrast to the situations in *Rubin* and *Sorrell*, by implementing these proposed rules, the department specifically seeks to avoid alcoholic beverage sales where the packaging or labeling is inherently misleading, nonverifiable, or encourages illegal activity. The test applied by the court in *Rubin* for determining whether "commercial speech" falls within the First Amendment is the *Central Hudson* test.

The threshold requirement of the *Central Hudson* test is that the commercial speech "at least must concern lawful activity and not be misleading." 514 U.S. at 482, citing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n,* 447 U.S. 557, 566 (1980). As noted by Justice Breyer in his dissenting opinion in *Sorrell*, "the Court normally exempts the regulation of 'misleading' and 'deceptive' information even from the rigors of its 'intermediate' commercial speech scrutiny." 131 S. Ct. at 2681 (Breyer, J., dissenting), citing *44 Liquormart v. R.I.*, 517 U.S. 484, 501 (1996).

Because the rule proposed by the department is tailored to prevent specific instances of misleading product labeling and packaging, which make it difficult to determine the product contains alcohol, encourage illegal activity, or specifically appeal to underage persons, the rule is permissible under the First Amendment.

The department commends Ms. Jacoy and the Wine Institute's effort in implementing a self-regulatory Code of Advertising Standards. The department referenced this code as the rules were drafted. Although the alcoholic beverage industry in general does an excellent job in marketing their products to the appropriate age group, some manufacturers don't always follow the same set of codes or inadvertently target the wrong age group. The department's product approval process will ensure all manufacturers are following the same set of rules.

The alcoholic beverage industry continues to evolve. New flavors, packaging and marketing concepts are regularly entering the market. As these new concepts enter the market, some are targeted towards underage persons or make it difficult for an underage person to differentiate it from a nonalcoholic product. As mentioned previously, these rules will ensure the public health and safety while ensuring all products are looked at in a fair and equitable manner.

The department appreciates Ms. Jacoy's comments regarding flavors used in the manufacturing of alcoholic beverages. The department will look at all flavors as they are introduced and will make a decision on a case-by-case basis. The department feels it is necessary to make this provision broad in nature as the flavors of alcoholic beverages today will most likely not be the same flavors in the future.

Ms. Jacoy's comments regarding the vagueness of graphics and elements on the label or packaging are well-taken. The department has further amended ARM 42.13.201(2)(c) and has used some of the language Ms. Jacoy suggested. The department does not feel that wine products should be exempt from these restrictions. It is imperative to treat all alcoholic beverages, whether they are wine, beer, or liquor in a fair and equitable manner.

COMMENT NO. 6: Ms. Jacoy commented, relative to ARM 42.13.401, that the inclusion of a reference to the labeling and packaging requirements in the fee section is confusing. The WI is very concerned that ARM 42.13.401 could be interpreted to require a fee to be paid for each label or brand registration rather than a fee for the winery or importers registration as an entity.

RESPONSE NO. 6: The department appreciates Ms. Jacoy's comment. The department believes it is necessary to include the reference to ARM 42.13.201 within ARM 42.13.401 to ensure wineries and importers are aware of the new and amended rules, to help ensure all wineries and importers are following the same process.

The registration fee provided for in the rule remains the same. It continues to represent the number of cases the winery or importer intends to ship to licensed distributors in the state of Montana as being on a case-by-case basis, and is not based on how many labels the winery or importer plans to register. Based on Ms. Jacoy's comments about the potential for confusion, the department is further amending the rule to add clarity.

3. As a result of the comments received, the department adopts NEW RULE I (ARM 42.13.204) with the following changes:

NEW RULE I (42.13.204) WINE LABEL APPROVALS (1) Each product a winery or wine importer desires to sell in the state of Montana must be approved by the department and conform to the provisions of ARM 42.13.201.

(2) ~~The~~ In order to consider the product for approval, the department must receive ~~picture copies of the label and packaging, from the winery or wine importer, in order to consider the product for approval.~~ copies of:

(a) ~~Changes to the label or packaging that requires TTB approval must be approved by the department prior to making the product available for sale in the state of Montana.~~ a picture of the primary packaging unless a traditional container is used. Traditional containers include aluminum cans, glass bottles, kegs, and boxes that are typically associated with alcoholic beverages. Any changes to the primary packaging must be approved by the department prior to entering the Montana market if a nontraditional container is used; and

(b) ~~A winery or wine importer that desires to sell wine that is subject to the labeling requirements administered by the U.S. Food and Drug Administration (FDA) must also supply copies of that label and packaging for approval to the department. Such products are wine beverages containing less than 7 percent alcohol by volume, including hard cider.~~ the Certificate of Label Approval from the Alcohol and Tobacco Tax and Trade Bureau for wine over 7 percent alcohol by volume. Any

changes to the label that require approval from the Alcohol and Tobacco Tax and Trade Bureau must be approved by the department prior to entering the Montana market; or

(c) the label, if the wine is less than 7 percent alcohol by volume. Any changes to the label must be approved by the department prior to entering the Montana market.

(3) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, 16-4-107, MCA

4. As a result of the comments received, and to include supportive implementing statutes previously omitted, the department amends ARM 42.13.111, and further amends ARM 42.13.201, 42.13.203, and 42.13.401 as follows:

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

(1) through (9) remain the same.

(10) "Primary packaging" means the container that directly holds the alcoholic beverage. Examples of primary packaging include, but are not limited to, aluminum cans, glass bottles, kegs, and a box containing a plastic bladder or other soft flexible container of wine.

(10) through (13) remain the same, but are renumbered (11) through (14).

AUTH: 16-1-303, 16-1-424, 16-9-1009, MCA
IMP: 16-1-424, 16-3-302, 16-3-311, 16-4-312, 16-4-404, 16-4-406, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-104, MCA

42.13.201 LABELING AND PACKAGING REQUIREMENTS (1) As a condition of holding a retail license, no retail licensee shall sell, offer for sale, or provide any beer, wine, or hard cider unless the label and primary packaging are in conformity with this rule and ARM 42.13.221.

(2) Alcoholic beverage products are a mature product category, restricted by law to only consumers age 21 and older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a beer, wine, or hard cider label or primary package that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling~~,~~ and/or primary packaging~~, and/or containers~~ that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

(i) aerosol cans;

(ii) gelatin cups;

(iii) hollow candies; or

(iv) mason jars that contain fruit;

(b) uses flavors that are ~~most commonly associated with underage persons~~ designed to target or particularly appeal to underage persons, such as:

(i) cotton candy; or

(ii) bubble gum; or

(c) contains graphics or elements that:

(i) are ~~most commonly associated with underage persons~~ designed to target or particularly appeal to underage persons;

(ii) minimizes, fails to identify, or disguises that the ~~product's alcohol content~~ product contains alcohol; or

(iii) alludes to or suggests irresponsible, excessive, or underage consumption.

(3) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, MCA

42.13.203 BEER LABEL APPROVALS (1) Each product a brewer or beer importer desires to sell in the state of Montana must be approved by the department and conform to the provisions of ARM 42.13.201.

(2) ~~Except as provided in (a), the department must receive picture copies of the label and packaging, from the brewer or beer importer, in order to consider the product for approval.~~

~~(a)~~ A brewer of malted beverages who has an annual nationwide production of less than 10,000 barrels is ~~not required to provide the department with copies of the label and packaging~~ exempt from the requirements in (3).

~~(b) Changes to the label or packaging that require Tobacco Tax and Trade Bureau (TTB) approval must be approved by the department prior to making the product available for sale in the state of Montana.~~

~~(c) A brewer or beer importer that desires to sell beer that is subject to the labeling requirements administered by the U.S. Food and Drug Administration (FDA) must also supply copies of that label and packaging to the department for approval. Such products are a fermented beverage that qualifies as a beer under the Internal Revenue Code (other than sake or similar products) but that is made without both malted barley and hops.~~

(3) In order to consider the product for approval, the department must receive copies of:

(a) the primary packaging unless a traditional container is used. Traditional containers include aluminum cans, glass bottles, kegs, and boxes that are typically associated with alcoholic beverages. Any change to the primary packaging must be approved by the department prior to entering the Montana market if a nontraditional container is used; and

(b) the Certificate of Label Approval for products that are regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB). Any change to the label that requires approval from the TTB must be approved by the department prior to the product entering the Montana market; or

(c) the label for products that are regulated by the U.S. Food and Drug Administration. Any changes to the label must be approved by the department prior to entering the Montana market.

(3) remains as proposed but is renumbered (4).

~~(4)~~(5) To obtain approval from the department for all beer or formula changes that meet the criteria in ~~(3)~~(4), the following documents are required:

(a) The brewer or beer importer must file a form, supplied by the department, attesting that the formula meets the requirements in ~~(3)~~(4).

(b) If the brewer or beer importer is required by federal law or regulations to file its formula with TTB, the brewer or beer importer is also required to send a copy of the formula filed with the TTB to the department.

(c) At the department's request and sole discretion, brewers or beer importers must file a formula for verification of its compliance with Montana statutes.

(d) All formulas filed with the department are protected by the privacy act and will not be released by the department unless otherwise required by law or by court order.

(5) remains as proposed, but is renumbered (6).

AUTH: 16-1-303, MCA
IMP: 16-1-102, 16-1-106, 16-1-302, 16-4-105, MCA

42.13.401 IMPORTATION OF WINE (1) Each winery or importer desiring to ship table wines to licensed distributors within the state must submit an application for registration to the department as specified in 16-4-107, MCA. Each product the winery or importer desires to ship must conform to the provisions of ARM 42.13.201. Each application must be accompanied by the applicable registration fee shown in (2). ~~Each product the winery or importer desires to ship must conform to the provisions of ARM 42.13.201.~~

(2) and (3) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-107, MCA

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 10, 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 September 30, 2012. This table includes those rules adopted during the period October 1, 2012, through December 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 September 30, 2012, 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 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.

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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, 737, 1349

17.24.645 and other rules - Reclamation - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7 - Definitions - Incorporations by Reference - C-3 Classification Standards - General Treatment Standards - General Prohibitions - Water-Use Classification - Descriptions for Ponds and Reservoirs Constructed for Disposal of Coal Bed Methane Water - G-1 Classification Standards, p. 1103, 2060

17.24.902 and other rule - General Performance Standards - Rules Not Applicable to In Situ Coal Operation, p. 1027, 1617

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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, 1310

17.30.1001 and other rules - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements - Solid Waste Management - Definitions - Exclusions From Permit Requirements - Subdivisions - Wastewater Treatment Systems - Plans for the Public Water Supply or Wastewater System - Fees - Operation and Maintenance Requirements for Land Application or Incorporation of Septage - Grease Trap Waste - Incorporation by Reference, p. 1169, 2067

17.30.1304 and other rules - Montana Pollutant Discharge Elimination System Permits - Permit Exclusions - Application Requirements - Incorporations by Reference, p. 1556

17.36.340 and other rule - Lot Sizes: Exemptions and Exclusions, p. 2299

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TRANSPORTATION, Department of, Title 18

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(Board of Athletic Trainers)
24.118.402 and other rules - Fee Schedule - Applications - Renewals, p. 1312, 2378

(Board of Clinical Laboratory Science Practitioners)
24.129.2101 Continuing Education Requirements, p. 1316

(Board of Medical Examiners)
24.156.618 and other rules - Testing Requirement - Reporting Obligations, p. 1319, 2464
24.156.2701 and other rules - Emergency Medical Technicians - Endorsement Application - Continuing Education Requirements - Post-Course Requirements - Obligation to Report to the Board - Complaints, p. 1809

(Board of Outfitters)
24.101.413 and other rules - Renewal Dates - Requirements - Fees - Outfitter Records - NCHU Categories - Transfers - Records - Renewals - Incomplete Outfitter and Guide License Application - Guide to Hunter Ratio - Provisional Guide License, p. 2107, 2304

(Board of Physical Therapy Examiners)
24.177.401 and other rules - Examinations - Temporary Licenses - Licensure of Out-of-State Applicants - Foreign-Trained Physical Therapy Applicants - Continuing Education -Unprofessional Conduct - Screening Panel, p. 939, 1526

(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, 1635

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24.181.301 and other rule - Amendment - Definitions - Renewals, p. 2310

(Board of Professional Engineers and Professional Land Surveyors)
24.183.1001 and other rules - Form of Corner Records - Uniform Standards for Certificates of Survey - Uniform Standards for Final Subdivision Plats, p. 1716, 2113

(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, 1363

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in November 2012 appear. Vacancies scheduled to appear from January 1, 2013, through March 31, 2013, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2012.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2012

Appointee	Appointed by	Succeeds	Appointment/End Date
Mint Committee (Agriculture)			
Mr. Clyde Fisher	Governor	reappointed	11/1/2012
Columbia Falls			7/1/2016
Qualifications (if required): mint grower/research council representative			
Mr. Kirk Passmore	Governor	reappointed	11/1/2012
Kalispell			7/1/2016
Qualifications (if required): mint grower			
Trauma Care Committee (Public Health and Human Services)			
Dr. Freddy Bartoletti	Governor	reappointed	11/2/2012
Anaconda			11/2/2016
Qualifications (if required): representative of the Montana Medical Association			
Ms. Joy Fortin	Governor	Lowery	11/2/2012
Kalispell			11/2/2015
Qualifications (if required): representative of the Montana Trauma Coordinators			
Ms. Lauri Jackson	Governor	reappointed	11/2/2012
Great Falls			11/2/2016
Qualifications (if required): representative of the Central Region Trauma Care Advisory Council			
Dr. Brad Pickhardt	Governor	reappointed	11/2/2012
Missoula			11/2/2016
Qualifications (if required): representative of the Western Region Trauma Advisory Council			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2012

Appointee	Appointed by	Succeeds	Appointment/End Date
Trauma Care Committee (Public Health and Human Services) cont.			
Mr. Bradley Von Bergen	Governor	reappointed	11/2/2012
Billings			11/2/2016
Qualifications (if required): representative of the Eastern Region Trauma Care Advisory Council			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)		
Ms. Linda Nielsen, Nashua	Governor	1/1/2013
Qualifications (if required): representative of the Board of Livestock		
Mr. Ron Moody, Lewistown	Governor	1/1/2013
Qualifications (if required): representative of the Board of Livestock		
Board of Aeronautics (Transportation)		
Rep. Ted Schye, Fort Peck	Governor	1/1/2013
Qualifications (if required): member of the Montana Pilots Association		
Mr. Fred Leistiko, Kalispell	Governor	1/1/2013
Qualifications (if required): representative of the Montana Airport Managers Association		
Ms. Tricia McKenna, Bozeman	Governor	1/1/2013
Qualifications (if required): representative of the Montana Chamber of Commerce		
Mr. Roger Lincoln, Gildford	Governor	1/1/2013
Qualifications (if required): member of the Montana Aerial Applicators Association		
Mr. Bill Hunt Jr., Shelby	Governor	1/1/2013
Qualifications (if required): attorney and member of the Montana League of Cities and Towns		
Board of Architects and Landscape Architects (Labor and Industry)		
Ms. Shelly Engler, Bozeman	Governor	3/27/2013
Qualifications (if required): licensed landscape architect		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Architects and Landscape Architects (Labor and Industry) cont.		
Mr. Carl A. Thuesen, Billings	Governor	3/27/2013
Qualifications (if required): licensed landscape architect		
Ms. Maire O'Neill, Bozeman	Governor	3/27/2013
Qualifications (if required): registered architect with the MSU School of Architecture		
Ms. Janet Cornish, Billings	Governor	3/27/2013
Qualifications (if required): public representative		
Board of Chiropractors (Labor and Industry)		
Dr. Cathleen Fellows, Billings	Governor	1/1/2013
Qualifications (if required): practicing chiropractor with at least one year experience		
Board of Crime Control (Justice)		
Mr. Harold F. Hanser, Billings	Governor	1/1/2013
Qualifications (if required): public representative		
Chief Lyndon Erickson, Glasgow	Governor	1/1/2013
Qualifications (if required): local law enforcement representative		
Mr. James R. Cashell, Bozeman	Governor	1/1/2013
Qualifications (if required): local law enforcement representative		
Mr. Steve McArthur, Butte	Governor	1/1/2013
Qualifications (if required): community corrections representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice) cont.		
Ms. Mikie Hajek, Great Falls	Governor	1/1/2013
Qualifications (if required): community organization representative		
Commissioner Mike Anderson, Havre	Governor	1/1/2013
Qualifications (if required): public member		
Mayor Pamela B. Kennedy, Kalispell	Governor	1/1/2013
Qualifications (if required): local government representative and the Youth Justice Council representative		
Mr. Nickolas C. Murnion, Jordan	Governor	1/1/2013
Qualifications (if required): local law enforcement representative		
Atty. General Steve Bullock, Helena	Governor	1/1/2013
Qualifications (if required): representative of state law enforcement		
Commissioner Laura Obert, Townsend	Governor	1/1/2013
Qualifications (if required): local government representative		
Board of Dentistry (Labor and Industry)		
Dr. Aimee R. Ameline, Great Falls	Governor	3/29/2013
Qualifications (if required): dentist		
Board of Environmental Review (Environmental Quality)		
Mr. Marvin Miller, Butte	Governor	1/1/2013
Qualifications (if required): background or expertise in environmental science		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Environmental Review (Environmental Quality) cont.		
Mr. William Rossbach, Missoula Qualifications (if required): attorney	Governor	1/1/2013
Ms. Robin Shropshire, Helena Qualifications (if required): background or expertise in hydrology	Governor	1/1/2013
Mr. Joseph Whalen, Miles City Qualifications (if required): background or expertise in local government planning	Governor	1/1/2013
Mr. Larry Anderson, Great Falls Qualifications (if required): attorney	Governor	1/1/2013
Board of Horseracing (Livestock)		
Sen. Dale Mahlum, Missoula Qualifications (if required): industry representative	Governor	1/20/2013
Ms. Susan Austin, Kalispell Qualifications (if required): resident of District 5	Governor	1/20/2013
Mr. Charles (Al) Carruthers, Butte Qualifications (if required): industry representative	Governor	1/20/2013
Mr. Shawn Real Bird, Garryowen Qualifications (if required): resident of District 2	Governor	1/20/2013

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Horseracing (Livestock) cont.		
Mr. Ray "Topper" Tracy, Stevensville	Governor	1/20/2013
Qualifications (if required): industry representative		
Mr. Ralph Young, Columbus	Governor	1/20/2013
Qualifications (if required): industry representative		
Board of Housing (Commerce)		
Ms. Audrey Black Eagle, Lodge Grass	Governor	1/1/2013
Qualifications (if required): public representative		
Mr. J. P. Crowley, Helena	Governor	1/1/2013
Qualifications (if required): public representative		
Mr. Jeff Rupp, Bozeman	Governor	1/1/2013
Qualifications (if required): public representative		
Ms. Elizabeth Scanlin, Red Lodge	Governor	1/1/2013
Qualifications (if required): an attorney		
Board of Investments (Commerce)		
Mr. David E. Aageson, Gilford	Governor	1/1/2013
Qualifications (if required): representative of the agriculture community		
Mr. James Turcotte, Helena	Governor	1/1/2013
Qualifications (if required): representative of the Teachers' Retirement Board		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Investments (Commerce) cont.		
Rep. Mark E. Noennig, Billings	Governor	1/1/2013
Qualifications (if required): business person		
Mr. Jack Prothero, Great Falls	Governor	1/1/2013
Qualifications (if required): representative of the financial community		
Mr. Bob Bugni, East Helena	Governor	1/1/2013
Qualifications (if required): representative of the Public Employees		
Board of Labor Appeals (Labor and Industry)		
Mr. Ed Logan, Billings	Governor	1/1/2013
Qualifications (if required): public representative		
Mr. Norman Grosfield, Helena	Governor	1/1/2013
Qualifications (if required): attorney		
Mr. Brian Boland, Great Falls	Governor	1/1/2013
Qualifications (if required): public representative		
Board of Livestock (Livestock)		
Mr. John Lehfeldt, Lavina	Governor	3/1/2013
Qualifications (if required): sheep producer		
Mr. Stan Boone, Ingomar	Governor	3/1/2013
Qualifications (if required): cattle producer		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Livestock (Livestock) cont.		
Ms. Rebecca Weed, Belgrade	Governor	3/1/2013
Qualifications (if required): sheep producer		
Board of Oil and Gas Conservation (Natural Resources and Conservation)		
Sen. Linda Nelson, Medicine Lake	Governor	1/1/2013
Qualifications (if required): landowner with minerals		
Mr. Donald D. Bradshaw, Fort Benton	Governor	1/1/2013
Qualifications (if required): oil and gas industry representative		
Mr. Wayne Smith, Valier	Governor	1/1/2013
Qualifications (if required): oil and gas industry representative		
Mr. Jay A. Gunderson, Billings	Governor	1/1/2013
Qualifications (if required): public member		
Board of Pardons and Parole (Corrections)		
Rep. John Ward, Helena	Governor	1/1/2013
Qualifications (if required): education/experience in criminology, education, psychiatry, law, social work or sociology		
Ms. Teresa McCann O'Connor, Billings	Governor	1/1/2013
Qualifications (if required): an attorney		
Mr. Samuel Lemaich, Missoula	Governor	1/1/2013
Qualifications (if required): auxiliary member		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Personnel Appeals (Labor and Industry)		
Mr. Jay Reardon, Helena	Governor	1/1/2013
Qualifications (if required): full-time employee of a labor union or an association recognized by the board		
Mr. Quint Nyman, Helena	Governor	1/1/2013
Qualifications (if required): full-time employee of a labor union or an association recognized by the board		
Ms. Karla Stanton, Billings	Governor	1/1/2013
Qualifications (if required): management representative with collective bargaining experience		
Board of Public Assistance (Public Health and Human Services)		
Mr. Scott Sorensen, Whitefish	Governor	1/1/2013
Qualifications (if required): resident of Montana		
Ms. Amy D. Christensen, Helena	Governor	1/1/2013
Qualifications (if required): resident of Montana		
Board of Public Education (Commissioner of Higher Education)		
Ms. Angela McLean, Anaconda	Governor	2/1/2013
Qualifications (if required): resident of District 1		
Rep. Douglas E. Cordier, Columbia Falls	Governor	2/1/2013
Qualifications (if required): resident of District 1 and a Democrat		
Board of Regents (Higher Education)		
Ms. Lynn Hamilton, Havre	Governor	2/1/2013
Qualifications (if required): resident of District 2		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Board of Regents (Higher Education) cont.		
Mr. Paul Tuss, Havre	Governor	2/1/2013
Qualifications (if required): resident of District 2		
Board of Social Work Examiners and Professional Counselors (Labor and Industry)		
Mr. John Lynn, Missoula	Governor	1/1/2013
Qualifications (if required): licensed counselor		
Ms. Treasa Glinnwater, Ronan	Governor	1/1/2013
Qualifications (if required): licensed social worker		
Mr. Henry Pretty On Top, Crow Agency	Governor	1/1/2013
Qualifications (if required): licensed social worker		
Ms. Linda Crummett, Billings	Governor	1/1/2013
Qualifications (if required): licensed social worker		
Capital Investment Board (Commerce)		
Ms. Ellen Feaver, Helena	Governor	1/1/2013
Qualifications (if required): financial expert		
Mr. Robert Pancich, Great Falls	Governor	1/1/2013
Qualifications (if required): financial expert		
Mr. Lawrence A. Anderson, Great Falls	Governor	1/1/2013
Qualifications (if required): financial expert		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Children's Trust Fund (Public Health and Human Services)		
Rep. Rosalie "Rosie" Buzzas, Missoula	Governor	1/1/2013
Qualifications (if required): public representative		
Ms. Betty Hidalgo, Great Falls	Governor	1/1/2013
Qualifications (if required): public representative		
Ms. Mary Gallagher, no city listed	Governor	1/1/2013
Qualifications (if required): agency representative		
Ms. Nancy Wikle, Helena	Governor	1/1/2013
Qualifications (if required): agency representative		
Ms. JoAnn Eder, Red Lodge	Governor	1/1/2013
Qualifications (if required): public representative		
Ms. Deborah Hansen, Helena	Governor	1/1/2013
Qualifications (if required): agency representative		
Coal Board (Commerce)		
Mayor John Williams, Colstrip	Governor	1/1/2013
Qualifications (if required): experience in public administration and planning and a resident of an impact area		
Mr. Dan Dutton, Belfry	Governor	1/1/2013
Qualifications (if required): representative from business and resident of District 1		
Mr. Gerald Navratil, Sidney	Governor	1/1/2013
Qualifications (if required): resident of District 2		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Coal Board (Commerce) cont.		
Mr. Chad Fenner, Hardin	Governor	1/1/2013
Qualifications (if required): experience in public administration and planning and a resident of an impact area		
Council Member of the Northwest Power and Conservation Council		
Ms. Rhonda Whiting, no city listed	Governor	1/1/2013
Qualifications (if required): none specified		
Council on Developmental Disabilities (Commerce)		
Dr. R. Timm Vogelsberg, Missoula	Governor	1/1/2013
Qualifications (if required): university program representative		
Sen. Carol Williams, Missoula	Governor	1/1/2013
Qualifications (if required): legislator		
Ms. Diana Tavary, Helena	Governor	1/1/2013
Qualifications (if required): advocacy program representative		
Rep. Tim Furey, Milltown	Governor	1/1/2013
Qualifications (if required): legislator		
Ms. Marla Swanby, Helena	Governor	1/1/2013
Qualifications (if required): agency representative		
Mr. Bob Norbie, Great Falls	Governor	1/1/2013
Qualifications (if required): advocacy program representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Facility Finance Authority (Commerce)		
Mr. James W. (Bill) Kearns, Townsend	Governor	1/1/2013
Qualifications (if required): background in investments or finances		
Mr. Jon Marchi, Polson	Governor	1/1/2013
Qualifications (if required): background in investments or finances		
Mr. Larry Putnam, Helena	Governor	1/1/2013
Qualifications (if required): public member		
Mr. Richard C. King, Missoula	Governor	1/1/2013
Qualifications (if required): background in investments or finances		
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)		
Rep. Bob Ream, Helena	Governor	1/1/2013
Qualifications (if required): resident of District 1		
Mr. Shane Colton, Billings	Governor	1/1/2013
Qualifications (if required): resident of District 5		
Mr. Ron Moody, Lewistown	Governor	1/1/2013
Qualifications (if required): resident of District 3		
Hard Rock Mining Impact Board (Commerce)		
Commissioner Ed Tinsley, Fort Harrison	Governor	1/1/2013
Qualifications (if required): public representative and a resident of District 2		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Hard Rock Mining Impact Board (Commerce) cont.		
Ms. Mary Ellen Cremer, Big Timber	Governor	1/1/2013
Qualifications (if required): representative of major financial institution in Montana and a resident of District 1		
Mr. Joe Michaletz, Helena	Governor	1/1/2013
Qualifications (if required): representative of the hard-rock mining industry and a resident of District 2		
Human Rights Commission (Labor and Industry)		
Mr. Dustin J. Hankinson, Missoula	Governor	1/1/2013
Qualifications (if required): public representative		
Ms. Maria E. Beltran, Worden	Governor	1/1/2013
Qualifications (if required): public representative		
Ms. Linda Minich, Jefferson City	Governor	1/1/2013
Qualifications (if required): public representative		
Judicial Nomination Commission (Justice)		
Ms. Monica Conrad Paoli, Missoula	Governor	1/1/2013
Qualifications (if required): public representative		
Livestock Loss Reduction and Mitigation Board (Livestock)		
Mr. James Cross, Kalispell	Governor	1/1/2013
Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission		
Mr. Brad Radtke, Drummond	Governor	1/1/2013
Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Livestock Loss Reduction and Mitigation Board (Livestock) cont.		
Ms. Whitney Wankel, Bozeman	Governor	1/1/2013
Qualifications (if required): public member		
Mr. Michael Leahy, Bozeman	Governor	1/1/2013
Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission		
Mr. John Herman, Hot Springs	Governor	1/1/2013
Qualifications (if required): nominee from the Board of Livestock		
Lottery Commission (Administration)		
Sheriff Craig Anderson, Glendive	Governor	1/1/2013
Qualifications (if required): representative of law enforcement		
Mr. Wilbur Rehmann, Helena	Governor	1/1/2013
Qualifications (if required): public member		
Milk Control Board (Livestock)		
Mr. Gary Parker, Fort Shaw	Governor	1/1/2013
Qualifications (if required): public representative and a Democrat		
Mr. Larry Van Dyke, Bozeman	Governor	1/1/2013
Qualifications (if required): public representative and a Republican		
Mr. Hubert Abrams, Wibaux	Governor	1/1/2013
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Montana Arts Council (Arts Council)		
Ms. Jackie Parsons, Browning Qualifications (if required): public representative	Governor	2/1/2013
Ms. Arlene Parisot, Helena Qualifications (if required): public representative	Governor	2/1/2013
Ms. Kathleen Schlepp, Miles City Qualifications (if required): public representative	Governor	2/1/2013
Ms. Tracy Linder, Molt Qualifications (if required): public representative	Governor	2/1/2013
Mr. Corwin Clairmont, Ronan Qualifications (if required): public representative	Governor	2/1/2013
Montana Committee for the Humanities (Committee for the Humanities)		
Mr. Bruce Whittenberg, Helena Qualifications (if required): public representative	Governor	1/1/2013
Mr. James Shanley, Poplar Qualifications (if required): public representative	Governor	1/1/2013
Ms. Ruth Towe, Billings Qualifications (if required): public representative	Governor	1/1/2013
Ms. Sidney Armstrong, Helena Qualifications (if required): public representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Montana Council on Developmental Disabilities (Commerce)		
Ms. Diana Tavary, Helena Qualifications (if required): advocacy representative	Governor	1/1/2013
Ms. P. J. Rismon-Beckley, Kalispell Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Barbara Olind, Baker Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Melissa Clark, Great Falls Qualifications (if required): primary consumer representative	Governor	1/1/2013
Ms. Jan Wenaas, Great Falls Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Lisa Hathaway, Bozeman Qualifications (if required): primary consumer representative	Governor	1/1/2013
Mr. Shawn Parker, Box Elder Qualifications (if required): primary consumer representative	Governor	1/1/2013
Ms. Brenda Walters, Shepherd Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Keogh Duffy, Missoula Qualifications (if required): primary consumer representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Montana Council on Developmental Disabilities (Commerce) cont.		
Mr. Don Berryman, Anaconda	Governor	1/1/2013
Qualifications (if required): secondary consumer representative		
Ms. Nanette Whitman-Holmes, Helena	Governor	1/1/2013
Qualifications (if required): secondary consumer representative		
Ms. Debra Ekblom, Boulder	Governor	1/1/2013
Qualifications (if required): secondary consumer representative		
Mr. Isaiah Devereaux, Glasgow	Governor	1/1/2013
Qualifications (if required): primary consumer representative		
Mr. Rudy Shriner, Helena	Governor	1/1/2013
Qualifications (if required): primary consumer representative		
Montana Grass Conservation Commission (Natural Resources and Conservation)		
Mr. Sonny Obrecht, Turner	Governor	1/1/2013
Qualifications (if required): grazing district preference holder		
Montana Pulse Crop Advisory Committee (Agriculture)		
Mr. Brian Kaae, Dagmar	Director	2/13/2013
Qualifications (if required): none specified		
Northwest Power and Conservation Council		
Rep. Bruce Measure, Kalispell	Governor	1/1/2013
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Public Safety Officer Standards and Training Council (Justice)		
Mr. Harold F. Hanser, Billings Qualifications (if required): Board of Crime Control representative	Governor	1/1/2013
Sheriff Tony Harbaugh, Miles City Qualifications (if required): Sheriff	Governor	1/1/2013
Captain Dennis McCave, Billings Qualifications (if required): detention center representative	Governor	1/1/2013
Mr. Steve Barry, Helena Qualifications (if required): Department of Corrections representative	Governor	1/1/2013
Mr. Raymond Murray, Missoula Qualifications (if required): public representative	Governor	1/1/2013
Mr. Robert M. McCarthy, Butte Qualifications (if required): public representative	Governor	1/1/2013
Sergeant Greg Watson, Whitehall Qualifications (if required): state government law enforcement representative	Governor	1/1/2013
Sgt. Alex Betz, Helena Qualifications (if required): state government law enforcement representative	Governor	1/1/2013
Rail Service Competition Council (Transportation)		
Mr. Michael V. O'Hara, Fort Benton Qualifications (if required): farm commodity producer	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Rail Service Competition Council (Transportation) cont.		
Mr. Doug Miller, Troy	Governor	1/1/2013
Qualifications (if required): knowledge of transportation for mineral industry		
Mr. John DeMichiei, Roundup	Governor	1/1/2013
Qualifications (if required): knowledge of transportation for coal industry		
Mr. Jerry Jimison, Glendive	Governor	1/1/2013
Qualifications (if required): knowledge of class I railroads		
Respiratory Care Practitioners (Labor and Industry)		
Rep. Eileen Carney, Libby	Governor	1/1/2013
Qualifications (if required): public representative		
Mr. Tony Jay Miller, Joplin	Governor	1/1/2013
Qualifications (if required): respiratory care practitioner		
Mr. Leonard Bates, Great Falls	Governor	1/1/2013
Qualifications (if required): respiratory care practitioner		
Mr. Rusty Davies, Billings	Governor	1/1/2013
Qualifications (if required): respiratory care practitioner/pulmonary function speciality		
Small Business Health Insurance Pool Board (State Auditor)		
Ms. Betty Beverly, Helena	Governor	1/1/2013
Qualifications (if required): consumer		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Small Business Health Insurance Pool Board (State Auditor) cont.		
Ms. M. Katherine Buckley-Patton, Helena	Governor	1/1/2013
Qualifications (if required): management level individual with knowledge of Medicaid services		
State Tax Appeals Board (Administration)		
Ms. Kelly Flaherty-Settle, Canyon Creek	Governor	1/1/2013
Qualifications (if required): public representative		
Mr. Douglas A. Kaercher, Havre	Governor	1/1/2013
Qualifications (if required): public representative		
Transportation Commission (Governor)		
Ms. Barb Skelton, Billings	Governor	1/1/2013
Qualifications (if required): resident of District 5 and identifies herself as a Democrat		
Mr. Rick Griffith, Butte	Governor	1/1/2013
Qualifications (if required): resident of District 2 and identifies himself as a Democrat		
Ms. Diann Seymour-Winterburn, Helena	Governor	1/1/2013
Qualifications (if required): resident of District 3 and identifies herself as an Independent		
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Mr. Ian Elliot, Billings	Governor	1/1/2013
Qualifications (if required): brain injury survivor		
Mr. James Hunt, Helena	Governor	1/1/2013
Qualifications (if required): advocate of brain injured		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2013 THROUGH MARCH 31, 2013

Board/current position holder	Appointed by	Term end
Traumatic Brain Injury Advisory Council (Public Health and Human Services) cont.		
Dr. James Wright, Butte	Governor	1/1/2013
Qualifications (if required): advocate of brain injured		