ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 2.59.1001 pertaining to the merger application procedures	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 9, 2013, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 29, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

NEW RULE I MERGER APPLICATION PROCEDURES (1) An application to merge one or more banks located in Montana pursuant to 32-1-370, MCA, must be on the form in ARM 2.59.1001.

(2) An application to merge any two or more banks doing business in this state pursuant to 32-1-371, MCA, must be on the form in ARM 2.59.1001.

(3) The application to merge must be filed with the Montana Division of Banking and Financial Institutions (division).

(4) The applicant bank(s) shall publish a notice in a newspaper of general circulation in the community in which the main office of each party to the transaction is located. If there is no such newspaper in the community, then the notice shall be published in a newspaper of general circulation published nearest to the community. The notice must run three times. It must be published once a week on the same day for two consecutive weeks and the last publication must be the 25th day after the first publication. If the newspaper does not publish on the 25th day, the notice must be published on the newspaper's publication date that most closely precedes the 25th day.

(5) The text of the public notice must include the following information:

(a) that an application for merger has been made to the Montana Commissioner of Banking;

(b) the name and address of all the parties to the merger;

(c) the identity of the surviving institution;

(d) that the public may submit comments to the Commissioner, Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546;

(e) the closing date of the public comment period; and

(f) that the nonconfidential portions of the application are on file with the division and are available for public inspection during regular business hours.

(6) The comment period must be 30 days.

(7) The notice may be combined with any notice of an applicable state or federal regulator and published jointly.

(8) The applicant(s) shall provide the affidavit(s) of publication to the division after it is received.

AUTH: 32-1-218, MCA
IMP: 32-1-370, 32-1-371, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Administration (department) is proposing to adopt this new rule and to amend ARM 2.59.1001 for several reasons. First, the existing rule, ARM 2.59.1001, is outdated and requires that the banks provide information that is no longer considered necessary. Second, in the past, mergers were very limited in Montana and were allowed only between "affiliated" banks. Now, however, mergers are allowed in all instances, between in-state and out-of-state state-chartered banks and national banks. So it has become necessary for the department to adopt a process that will apply to all the types of mergers that currently take place. Third, another purpose in adopting and amending these rules is to coordinate the state rules with the federal rules promulgated by the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), and the Office of the Comptroller of the Currency (OCC). The merger application must be approved by the state regulator (the department) and at least one federal regulator. At times, several other state regulators, in addition to the department, are involved in merger approvals. Since the banks must comply with all the regulations of all the regulators involved in the merger transaction, the department seeks to make its rules consistent with the federal rules in order to facilitate the merger, without compromising the needs of the state in obtaining the information it needs to understand and approve the merger. Fourth, the department has seen mergers of late in which it has no rules to guide the approval process. The department needs to have rules that will apply to these mergers because, at this point, there is nothing to guide the agency's discretion. Fifth, the department is proposing, in MAR Notice No. 2-60-485, to adopt rules for interim bank charters. The department, in this rulemaking, is proposing a process that will be similar to and consistent with that proposed rulemaking.

The format of this new proposed rule is consistent with the format of the new proposed rule on interim bank charters being proposed in MAR Notice No. 2-60-485. A copy of the proposed merger application must be sent to the department to review the application for completeness and begin the approval process.

Montana law has always required notice of a proposed merger be published in the newspaper published where the offices of the banks are located. The language of the rule clarifies that the notice need only be published in the community

or communities where the main offices of the banks being merged are located, not where all the branches of the institutions are located. The timing of the notices is being changed from once a week on the same day for five consecutive weeks, and, when published in a daily newspaper, one additional publication on the 30th day from the date of the first publication to once a week on the same day for two consecutive weeks and the last publication must be the 25th day after the first publication. If the newspaper does not publish on the 25th day, the notice must be published on the newspaper's publication date that most closely precedes the 25th day in order to be consistent with the rules of the FDIC, the FRB, and the OCC.

The department has chosen to adopt notice language that is generic so as to allow the applicant banks involved in the merger to publish one notice and have it be acceptable to both the state and the federal regulators instead of having to publish two notices due to minor variations in wording between the required notices.

The length of the comment period is being specified in this notice. It was not clear under the old rule what the length of the comment period was.

The rule specifically states that any notice required under Montana law may be combined and published jointly with any notice required by an applicable state or federal regulator involved in the transaction. Both the FDIC and the FRB allow joint notices to be published. The department is seeking to make clear in this rulemaking that it too will allow joint publication of notices.

The affidavit of publication is required as part of the merger process because otherwise the applicant would have no way to prove the notice ran on the specific days required in the format required for notice. However, since it is an affidavit of publication, it cannot be made and sworn to until after the publication has been made. Thus, the affidavit is not available at the time the initial application is made. In (5), the department requires that the affidavit of publication be delivered to the department after it is received by the applicant.

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

2.59.1001 MERGER APPLICATION ~~PROCEDURE FOR APPROVAL TO~~ MERGE AFFILIATED BANKS ~~(1) Under authority granted by 32-1-218, MCA, the division adopts the following rules for the consolidation or merger into one bank of any two or more affiliated banks doing business in this state, if the resultant bank is to be a state bank.~~

~~(2) Applicant banks shall publish notice of intent to merge or consolidate. This notice shall be published in a newspaper of general circulation in the community or communities where the banking offices of all the merging banks are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for five consecutive weeks, and, when published in a daily newspaper, one additional publication shall be made on the 30th day from the date of the first publication. The application shall be mailed or delivered to the division of banking and financial institutions not more than 30 days subsequent to the first publication of notice.~~

~~(3)~~ (1) The application to merge one or more banks located in Montana or to merge two or more banks doing business in this state must be in the following form~~, including a request for authorization to operate the merged banks as branches, shall contain the following information~~:

BANK MERGER APPLICATION

Any individual or entity desiring confidential treatment of specific portions of the application shall specifically identify the information for which they request confidentiality, separately bind it, and label it "Confidential." The individual or entity shall follow the same procedure for a request for confidential treatment for the subsequent filing of supplemental information to the application. Inquiries concerning the preparation and filing of this or any other application with the department should be directed to the Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546.

~~(a)~~1. State t~~T~~he exact corporate name and address of each bank and holding company participating in the merger ~~or consolidation~~, the name and address of every bank ~~any of~~ whose stock is owned by a participating bank holding company, the percentage of total voting stock which that holding represents, and the proposed names of the resultant bank and holding company.

~~(b)~~2. State t~~T~~he name and address of, and the dates of publication in, the newspapers in which the required notice is published.

~~(c) The resolution or an authentic copy of the resolution, authorizing the merger adopted by a majority of the board of directors and ratified by the consent in writing of the shareholders of each bank owning at least two-thirds of its capital stock outstanding.~~

~~(d) A year-end financial statement for each participating bank and/or a consolidated statement for multi-bank holding company.~~

~~(e) A pro forma financial statement showing projected assets and liabilities, and first year earnings for the consolidated organization.~~

~~(f)~~3. For the resultant bank, a list of the names of the directors and principal executive officers, ~~their ages,~~ their titles, ~~salaries~~ and shares owned in the participating institutions and the resultant bank, including a brief resume of the educational background, banking experience, and other qualifications of each and explanation of the extent of common ownership, direct or indirect, or common management of the participating institution and the length of time such common ownership or management has existed.

~~(g) Specification and explanation of any new services offered as a result of the merger that individual participants presently do not offer, and existing services that will be discontinued as a result of the merger must be provided.~~

~~(h) If national banks are parties to the merger, the following information will be required for each national bank:~~

~~(i) Year-end call reports for three previous years plus the previous quarter.~~

~~(ii) Year-end financial statements.~~

~~(iii) Director's audit reports, if available.~~

~~(iv) Office of the comptroller of the currency administrative orders under which the bank might be operating.~~

4. The date on which the proposed merger is to occur.

5. Attach the following documents:

(a) the resolution or an authentic copy of the resolution, authorizing the merger adopted by a majority of the board of directors and ratified by the consent in writing of the shareholders of each bank owning at least two-thirds of its capital stock outstanding;

(b) a year-end financial statement for each participating bank and/or a consolidated statement for multi-bank holding company;

(c) a pro forma financial statement showing projected assets and liabilities, and first-year earnings for the consolidated organization; and

(d) the proposed articles of merger and plan of merger.

~~(4)~~(2) An application fee of $2,000 plus $200 for each bank involved in the merger ~~shall~~ must be paid to the division ~~of banking and financial institutions~~ at the time of application and ~~thereafter shall~~ may not be refunded in whole or in part.

~~(5)~~(3) If an application is incomplete in any respect, or if additional information is required, the ~~applicants will be so notified by the~~ division ~~of banking and financial institutions~~ shall notify the applicant and the applicant will be allowed up to 30 days in which to perfect the application or provide additional information. An extension of this 30-day period may be obtained from the division ~~of banking and financial institutions~~ by showing good cause why it should be ~~so~~ extended. The division may delay processing, including extending the comment period for good cause. ~~Processing will be completed no earlier than the 15th day nor generally not later than the 45th day following the date of the last required publication.~~

~~(6)~~(4) The application ~~shall~~ must be in letter form addressed to the Commissioner of Banking and Financial Institutions, Department of Administration, P.O. Box 200546, Helena, MT 59620-0546.

AUTH: ~~32-1-203,~~ 32-1-218, MCA
IMP: 32-1-370, 32-1-371, MCA

STATEMENT OF REASONABLE NECESSITY: The form of the application is being proposed because it is consistent with the form being proposed for an interim bank charter in MAR Notice No. 2-60-485. The department is seeking to make its forms consistent across various types of applications.

The second section of the existing rule is being moved to New Rule I in order to be consistent with other department forms. Section (3) is being redrafted to be consistent with current statutory language instead of old statutory language. The new language in (3) is designed to be consistent with other department forms, namely the application form for an interim bank. The language in the remainder of (3) is being redrafted to delete things that are no longer needed by the department as part of the merger process, such as the address of the newspaper that publishes the notice. The address of the newspaper that publishes the notice is not needed because it is contained in the affidavit of publication.

The resolution or an authentic copy of the resolution authorizing the merger adopted by a majority of the board of directors and ratified by the consent in writing of the shareholders of each bank owning at least two-thirds of its capital stock outstanding, the year-end financial statement for each participating bank and/or a

consolidated statement for multi-bank holding company, a pro forma financial statement showing projected assets and liabilities and first-year earnings for the consolidated organization are being moved from the "general description of the proposed merger" section to the "attach the following documents" section of the rule because that is where they logically belong.

The ages and salaries of directors and principal officers used to be required under the old rule but are viewed as simply too intrusive and unnecessary.

The date on which the merger is expected to occur is not currently required under our rules. Unfortunately, that recently led to a situation where the department received an application for a merger that, according to a fellow regulator, needed to be processed immediately. The department did so. As part of its process, it caused a notice to be published in a newspaper in the community in which one merging bank was located. After the publication occurred, the department learned that, in fact, the merger was not scheduled to occur until after October 1, 2013. On October 1, 2013, HB 138 will become effective. HB 138 changes the merger provisions found in 32-1-370 and 32-1-371, MCA. The department analyzed the merger under the wrong statute because the proposed date of the merger was not provided as part of the application process. The changes in HB 138 will no longer require publication of notice by the department. So the department is proposing to add the merger date to the application process in order to avoid this situation in the future.

The applicant need not provide a listing of new services to be offered or old services to be discontinued. The department expects banks to offer all the usual banking services and does not need a specific listing of the types of services a bank expects to offer or discontinue.

The section on information necessary if one of the parties to the merger is a national bank is being deleted because the year-end call reports for three previous years plus the previous quarter, the year-end financial statements and director's audit reports, if available, are no longer needed. The administrative order that the bank is operating under is either public or it is not. If it is public, the department can download it, like any member of the public. If it is not public, the bank cannot give it to the department anyway so there is no point in asking.

The proposed articles of merger and plan of merger are necessary because the department legal counsel reviews them for legal sufficiency before they are finalized. The articles of merger and plan of merger must be filed with the Montana Secretary of State's Office after the merger is approved by the commissioner. The Secretary of State's Office will reject any articles of merger or plan of merger that do not contain the legally required elements. It is much easier to fix errors or omissions in the merger documents before they have been executed and tendered for filing, especially if a merger deadline is looming.

Division is being abbreviated in the old (4) since it has been used and defined previously in these rules. The language is being updated in this section by changing "shall" to "must" and "thereafter shall" to "may."

In old (5), division is being abbreviated since it has been used and defined previously in these rules. The language is being updated by removing "applicants will be so notified," which is archaic. The prohibition against processing an application for 15 days after the last publication of the notice is being removed. Presumably, this was designed to allow mailed comments to be received before the

application was processed. But now that communications are instantaneous, in the case of e-mails, and relatively quick, in the case of mail, a 15-day waiting period is unnecessary. And the general 45-day period for processing an application after the last publication of the notice is no longer necessary. Depending on how "processing" is defined, this section of the rule may conflict with the merger date selected by the merging entities. The department encourages potential merger partners to let the regulator know as soon as possible about a merger. Merger documents can contain an effective date of the merger. That effective date can be up to 90 days after the documents are filed with the Secretary of State's Office. The department has seen applications in which the applicants gave the department four months' notice of a merger. If "processing" is defined as filing the articles of merger with the Secretary of State's Office, the provision in this rule could interfere with the merger date selected by the merger parties. The department wants to continue to encourage merger parties to let their regulator know as soon as possible about any potential merger and does not want a built-in disincentive to providing as much advance notice of a potential merger as possible.

Section 32-1-203, MCA, is being deleted from the authority section since it does not apply to this rule. The State Banking Board makes rules applicable to new bank charters, but they do not apply here. However, 32-1-218, MCA, does apply here since it allows the department to make rules.

Section 32-1-371, MCA, is being added to the implemented section since there are two merger statutes being implemented by the rulemaking, 32-1-370 and 32-1-371, MCA.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 6, 2013.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., September 6, 2013.

7. If the Division of Banking and Financial Institutions 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 six persons based on the 57 existing state-chartered banks.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/administrativerules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

11. The department has determined that this new rule and the proposed rule amendments will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 29, 2013.

BEFORE THE STATE BANKING BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VII pertaining to applications for shell banks	)	NOTICE OF PROPOSED ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 9, 2013, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 29, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

NEW RULE I STATE BANK ORGANIZED FOR PURPOSE OF BEING A SHELL BANK (1) If a shell bank is being organized for the purpose of acquiring control of or acquiring all or substantially all of the assets of an existing bank or savings association, the organizers shall comply with 32-1-202 through 32-1-206 and 32-1-301 through 32-1-307, MCA, and the rules adopted thereunder.

(2) An application for a shell bank organized solely for the purpose of merging with an existing bank or savings association is governed by this subchapter.

(3) A shell bank organized solely for the purpose of merging with an existing bank or savings association is referred to as an interim bank in this subchapter. An interim bank has no authority to conduct a banking business until merged with an existing bank or savings association.

(4) The provisions of this subchapter do not apply to a state bank organized for the purpose of assuming deposit liabilities of any closed bank governed by ARM 2.60.501.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-204, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-1-218, MCA, allows the department to adopt rules regarding shell banks. That has not been done before this time because there were not very many mergers of banks. However, our current economic climate has led to an environment in which banks are merging

more frequently. This is expected to continue in the near future. The department decided that rules are necessary to provide an expedited procedure to create an interim bank to facilitate a merger with an existing institution.

The department has proposed (1) because if a shell bank is being organized to acquire control of or to acquire all or substantially all of the assets of an existing bank or savings association, that means the persons seeking to organize the shell bank do not currently own, work in, or manage an existing bank or savings association. In light of that fact, it is necessary for them to go through the full process of chartering a de novo bank, so that the State Banking Board may determine whether they meet the requirements set forth in state law to charter a new bank.

However, in the case of a shell bank being organized for the purpose of merging with an existing state bank or a savings association, there is already a state bank or savings association in existence that has already been chartered. This means that the chartering authority has already investigated and determined that the criteria to charter a bank or savings association have been met. In some cases, the financial institution in question has been in existence for decades.

Given the fact that a financial institution already exists, there is no need to reinvestigate the people involved in the bank and determine whether adequate capital exists to authorize an institution since that has already been done. Instead, the department seeks by these proposed rules to provide a summary process by which an interim bank can be granted a certificate of authority. This process is separate and apart from the merger process that will proceed under 32-1-370 or 32-1-371, MCA, and the rules adopted under the relevant statute in question.

However, if the institution to be merged is considered to have deficient capital, the State Banking Board may require that the proposed interim bank be capitalized in a specific manner in order to address that issue. And, if the proposed interim bank will involve changes to personnel on the bank board or executive officers of the merging bank, the State Banking Board may review those changes and determine if they are acceptable. The department proposes this requirement because it is necessary for the State Banking Board to determine that a new bank will meet the criteria set forth in 32-1-203, MCA, which include that the bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated.

A procedure for establishing an interim bank already exists in many other states. In addition, the Interagency Bank Merger Application form that was developed and adopted by the Federal Deposit Insurance Corporation, Federal Reserve Board, and the Office of the Comptroller of the Currency (OCC) recognizes that an interim state or federal charter may be used to facilitate a merger. The department has adopted the Interagency Bank Merger Application as its form for mergers in Montana. These proposed rules are designed to create a procedure for authorizing interim banks in Montana that is consistent with other states and the federal process for interim banks used in mergers. These procedures are well-designed and will address the issues arising in Montana.

New Rules I through VII are not intended to govern a state bank being organized for the purpose of assuming the deposit liabilities of any closed bank. That instance is governed by a specific rule adopted by the State Banking Board,

ARM 2.60.501, which allows a summary process to facilitate the transfer of the deposit liabilities of any closed bank. Section (4) makes clear that these rules are not intended to apply to transactions under ARM 2.60.501.

NEW RULE II APPLICATION PROCEDURES (1) An application to form an interim bank must be on the form in [New Rule III].

(2) The application to form an interim bank must be filed with the department.

(3) The applicant shall publish a notice in a newspaper of general circulation in the community in which the main office of the proposed interim bank is to be located. If there is no such newspaper in the community, then in a newspaper of general circulation published nearest the community will suffice. The notice must run once a week for two consecutive weeks. The public notice must include:

(a) the name of the proposed interim bank;

(b) a brief summary of the purpose of the interim bank;

(c) a reference to [New Rule III], under which the proposed interim bank is to be formed; and

(d) notice that interested persons are invited to comment on the application before the State Banking Board.

(4) The applicant shall provide the affidavit of publication to the department after it is received.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The application must be sent to the department to begin the approval process. The department must review the application for completeness. The department must also set the time of the meeting of the State Banking Board, notify the public of the time and place of the State Banking Board meeting, and ensure that the State Banking Board members have the application and all exhibits in time to review them before the meeting. Therefore, it is necessary for the department to receive an application in order to begin the approval process.

Traditionally, all de novo banks in Montana must provide public notice of the proposal in a newspaper of general circulation in the community in which the bank seeks a certificate of authorization. The department has set forth a like process in this rule in order to be consistent with the process for de novo banks in Montana. While Ralph Waldo Emerson wrote in his essay "Self-Reliance," "A foolish consistency is the hobgoblin of little minds," at the department, we generally strive to make our procedures consistent over various types of applications in order to simplify them for bankers and the agency staff alike.

The affidavit of publication is required as part of the application process. However, since it is an affidavit of publication, it cannot be made and sworn to until after the publication has been made and it is not available at the time the initial application is made. So the department requires that the affidavit of publication be delivered after it is received.

NEW RULE III APPLICATION TO FORM AN INTERIM BANK (1) The application to form an interim bank must be in the following form:

INTERIM BANK CHARTER APPLICATION

Any individual or entity desiring confidential treatment of specific portions of the application shall specifically identify the information for which they request confidentiality, separately bind it, and label it "Confidential." The individual or entity shall follow the same procedure for a request for confidential treatment for the subsequent filing of supplemental information to the application. Inquiries concerning the preparation and filing of this or any other application with the department should be directed to the Montana Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546.

1. State the name, address, and phone number of the person(s) who will represent the applicant.
2. State the purpose for forming the proposed interim bank.
3. State the name and location of the proposed interim bank.
4. State the names and addresses of the organizer(s) and first board of directors of the proposed interim bank. See 32-1-322, MCA.
5. State the positions and names of the officers of the proposed interim bank.
6. Provide full details of the capital structure of the proposed interim bank including number and types of authorized shares, par value, total capital stock, surplus, and any other components of capital. Also, state the initial amount of reserves to be established, if any.
7. Describe in detail the entire transaction in which the interim charter is proposed to be used and identify the resulting bank after completion of the transaction.

We, the undersigned Board of Directors of the proposed interim bank, do solemnly swear or affirm that the statement and representations made herein are true and correct to the best of our knowledge and belief, and that the personal data and financial statements submitted with this application are true and correct and that this application is made in good faith, with the purpose and intent that the affairs and business of the proposed interim bank shall be honestly conducted upon good and sound business principles.

NAME	ADDRESS	DATE

State of _____

County of _____

Signed and sworn to before me this _____ day of _____, _____

By _____

_____
Notary Public for the State of Montana

_____
Printed Name
Residing at _____, Montana

My commission expires _____

EXHIBITS

In order for the interim bank application to be considered complete, the following exhibits must be furnished:

1. Attach brief resumes of past business and banking or related experience of the principal shareholders, directors, and executive officers of the proposed interim bank. "Principal shareholder" means a person who directly or indirectly owns, controls, or holds (either individually or as a member of a group) the power to vote 10% or more of any class of voting securities or other voting equity interest of the entity.

If the proposed principal shareholders, directors, and executive officers are not currently serving as principal shareholders, directors, or executive officers of an insured depository institution, attach an Interagency Biographical and Financial Report for each person not currently so serving. The Interagency Biographical and Financial Report is available at the Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546, or on the division web site located at www.banking.mt.gov.

2. Attach a summary of the facts in support of the applicant's contention that the conditions for incorporation set forth in 32-1-203, MCA, are met.

3. Attach the proposed articles of incorporation and by-laws of the proposed interim bank.

4. Attach a copy of all agreements or plans which detail how the interim bank will be used in a merger or consolidation.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The form set forth above is designed to be similar to the existing process to request authorization for de novo banks. The application may contain two types of confidential information: information that is a trade secret or other confidential information of the entity and information that is subject to an individual's reasonable expectation of privacy. The applicant must initially identify the information that is confidential and set it apart from the rest of the application that will be made publicly available. The department will exercise its judgment in what is or is not confidential; however, the applicant must first identify the information for which they claim confidentiality. The department will advise the applicant before it publicly releases any information marked confidential.

Since a bank is a corporate entity, the applicant must identify a person who has the authority to speak for the proposed corporate entity. At the hearing before the State Banking Board, the State Banking Board members must be able to address concerns and comments to an individual who has the authority to speak for the nascent corporation. This proposed rule requires the proposed corporation to nominate an individual to speak for it.

The purpose of the interim bank is necessary to ensure it meets the requirements of 32-1-109(17), MCA, which provides the definition of "shell bank."

The name of the proposed interim bank is to ensure the name complies with 32-1-301, MCA, which provides, in part, that a banking corporation may not adopt or use the name of any other banking corporation or association. The location of the proposed interim bank is to allow the applicant to determine the area in which to publish the notice and to allow the State Banking Board to determine compliance with 32-1-203(1), MCA, which requires the State Banking Board to determine there is a persuasive showing of reasonable public necessity and demand for a new bank at the proposed location.

The names of the initial incorporators are necessary to comply with 32-1-321 and 35-1-216, MCA, which address calling of the first meeting by the incorporators and the information to be included in the articles of incorporation, respectively. The board of directors of the bank is necessary to ensure compliance with 32-1-322, MCA, which requires that the bank's affairs be managed by a board consisting of not fewer than three persons and prohibits any person who has been convicted of a crime against the banking laws of the United States or of any state from being a bank director.

The positions and names of the officers of the proposed interim bank are necessary to ensure compliance with 32-1-203(2), MCA, which requires the State Banking Board to find that a new bank organized under Montana law be owned and managed by persons of good moral character and financial integrity and safely and soundly operated.

The capital structure of the bank is necessary for the State Banking Board to determine the safety and soundness of the proposed institution. Section 32-1-307, MCA, gives the department and the State Banking Board the authority to set the appropriate level of capitalization for the proposed interim bank.

The last item is necessary so that the State Banking Board can understand how the proposed interim bank is planned to be used and the transaction at hand and what the resulting institution after the merger will be. This is necessary for the

State Banking Board to determine that there is a persuasive showing of reasonable public necessity and demand for a new bank at the proposed location.

The oath of the directors of the proposed interim bank is designed to be consistent with OCC certification in the Interagency Charter and Federal Deposit Insurance Application. The State Banking Board has adopted the Interagency Charter and Federal Deposit Insurance Application as its application for a de novo charter. See ARM 2.60.303. The department seeks to be consistent with the de novo application by adopting this oath of directors.

The resumes of principal shareholders, directors, and executive officers are necessary to ensure compliance with 32-1-203, MCA. If the principal shareholders, directors, and executive officers are already serving in these positions with an existing financial institution, this has already been done by the chartering agency and there is no need for the individual to fill out another Interagency Biographical and Financial Report. However, if the individuals are not currently serving as a principal shareholder, director, or executive officer of a financial institution, then they will need to fill out an Interagency Biographical and Financial Report so that the State Banking Board members can review it and determine compliance with 32-1-203(2), MCA.

The summary of the facts in support of the applicant's contention that the conditions for incorporation are met is necessary to allow the members of the State Banking Board to determine whether the requirements of 32-1-203, MCA, are met by the proposed interim bank.

The articles of incorporation and by-laws are necessary to allow the department and the members of the State Banking Board to determine if the requirements of 32-1-301 and 32-1-302, MCA, have been met. The articles of incorporation and by-laws are kept on file by the department if the institution is granted a certificate of authorization.

A copy of the agreements or plans that detail how the interim bank will be used in a merger allows the department and the members of the State Banking Board to review and understand the agreement that requires an interim bank to be in place in order for a merger to proceed. This is important because the State Banking Board must charter the interim bank and in order to do so, it must be confident that it has all the information needed and available on which to base its decision. And if it believes additional information is extant, it must be able to request that information. Were it not so, the applicants for an interim bank charter could withhold relevant information from the State Banking Board.

NEW RULE IV DECISION OF STATE BANKING BOARD; INCORPORATION (1) Approval of an application for an interim bank certificate of authority under this rule will be accomplished through a telephone conference call with a quorum of the board participating.

(2) The provisions of ARM 2.60.202 and 2.60.204(1) and (2) apply to an application for an interim bank certificate of authority.

(3) Within two weeks after the conclusion of the hearing before the State Banking Board, the State Banking Board shall issue a decision as to whether to approve the application for the interim bank. This two-week period may be extended

by two additional weeks if the State Banking Board or the department requires more time or information.

(4) The receipt and approval of the information in [New Rules II and III] constitute sufficient authority for the State Banking Board to approve the issuance of a certificate of authorization to the interim bank.

(5) The State Banking Board may require additional information as it sees fit from an applicant before approving the application.

(6) The State Banking Board's approval shall be specifically conditioned on the approval of the subsequent merger.

(7) Upon the State Banking Board's approval of the interim bank application, the incorporator shall take the necessary steps to conform the articles of incorporation and by-laws to the requirements of the State Banking Board. The commissioner shall approve the articles and the department shall then file the necessary documents with the Secretary of State.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-202, 32-1-204, 32-1-205, 32-1-218, 32-1-302, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-1-204, MCA, requires that a hearing be conducted on all applications for a new bank certificate of authorization. However, in the case of a state bank organized for the purpose of assuming the deposit liability of a closed bank, the hearing before the State Banking Board is conducted by telephone conference call with a quorum of the board participating. The department decided to adopt a like process for interim banks because it will be less difficult for the members of the State Banking Board to conduct a telephone conference call than for all the members of the State Banking Board to coordinate a time to drive to Helena to attend an in-person board meeting.

The State Banking Board has no way to investigate an application so this rule makes the provisions of ARM 2.60.202, which require the department to investigate and report to the State Banking Board, applicable to interim bank applications. The State Banking Board uses the Attorney General's model rules and Robert's Rules of Order to conduct its meetings. The provisions are proposed to be made applicable to proceedings involving interim banks as well since they are the general rules the State Banking Board operate under. The State Banking Board could adopt a whole new set of rules of order and procedure that would apply only to a proceeding involving a request for a charter for an interim bank. But since there are already established rules in existence that have proven over time to be efficacious in other various settings in which rules are required, it behooves the State Banking Board to adopt rules that have been litigated previously and on which there is a general agreement as to what the terms mean rather than drafting all new rules of order and procedure.

Because this process is designed to be a summary process, the rule proposes a two-week timeframe for a final decision unless the time is extended by the State Banking Board or the department if additional time is needed to make the final decision regarding approval or denial of the application. Two weeks was chosen because this is a summary process and time is of the essence.

Section (4) is designed to make clear that the State Banking Board may authorize a new interim bank if it approves the information set forth in New Rules II and III because the rules are designed to provide the State Banking Board with the information that it needs to determine if the statutory criteria for chartering a new bank have been met. The other statutes and rules that apply in the case of de novo banks do not apply here.

Section (5) provides that the State Banking Board members are not limited to only the information before them. The State Banking Board may ask for any additional information it deems necessary. The department proposes this flexibility because the State Banking Board is responsible for chartering a shell bank. It must be able to satisfy itself that it has investigated and determined that the requirements for the approval of a shell bank have been met.

Since the definition of an interim bank is a bank organized solely for the purpose of merging with an existing state bank or savings association, the approval of the State Banking Board must be conditioned on the approval of the merger. If that merger is not approved, there is no reason for the interim bank to exist.

The last section of this rule sets forth the procedure for the applicant and the department to follow after the State Banking Board approves the application for an interim charter. The department proposes this particular procedure because Montana law requires the process to be followed in order to organize and charter a new bank.

NEW RULE V POWERS OF INTERIM BANK BEFORE MERGER (1) An interim bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation does not preclude the State Banking Board from ordering the department to grant a certificate of authorization, and to otherwise facilitate and authorize the formation and incorporation of the interim bank.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-1-109(17), MCA, provides that an interim bank cannot conduct any banking business before merging with an existing state bank or savings association. This rule is designed to make clear that the bank can take the steps necessary to form and organize itself and merge without violating 32-1-109(17), MCA. If this were not the case, it would be impossible to form and organize an interim charter and merge it. The law never requires impossibilities. Section 1-3-222, MCA.

NEW RULE VI PROOF OF MERGER: REVOCATION OF CERTIFICATE OF AUTHORIZATION (1) From the date an interim bank is authorized according to this rule, the parties to the interim bank agreement have six months in which to effect the merger with the existing bank or savings association. The merger must proceed under 32-1-370 or 32-1-371, MCA.

(2) The department may grant extensions if the parties to the interim bank agreement show good cause as to why an extension is needed to complete the merger.

(3) The department may cancel or revoke the certificate of authorization of the interim bank (and may take such other steps as are appropriate at any time) if:

(a) proof of the merger between the interim bank and the existing bank or savings association has not been provided to the department at the end of the authorized time;

(b) the interim bank actually conducts any banking business prior to its proposed merger; or

(c) any related merger or consolidation application is denied or withdrawn.

AUTH: 32-1-218, MCA
IMP: 32-1-218, 32-1-502, MCA

STATEMENT OF REASONABLE NECESSITY: Since the entire purpose of an interim charter is to fulfill a merger, if after the interim bank is chartered, the merger does not occur for some reason, the department must be able to cancel the certificate of authority of the interim bank. Otherwise, there will be unused interim bank charters in existence with no way to use them or get rid of them. The department also needs the ability to revoke a certificate of authorization if any banking business is conducted by the interim charter before the merger or consolidation. The interim bank charter is, by definition, not a de novo bank and it cannot do business as a bank until after the merger or consolidation is complete.

NEW RULE VII FEES (1) A nonrefundable fee of $1,000 to offset the administrative expense of the department must be included with the application, provided, however, the fee is considered a part of and not in addition to any fee being paid at the same time to the department in connection with a contemporaneous application for a merger.

(2) Depending on the structure of the transaction, other fees may be required in accordance with applicable statutes or rules.

AUTH: 32-1-218, MCA
IMP: 32-1-109, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The department is charged by ARM 2.60.202 with conducting investigations of an applicant at the State Banking Board's direction. The department is a proprietary agency, which is self-funded through the fees it charges its licensees. In order to cover the cost of investigation of an applicant and the costs associated with an application for an interim bank, the department must charge an amount that will cover its staff time and expenses in processing and investigating the application. The cost of an application for a de novo bank is $10,000. However, since this is a simpler and shorter process, the fee for an interim bank can be much less. In this case, the department estimates that the staff time and expenses, including the stipend for the members of the State Banking Board, can be covered by a fee of $1,000.

The cumulative amount for all persons of the proposed fee above cannot be estimated. It depends on the number of mergers that will occur in the future that will require a shell bank to be organized. At this time, the department does not know the number of persons that will be affected by this fee. It also depends on the number of mergers in which the parties will choose to use a shell bank. The department cannot estimate the number of mergers in which this process may be used, but wants to make it available to merging institutions in case it may be beneficial for them.

Since the interim bank cannot be used or exist outside of a merger process and there is already a fee for a merger, the department has chosen to make the interim bank fee apply toward the merger fee, not in addition to the merger fee. This is because some of the documents (articles of incorporation and resumes of principal shareholders, officers, and directors) are the same and once they are reviewed, there is no need to review them again. So the cost to apply for the interim bank should go toward the fee for a merger.

4. 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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov, and must be received no later than 5:00 p.m., September 6, 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 Kelly O'Sullivan at the above address no later than 5:00 p.m., September 6, 2013.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 affected has been determined to be six persons based on the number of existing state-chartered banks which is 57.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the

office at (406) 841-2930; e-mailed to banking@mt.gov; 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 department's web site at http://doa.mt.gov/administrativerules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists 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 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.

10. The department has determined that these proposed rule amendments will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 29, 2013

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.313 pertaining to Noxious Weed Seed Free Forage Fees	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 28, 2013, at 2 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5 p.m. on August 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, MT 59620; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov.

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

4.5.313 FEES (1) ~~An~~ A field inspection fee of ~~$2.50~~ 4.50 per acre or a $25 minimum charge per field for forage inspection will be charged to the person for whom the forage was inspected. State mileage and per diem rates may also be assessed by the department or its agents.

(2) Fees charged are payable to the department or its agent:

(a) at the time of inspection; or

(b) by special arrangement made for payment through a written agreement with the department or its agent.

(c) If additional inspections are required because of weather operation delays or other related problems, the discretion of whether to charge an additional inspection fee will be left to the department or its agent. ~~The department will not require that the $1.00 per acre be charged for additional inspections due to weather, or other related problems, so the maximum inspection fee (if charged) will be $1.50/ per acre.~~

(3) Agents ~~The government agent~~ must submit a copy of the department completed inspection form and submit ~~$1.00~~ 2.25 per acre or ~~$10.00~~ 20.00 minimum inspection fee, whichever is greater, ~~for ten acres or less for hay or straw to the department and report on a financial form provided by the department. The funds and form must be submitted~~ by September 15 of each year to ensure that the persons producing certified forage will be included on the NWSFF producer list.

(4) remains the same.

(5) An inspection fee of ~~$20.00~~ 44.00 per hour or ~~a~~ an ~~$40.00~~ 88.00 minimum charge per facility per inspection will be charged to manufacturers of

certified processed pellets using noncertified forage in the process and certified grain concentrates harvested from noncertified fields that are mechanically cleaned of noxious weed seed. State mileage, ~~and~~ per diem, ~~rates~~ and lodging may also be assessed by the department or its agents~~.~~ when conducting in-state facility inspections. Actual costs associated with out-of-state facility inspections will be assessed by the department or its agents. Costs may include, but are not limited to, airfare, vehicle rental, state mileage, per diem, and lodging. The manufacturer shall document the tons of grain concentrate or pellets processed and submit the document to the department on or before January 30 for the previous year's production.

(6) remains the same.

(7) The cost for grain concentrate analysis shall be paid by the manufacturer. The product marker (label) will be provided by the department or its agent to the manufacturer of certified grain concentrates and pellets at $0.40 per marker (label) ~~cost~~.

AUTH: 80-7-905, 80-7-907, 80-7-908, MCA
IMP: 80-7-905, 80-7-907, 80-7-908, MCA

REASON: The Noxious Weed Seed Free Forage Act, under 80-7-905(7), MCA, provides authority for fee assessments and the ability to accept other funds to make the certification program financially self-supporting. Current fees are generating significantly less revenue than needed. The program has been receiving financial support from the Montana Noxious Weed Trust Fund and Pesticide Program. With passage of SB 144, the reduction in funding to the department for administration and program costs will eliminate the department's ability to continue supplemental support of the forage program through the Noxious Weed Trust Fund. Pesticide program funds must be used in the department's analytical lab to fill the hole left by federal sequestration cuts and, therefore, will no longer be able to support the forage program. A fee increase is necessary to generate revenue to fully meet expenditures associated with the Noxious Weed Seed Free Forage program. Fees for this program were last raised in 2006.

ECONOMIC IMPACT: Fees associated with the Noxious Weed Seed Free Forage Program are established both by administrative rule and policy. The per acre inspection fee, the hourly fee, and the cost for labels are set by administrative rule while the fees for the twine and tags are set by policy. All fees associated with the program are included in this economic impact statement to give the reader an understanding of the fees as a whole.

There are 200 producers growing 14,505 acres of certified weed seed free forage. These producers will see an increase in inspection costs from $2.50 per acre to $4.50 per acre. Actual inspection costs for individual producers will depend on the number of acres being requested for certification. Producers will also see an increase in price for twine from $37.55 to $50.00 per box and an increase in price for tags from $0.10 per tag to $0.50 per tag. Actual costs will depend on the type of marker being purchased (twine or tags).

In addition to field inspection fees, the department proposes increasing the hourly inspection rate and certification label cost. These costs are primarily associated with facilities that produce pelletized products. Facility inspection charges are at actual costs, e.g., airfare, vehicle rental or state mileage, per diem, and lodging. Hourly inspection charges will increase by $24 per hour from $20 per hour to $44 per hour. The change will provide cost recovery of personnel costs associated with facility inspections. There are 11 facilities, eight located in Montana and three located out of state (Colorado, Washington, and Utah). Out-of-state facility inspections consume 12 to 14 hours each, depending on location and trip arrangements available to meet inspection requests. Average increase in hourly costs for an out-of-state facility would be $336. Travel associated with in-state facility inspections can often be combined, reducing the associated inspection hours. Time commitment ranges from 2 hours to 13.5 hours per facility inspection with an average of 5.75 hours. The increased hourly costs range from $48 to $324 with an average of $138. Certification labels would increase from $0.10 to $0.40 per label. Increased costs to a facility will depend on the number of labels purchased.

Agents who conduct field inspections will see an increase in revenue from inspection fees from $1.50 to $2.25 per acre. Agent revenue from inspections is dependent upon the number of acres inspected in a growing season.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, MT, 59620; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5 p.m., September 5, 2013.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

/s/ *Cort Jensen*
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State July 29, 2013.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.1405, 4.12.1411, and 4.12.1431, the adoption of New Rules I through VI, and the repeal of 4.12.1408, 4.12.1410, and 4.12.1412 through 4.12.1424 pertaining to plant inspection certificate and survey costs, fees, and civil penalties	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 28, 2013, at 1 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 North Roberts, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5 p.m. on August 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, PO Box 200201, Helena, Montana, 59620; telephone; (406) 444-5402; fax (406) 444-5409; or cojensen@mt.gov.

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

4.12.1405 PLANT INSPECTION, CERTIFICATE, AND ~~SURVEY~~ SERVICE COSTS – FEES (1) All fees for services are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of $25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to providing inspection and certification services.

(2) The fees shall be as follows:

(a) remains the same.

(i) annual plant inspection certificates: ~~$50~~ 75; ~~and~~

(ii) nursery tags: ~~15~~ $0.25 ~~¢~~/tag ~~-~~ for nursery stock inspected and certified ~~Nursery tags are issued provided that the commodity is inspected~~ by the department. ~~Costs for the inspection will be charged according to fees in this rule with a minimum $5 inspection fee.~~;

(iii) certification inspections will be charged at $44 per hour with a minimum one hour charge; and

(iv) quarantine and other documents: $25.

~~(b) Plant inspection certificates, pursuant to 80-7-108, MCA:~~

~~(i) phytosanitary certificates: $23 if the monetary value of the shipment is $1,250 or less;~~

~~(ii) phytosanitary certificates: $50 if monetary value of shipment exceeds $1,250;~~

~~(iii) heat treatment certificates: $10;~~

~~(iv) certificates of origin: $30; and~~

~~(v) other documents of quarantine compliance: $10.~~

(b) Clean Plant and Indexing Certification:

(i) annual application fee is $250; and

(ii) late fee of $25 if annual application is filed after June 1 of each year.

(c) The department charges for mileage, lodging, per diem, and an hourly rate for certain services to recover costs for expenses that exceed the fees established in ~~(1)~~ (2)(a) and (b). These charges are as follows:

(i) actual costs for sampling and testing for ~~phytosanitary~~ nursery and clean plant and indexing certification and services; and

~~(ii) mileage for inspecting commodities for phytosanitary certification in excess of 50 miles for any certificate;~~

~~(iii) lodging and per diem for phytosanitary certification when travel to inspect requires overnight lodging and per diem;~~

~~(iv)~~ (ii) actual cost of trapping, survey, and treatment. ~~materials when requested by public or private persons when related to export certification, nursery certification, or nursery stock certification; and~~

~~(v) hourly charge - $20 per hour with a one hour minimum.~~

(d) remains the same.

AUTH: 80-7-108, 80-7-122, MCA
IMP: 80-7-108, 80-7-122, MCA

REASON: The nursery program is fee-for-service and does not receive any other sources of funding. The rule provides clarity about which fees are specific to nursery inspection, certification, and services. Fee increases are necessary to meet expenditures associated with the responsibilities and services being provided.

ECONOMIC IMPACT: Nursery certification is fee-for-service. In 2012, ten nurseries were issued nursery certification to support nursery stock sale and distribution. Certificate costs will increase by $25. Five nurseries purchased 1,748 nursery certification tags in 2012. Cost will increase from $0.15/tag to $0.25/tag. The economic impact to these five nurseries is expected to be $0.80, $4, $10, $40, and $120 respectively. Currently the department does not charge an hourly rate, mileage, per diem, or other costs incurred in providing certification. Proposed rules adopt an hourly rate, mileage, per diem, and other costs associated with the certification process. Costs will correspond with actual time and expense. This will vary widely, depending on size of operation, variety and volume of nursery stock, buyer requirements, and distance from nearest field office providing nursery certification. Because of these factors, an estimate cannot be made for an individual nursery; however, these are new costs and each nursery may expect, at a minimum,

an additional cost of $75. Heat treatments or quarantine document services will be available upon request''. The rule provides for the associated cost.

4.12.1411 DEFINITIONS (1) ~~"Blue Tag Certification" means an official certification tag issued by the department indicating that the plant or plant part has been inspected and tested in accordance with the provisions of this program.~~ "Audit" means a systematic and independent examination to determine whether an auditee's activities conform with prescribed objectives.

(2) "Certification Program" means a comprehensive process established and authorized by a state or other governmental entity for the production of plants, plant materials, and propagative materials free of regulated pests and diseases. The regulations of the program define the program participation, plant production, plant identification and labeling, and quality assurance requirements.

~~(2)~~ (3) "Department" means the Montana Department of Agriculture.

~~(3) "Good horticultural condition" means a condition that reduces the risk of infestation by a quarantined pest, including good sanitary practices.~~

(4) "Indexing" means to determine the presence or absence of transmissible viruses or diseases in plants, plant materials, or propagative materials that may involve inspection, tests, and analysis.

~~(4)~~ (5) "Import permit" means an official document issued by a national or regional plant protection organization of the importing country authorizing importation of a commodity in accordance with specified phytosanitary measures.

~~(5) "Infected (affected)" means the presence of a harmful virus(es) or virus-like disorders, viroids, phytoplasms, and bacteria in a plant or plant part.~~

~~(6) "Inspection" means official visual and/or diagnostic examination of plants, plant products, or other regulated articles to determine if pests are present and/or to determine compliance with phytosanitary regulations.~~

~~(7)~~ (6) "International Standard for Phytosanitary Measures (ISPM)" means an international standard adopted by the Conference of FAO, the Interim Commission on Phytosanitary Measures or the Commission on Phytosanitary Measures, established under the International Plant Protection Convention.

~~(8) "Montana certified fruit tree nursery stock" means nursery grown seedlings or clonal rootstocks originating from registered plants or plant parts and nursery grown plants propagated by using top-stock from registered trees and rootstock originating from registered trees except as herein provided for certain rootstocks.~~

~~(9) "Montana certified fruit tree seed" means seed produced on registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed 5% for ilarviruses and is found negative for Plum Pox Virus.~~

~~(10) "Mother trees" means base plant material used for the production of certified plant material, which is tested at a rate of 10% each year and maintained under continuous surveillance.~~

~~(11)~~ (7) "NAPPO" means North American Plant Protection Organization.

~~(12)~~ (8) "National Plant Protection Organization (NPPO)" means official service established by a government to discharge the functions specified by the International Plant Protection Convention.

~~(13)~~ (9) ″Official″ means established, authorized, or performed by a national plant protection organization.

~~(14) ″Off-type″ means not true-to-name.~~

~~(15)~~ (10) ″Pest″ means any species, strain, or biotype of plant, animal, or pathogenic agent injurious to plants or plant products.

~~(16)~~ (11) ″Phytosanitary Certificate″ means the use of phytosanitary measures that prevent the introduction or spread of a quarantined pest, which leads to the issuance of a certificate attesting to those measures.

~~(17) ″Prohibited″ means a phytosanitary regulation forbidding the importation or movement of specific pests or commodities.~~

~~(18) ″Registered tree″ means that a registration number, approved by the department, has been assigned to a tree or clonal planting that has been inspected and tested in accordance with the provisions of this program.~~

~~(19)~~ (12) ″Regulated Pest″ means a quarantine pest or a regulated nonquarantine pest.

~~(20) ″Scion-block″ means a planting of registered trees which serves as a source of scionwood from the propagation of ″Montana certified fruit tree nursery stock.″~~

~~(21) ″Seed-block″ means a planting of registered trees which serves as a source of seed for producing root-stock used in the propagation of ″Montana certified fruit tree nursery stock.″~~

~~(22) ″Stool-bed″ means a clonal planting of self-rooted registered trees for the specific purpose of producing vegetatively propagated rootstock used in the propagation of ″Montana certified fruit tree nursery stock.″~~

(13) ″Regional Standard for Phytosanitary Measures″ means phytosanitary measures established by a regional Plant Protection Organization.

~~(23)~~ (14) ″Test″ means official examination, other than visual, to determine if pests are present or to identify pests or disease.

~~(24) ″Virus indexing″ means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by an approved method.~~

~~(25) ″Virus-like″ means a disorder manifest on the plant as disease symptoms, as a result of suspected graft transmissible diseases of an unknown type.~~

AUTH: 80-7-105, 80-7-122, MCA
IMP: 80-7-105, 80-7-122, MCA

REASON: Addition, deletion, and change in definitions reflect a national trend toward a systems-based approach within the horticulture industry. The department desires to create a scalable clean plant and indexing system approach, which will provide greater flexibility to tailor requirements to meet disease indexing program needs and allow a consistent approach to be considered for certification needs, e.g., herbs, vegetables, perennials, and non-fruit tree shrubs and trees.
ECONOMIC IMPACT: This rule does not have an economic impact.

4.12.1431 CIVIL PENALTIES – MATRIX

(1) Type of Violation	1st Offense	2nd Offense	Subsequent Offenses
(a) Operating without a nursery license or refusal to pay the licensing fee required after being fully advised of its requirement.	$300	$600	$1000
(b) Misrepresenting information supplied regarding exemption from licensing.	300	600	1000
~~(b)~~ (c) Failure to properly label nursery stock offered at retail, or falsely representing or misrepresenting the name, age, variety, class, or origin of nursery stock.	300	600	1000
~~(c) Misrepresenting information supplied regarding exemption from licensing.~~	~~300~~	~~600~~	~~1000~~
(d) Bringing, selling, or ~~D~~ distributing plant materials into or within the state that are infected or infested with a plant pest considered a risk ~~dangerous~~ to horticultural or agricultural interests in Montana.	500	750	1000
(e) Distributing plants declared noxious weeds under 7-22-2101(7)(a)(i), MCA.	500	750	1000
(f) Failure to notify the department of an infestation or infection of plant and plant or propagative materials.	500	750	1000
(g) Failure to comply with the instructions of the department for destruction, treatment, or control within the timeframe specified.	500	750	1000
(h) Falsifying or misrepresenting registration, certification, status, source, or identity of nursery stock, plants, plant materials, propagative stock or agricultural commodities or products.	500	750	1000
~~(f)~~ (i) Violate or aid in violation of a statute, rule, order, or quarantine not otherwise stated above.	500	750	1000

(2) Anyone who violates these rules is acting negligently, if not intentionally, and may be liable for all harm they cause and may be liable for all costs associated with, but not limited to, trapping, monitoring, surveying, analysis, testing, containment, eradication, treatment, control, management, disposition, destruction, restoration, and other measures deemed necessary by the department.

(3) At the department's discretion, each day of violation can be considered a separate offense.

(4) Penalties may be assessed on a daily, per plant, and/or per event basis and will be determined on a case-by-case basis.

AUTH: 80-7-135, MCA
IMP: 80-7-135, MCA

REASON: The rule reorders one violation to provide logical order and flow. Violations were added as a result of recent enforcement issues that the department dealt with. This clarifies how the department will treat certain future violations.

ECONOMIC IMPACT: The rule change does not change the penalty amounts. A compliant nursery will not be assessed any civil penalties. The department encourages and provides compliance assistance that enables individuals and businesses to resolve issues, becoming compliant before assessment of civil penalties are considered. The maximum civil penalty for a violation is $1,000.

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

NEW RULE I PHYTOSANITARY INSPECTION AND CERTIFICATION COSTS -- FEES (1) All fees for services are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of $25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to providing inspection and certification services.

(2) Export certification fees shall be as follows:

(a) Federal and state phytosanitary certificate:

(i) $125 for noncommercial shipment, those shipments having a value that is less than $1,250; or

(ii) $200 for commercial shipment, those shipments having a value that is $1,250 or more;

(iii) administrative and replacement user fees for each federal or state phytosanitary certification. Requests for export certification shall be made through a client-funded Phytosanitary Certification Information Tracking (PCIT) account; and

(iv) Certificate of Origin and Statement of Origin $150.

(b) Other export certification document fees will be determined on a case-by-case basis and will reflect actual cost of providing or performing the service.

(3) An expedite fee of $100 per export certificate applies for all types of export certification requests made less than three days' notice.

AUTH: 80-1-102, 80-7-108, 80-7-122, MCA
IMP: 80-7-108, 80-7-122, MCA

REASON: The purpose of the new rule is two-fold: 1. To provide a separate section focused on phytosanitary certification since it is not nursery-specific and includes all

agricultural commodities and products that are being exported domestically or internationally, and 2. To increase fees associated with phytosanitary certification so that fees cover actual costs of providing the service.

ECONOMIC IMPACT: The department provides phytosanitary certification services under agreement with USDA APHIS but receives no funding from USDA APHIS. Phytosanitary services are based solely on fee for service. Revenue from fees varies with export demand and ranges between $35,000 and $45,000 a year. Expenditures incurred by the department for providing the service are $157,000 a year. Fee increases are necessary to provide sufficient revenue to cover the cost of providing the service. Under the proposed rule, a cost is assigned to a phytosanitary certificate (hereafter referred to as a phyto) and includes the inspection, hourly costs, per diem, and mileage. The potential economic impact to exporters can be best shown through illustrative examples.

A grain phyto based on a FGIS 921-2 currently costs $56 and will cost $206 under the proposed rules. A noncommercial phyto for nursery stock currently costs $157.76 and will cost $131. A grain phyto (non-FGIS 921-2) currently costs $96 and will cost $206. Multiple (four) nursery stock phytos (two noncommercial and two commercial) that currently cost $311 will cost $656. A grain phyto that can be processed as a Certificate of Origin currently costs $30 and will cost $150 under the proposed rule. A log home kit currently costing $225 will cost $206. The fee increases associated with this rule will allow the department to recover the costs associated with providing the service. An expedite fee is proposed for those requests for phytos with a turnaround under 72 hours. It is estimated that less than 10% of clients will desire an expedited phyto. USDA administrative and replacement pass-through fees also apply. Current administrative fees are $6 when PCIT (the USDA database) is used and $12 when PCIT is not used. The department requires the use of PCIT for all phytos except for extreme, extenuating circumstances. The current replacement fee is $15.

Export service is available from both the Montana Department of Agriculture and the Montana USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ). Only those fees associated with the Montana Department of Agriculture are detailed in this administrative rule. USDA APHIS PPQ fees differ and exporters should contact USDA APHIS PPQ to ascertain the USDA APHIS PPQ fees.

The alternative to this rule requires termination of our agreement with USDA and returning phytosanitary certification to USDA APHIS. USDA fees for phytosanitary certification are $106 for commercial shipments or $61 for noncommercial shipments plus an administrative fee of $6 or $12, depending on the Phytosanitary Certification Information Tracking (PCIT) system used and a user replacement fee of $15 when needed. USDA does not charge for inspections but may require exporters to present commodities and product for export at a USDA office in Montana for inspection. USDA has three Accredited Certifying Officials (ACOs) located in

Helena and Billings (the department has 12 ACOs located in Helena, Kalispell, Missoula, Bozeman, Forsyth, Billings, Glasgow, Conrad, and Great Falls).

NEW RULE II CLEAN PLANT AND INDEXING CERTIFICATION (1) Plant and plant propagative indexing is a systems- and audit-based program. Participation in clean plant and indexing certification programs is voluntary.

(2) The department will provide necessary services for certification of plant stock (plants and plant propagative materials) for the production and propagation of healthy, clean plant stock that meets certification requirements that support movement and state and international export of plants and propagative materials.

(3) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with these rules. No grower, nursery dealer, government official, or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding these rules.

(4) To qualify for export, plant stock must also meet import state and country requirements for freedom from specified regulated pests.

AUTH: 80-7-122, 80-7-402, MCA
IMP: 80-7-122, 80-7-402, MCA

REASON: Current rules are specific to fruit tree virus indexing. The department wants to provide clients the ability to certify a variety of plant materials using a systems-based approach that includes indexing of viruses and/or diseases and is flexible and scalable enough to be tailored to meet client needs while complying with phytosanitary measures and international regulations and requirements. This rule and other rules that follow outline what the department will be responsible for, what the client will be responsible for, and how compliance with requirements will be handled.

ECONOMIC IMPACT: This rule does not have an economic impact.

NEW RULE III DEPARTMENT CLEAN PLANT AND INDEXING CERTIFICATION RESPONSIBILITIES (1) The department will:

(a) Administer a clean plant and indexing certification program;

(b) Determine eligibility criteria for plants, plant and propagative materials for inclusion in the program;

(c) Identify eligibility of plant materials requested for inclusion in a clean plant and indexing certification program; confer certification upon those meeting the requirements and conditions of the clean plant certification and indexing program; and determine appropriate certification level(s);

(d) Approve registration and identity system of plants, plant and propagative materials of a clean plant and indexing program;

(e) Identify the viruses and diseases of regulatory, quarantine, and export significance and those specified as a concern by a buyer or exporter for the plants, plant materials, and propagative material requested for clean plant and indexing certification;

(f) Research and identify the International Standards for Pest Management (ISPM), Regional Standards for Pest Management (RSPM), and other applicable standards governing or guiding the viruses and diseases and their associated vectors and the propagation, development, and indexing of clean, disease-free plant and propagative plant material standards. Standards will outline the essential elements of a voluntary certification program for management of viruses, diseases, and their vectors, achieved through a combination of best management of practices and mandatory requirements;

(g) Review and approve written clean plant and indexing certification plans;

(h) Develop written inspection, audit, sampling and testing plans;

(i) Conduct audits and inspections necessary to assess compliance with standards and written clean plant and indexing certification plans. Inspections will be scheduled at the discretion of the department and at such times when specific disease symptoms are most likely to be expressed;

(j) Address compliance violations identified by the certified individual or entity or by the department based on inspection, audit, or test results. Unresolved compliance violations within the specified time frame will be cause for certification revocation, suspension, or cancellation; and

(k) Certify and provide certification identification materials.

AUTH: 80-7-122, 80-7-402, MCA
IMP: 80-7-122, 80-7-402, MCA

REASON: This rule describes what role and responsibilities the department will have in providing clean plant and indexing program services.

ECONOMIC IMPACT: This rule does not have an economic impact.

NEW RULE IV CLEAN PLANT AND INDEXING CERTIFICATION PLANS

(1) Clean plant and indexing certification plans must include, at a minimum, the following elements:

(a) Identification and quantification of all plant materials eligible for registration and certification;

(b) Origin or source of identified plant materials;

(c) Viruses, diseases, and associated vectors of concern;

(d) Site selection that includes a description and map of all facilities, propagative and production areas along with required isolation and buffer zones;

(e) Certification levels and identity registration system allowing for identification, tracking, tracing, and management of all plant and plant material identity;

(f) Program processes and procedures governing the establishment and management of plants and plant propagative materials including but not limited to sourcing, planting requirements, block management, increases, and maintenance;

(g) Pest management plan that prevents virus, disease, and associated vector introduction and which contains procedures for eradication, control, and suppression of pest populations to a level that meets certification standards. Major revisions of plans must be submitted for approval by the certifying agency;

(h) Identify approved laboratory(ies) for required tests and analysis and the testing and analysis schedule; and

(i) Other elements that are necessary to meet the specific type and level of certification requested or that are deemed necessary by the department.

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

REASON: This rule describes the required elements of a clean plant and indexing program plan.

ECONOMIC IMPACT: The rule does not have an economic impact. It creates a generic template to address required elements while allowing a plan to be specific to the type and level of clean plant and indexing certification sought. Plan development will have associated costs and will be borne by the individual or entity requesting clean plant and indexing certification. This cannot be estimated.

NEW RULE V APPLICANT AND CERTIFIED CLEAN PLANT AND INDEXING ENTITY RESPONSIBILITIES (1) The applicant and certified individual or entities will:

(a) Be registered or licensed in appropriate areas, e.g., nursery licensure is required for all plant materials covered under the definition of nursery stock;

(b) Develop and submit for approval a written clean plant and indexing certification plan that addresses the required elements identified by the department;

(c) Select, establish, develop, and manage all facilities and plant and propagation areas to meet the standards and requirements of the clean plant and indexing certification program, which includes critical control points associated with the operation, e.g., cultivation, irrigation, movement, sanitation, equipment management and other farming practices;

(d) Maintain identity, registry, and plant health certificates of all plant materials associated with foundation, nuclear, generation, mother, scion, seed, rootstock, stool, increase, certified, and other qualified plant and plant propagative materials that are traceable;

(e) Comply with all indexing, testing, and analysis required following an approved schedule. Ensure all test results are made available directly to the department from the approved agency or laboratory;

(f) Notify the department of virus, disease, and pest issues that violate or could lead, if unabated, to violations of clean plant and indexing certification standards and threaten certification of plants, plant materials and propagation materials. Participants must follow approved pest management plan actions to address virus, disease, and pest issues or, when deemed necessary, instructions of the department;

(g) Make facilities, propagation and production areas as well as tests and analysis and other documents available for inspection and audits by the department, or its representative or USDA;

(h) Address identified issues and violations within an identified time frame that resolves the issue or violation necessary to meet clean plant and indexing certification requirements;

(i) Keep records necessary to document: clean plant and indexing certification requirements; plant material identity from introduction, import, or development through sale, distribution, movement, export, or disposition; inspection and audit records and findings; compliance issues and resolutions; and test and analysis results for a minimum of three years;

(j) Make application using a form provided by the department and pay application fees; and

(k) Pay certification identification marker fees (labels, tags, and other methods of identification).

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

REASON: This rule describes what role and responsibilities an individual or business will have if they elect to participate in a clean plant and indexing certification program.

ECONOMIC IMPACT: This is a voluntary program. Plan development and implementation is the responsibility of the individual or business and will vary depending on the type of clean plant and indexing certification program they choose, the size of the operation, export state or country requirements, geographic location and the pest/disease pressures associated with the location, and other factors. Because of the variety and complexity of the factors, an economic impact cannot be estimated.

NEW RULE VI CLEAN PLANT AND INDEXING CERTIFICATION ENFORCEMENT (1) Registration or certification may be refused, suspended, revoked, or cancelled for any plants, in part or all, or planting under any of the following conditions:

(a) The requirements of this chapter have not been met;

(b) The plant or propagative material is found to be virus- or disease-infected or off-type;

(c) The registered tree is found through indexing, testing, or analysis to be virus- or disease-infected;

(d) Pest control requirements have not been met;

(e) The identity or eligibility of a plant or propagative materials becomes uncertain or has not been properly maintained;

(f) Registration, certification, or identification markers are misused; or

(g) The status of plants or propagative material sourced, produced, or used under the provisions of the clean plant and indexing certification program is knowingly misrepresented.

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

REASON: This rule describes the conditions of noncompliance under which a clean plant and indexing registration or certification may be refused, suspended or cancelled.

ECONOMIC IMPACT: This rule does not have an economic impact.

5. The department proposes to repeal the following rules:

4.12.1408 PREVENTING SPREAD OF CONTAGIOUS DISEASE AMONG FRUIT TREES

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1410 GENERAL

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1412 REQUIREMENTS

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1413 SCION-BLOCKS

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1414 SEED-BLOCKS

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1415 STOOL-BEDS

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1416 NURSERY STOCK

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1417 INSPECTION PROCEDURE

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1418 TESTING PROCEDURES

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1419 CERTIFICATION OF GROWING SITES

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1420 TAGGING AND IDENTITY

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1421 MONTANA CERTIFIED FRUIT TREE NURSERY STOCK AND SEED

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1422 REGULATED LOOSESTRIFE ARTICLES

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1423 CONDITIONS GOVERNING IMPORTATION OF LOOSESTRIFE ARTICLES – PERMIT

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

4.12.1424 FAILURE TO OBTAIN PERMIT OR VIOLATION OF TERMS OF PERMIT

IMP: 80-7-122, 80-7-402, MCA
AUTH: 80-7-122, 80-7-402, MCA

REASON: Current virus indexing rules 4.12.1408, 4.12.1410, and 4.12.1412 through 4.12.1418 for fruit trees are proposed for repeal and are intended to be replaced with New Rules II through VI. Rules 4.12.1420 and 4.12.1424 are related to purple loosestrife, a listed noxious weed, and no longer necessary.

ECONOMIC IMPACT: Repeal of these rules will not have an economic impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, PO Box 200201, Helena, Montana, 59620; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., September 5, 2013.

7. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

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

11. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment and adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State July 29, 2013.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of NEW RULES I through V pertaining to Patient-Centered Medical Homes	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 29, 2013, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor, will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing, or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m., August 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of these rules is to implement the provisions of the Patient-Centered Medical Homes Act specified in Title 33, Chapter 40. These rules establish the process under which the commissioner may qualify patient-centered medical homes that meet the standards set forth in the Act and in these rules, acknowledge certain accrediting entities, and provide guidance concerning the activities of the patient-centered medical homes program.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

NEW RULE II PATIENT-CENTERED MEDICAL HOME QUALIFICATION (1) After January 1, 2014, health plans and primary care practices as defined in 33-40-103, MCA, self-funded government plans, Medicaid plans, and other health care providers offering medical services as defined in 33-22-140, MCA, may not offer or identify themselves as a patient-centered medical home or "medical home" unless the participating provider groups are qualified by the commissioner, and the health plan or other payer is utilizing healthcare providers who are qualified when offering "medical home" services to covered individuals under the plan.

(2) A primary care practice that is currently operating as a patient-centered medical home must submit an application for qualification by December 1, 2013, if the practice wishes to continue using that designation. Thereafter, any provider seeking to use the patient-centered medical home designation must apply for

qualification and receive approval from the commissioner before holding itself out as a patient-centered medical home.

(3) The commissioner may provisionally qualify a patient-centered medical home for up to one year after the submission of an application, if the applicant needs additional time to obtain the necessary accreditation.

(4) A primary care practice must apply for qualified patient-centered medical home qualification in a form prescribed by the commissioner.

(5) The commissioner shall maintain a list of qualified patient-centered medical homes on the agency's web site.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

NEW RULE III NATIONAL ACCREDITATION (1) A primary care practice that seeks recognition as a patient-centered medical home must obtain accreditation from a nationally recognized accrediting organization approved by the commissioner as meeting the standards of the Montana patient-centered medical home program, including any additional standards adopted in these rules.

(2) The commissioner shall approve and maintain a current list of national accrediting organizations that have demonstrated that their standards meet or exceed the required Montana standards for patient-centered medical homes.

(3) The commissioner may qualify primary care practices that have obtained the appropriate accreditation as a patient-centered medical home from an accrediting organization approved by the commissioner.

(4) Nothing in this rule prevents the commissioner from monitoring and reviewing primary care practices and health plan payers for compliance with these rules and the Patient-Centered Medical Homes Act.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

NEW RULE IV ESTABLISHMENT AND DUTIES OF THE PATIENT-CENTERED MEDICAL HOMES STAKEHOLDER COUNCIL (1) The stakeholder council consists of 15 members who represent the interested parties identified in 33-40-104, MCA. The commissioner shall appoint members to serve a 12-month term beginning on October 15 of each year, beginning in 2013. Members may be reappointed.

(2) The commissioner shall consult with the stakeholder council before proposing new administrative rules, setting patient-centered medical home standards that implement, or further define, the standards set forth in 33-40-105, MCA, and establishing the process for qualifying patient-centered medical homes.

(3) The council shall advise the commissioner regarding activities relating to the promotion and coordination of the patient-centered medical home program in Montana and provide guidance concerning medical home activities.

(4) The council shall meet at least twice a year. The commissioner, or the commissioner's designee, shall provide updates regarding patient-centered medical home activities at each meeting.

(5) All stakeholder council meetings are subject to open meeting laws.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

NEW RULE V TIMELINES FOR REQUIRED REPORTING (1) Pursuant to 33-40-105, MCA, a patient-centered medical home shall report on its compliance with quality and performance measures to participating health plans and other payers and the commissioner, no later than March 31 of each year, beginning with 2015, or according to the timeline required by its contract with each payer, whichever is earlier.

(2) A health plan and other payers shall report to the patient-centered medical home and the commissioner regarding their compliance with the uniform set of cost and utilization measures set forth in the Act, these rules, or in the provider/payer contract, no later than March 31 of each year, beginning with 2015, or according to the timeline required by its contract with each patient-centered medical home, whichever is earlier.

(3) The commissioner shall share with the public, in the form of a summary report, de-identified, nonconfidential information contained in the reports listed in (1) and (2) at least once a year, beginning in June 2015.

AUTH: 33-40-104 MCA
IMP: 33-40-104, 33-40-105, MCA

4. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance.

Title 33, Chapter 40, The Patient-Centered Medical Homes Act, requires the commissioner to adopt rules. Patient-centered medical homes cannot be qualified until the qualification process is further refined. These rules set forth the specific process for determining patient-centered medical home qualification.

NEW RULE I is necessary to establish a purpose for this new set of administrative rules.

NEW RULE II is necessary to establish which entities may use or continue to use the "patient-centered medical home" or "medical home" designation. It describes the timeline and process for applying for qualification for newly established and preexisting patient-centered medical home practices. The rule allows for provisional qualification in order to give primary care practices time to complete the necessary accreditation process. It requires the commissioner to develop an application form and post a list of qualified medical homes on the agency's web site.

NEW RULE III is necessary to describe how the commissioner will determine which nationally recognized accrediting organizations will be approved by the

commissioner as meeting the standards set forth in Chapter 40. In order to accept this type of accreditation process, the commissioner must first ensure that the accrediting organization is meeting all of the standards required by Montana law. The rule allows the commissioner to do independent reviews beyond those required by the accrediting entity, as a cross-check on quality and maintaining standards.

NEW RULE IV is necessary to establish the size, individual terms of service, and meeting times of the stakeholder council. The rules also define when the commissioner must consult with the stakeholder council. This is necessary because the consultation with the interested parties, including the payers and healthcare providers, is critical to the success of the patient-centered medical home program.

NEW RULE V is necessary to set a timeline for the reports that are required in 33-40-105, MCA. The statute does not set forth a timeline for reporting.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, General Counsel, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail cgoe@mt.gov, and must be received no later than 5:00 p.m., September 5, 2013.

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

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

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. Pursuant to 2-4-302, MCA, the bill sponsor contact requirements apply. Christine Kaufmann is the bill sponsor, and she was contacted by e-mail on July 23, 2013, by phone message on July 23, 2013, and by letter sent July 26, 2013.

10. The proposed rule does not and cannot be applied directly to small businesses; therefore, the requirements of Chapter 318, Section 1, Laws of 2013 do not apply.

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

Certified to the Secretary of State July 29, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII pertaining to infectious waste	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION (INFECTIOUS WASTE MANAGEMENT)

TO: All Concerned Persons

1. On September 9, 2013, at 9:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed 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 Elois Johnson, Paralegal, no later than 5:00 p.m., August 26, 2013, 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 proposed new rules provide as follows, stricken matter interlined, new matter underlined:

NEW RULE I APPLICABILITY (1) The purpose of this subchapter is to provide uniform standards for the inspection, transportation, storage, and management, including, but not limited to, treatment and disposal, of infectious waste as defined in 75-10-1003, MCA, for the protection of human health and the environment.

(2) This subchapter does not apply to:

(a) the generation of infectious waste or to storage and transportation of infectious waste regulated under 75-10-1006, MCA; or

(b) the generation of infectious waste by a household.

AUTH: 75-10-204, 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: Section 75-10-208, MCA, requires that the department adopt rules governing the inspection and regulation of the transportation and management of infectious waste. Under this subchapter the department regulates the transportation of infectious waste to treatment facilities prior to final waste disposal. This subchapter complements the rules adopted by other state agencies or licensure boards and programs with responsibility for adopting infectious waste rules identified in Title 75, chapter 10, part 10, MCA.

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

(1) "Biohazard bag" or "red bag" means a bag marked with a biohazard symbol that meets the requirements of U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) 29 CFR 1910.1030(g)(1)(ii). The biohazard bag must be moisture-proof, disposable, and of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use.

(2) "Department" means the Department of Environmental Quality established in 2-15-3501, MCA.

(3) "Inactivate" means to cause the death of an infectious agent.

(4) "Infectious waste" has the meaning given in 75-10-1003, MCA.

(5) "Management" means the storage, treatment, or disposal of infectious waste.

(6) "Noninfectious waste" means treated infectious waste or any waste other than infectious waste.

(7) "Person" has the meaning given in 75-10-1003, MCA.

(8) "Storage" means the short-term containment of infectious waste, prior to treatment, for no longer than 90 days.

(9) "Transport" or "transportation" has the meaning given in 75-10-1003, MCA.

(10) "Transporter" means a person who transports, or engages in transportation or storage of, infectious waste or treated infectious waste.

(11) "Vehicle" means any vehicle, including a truck and trailer or tractor-trailer combination.

AUTH: 75-10-204, 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: The department is proposing NEW RULE II to further identify specific terms necessary to implement the infectious waste rules.

NEW RULE III TRANSPORTER AND STORAGE FACILITY OPERATOR REGISTRATION, DEPARTMENT REVIEW, AND ANNUAL RENEWAL (1) Except as provided in (4), a transporter must register with the department, on a form provided by the department, on or before January 1, 2014, for transporters engaged in transportation or storage on [the effective date of these rules] and for all other transporters, prior to engaging in transportation, and demonstrate that the person is able to meet the requirements of this subchapter by submitting an application for registration that contains the following information:

(a) the name and business address of the applicant;

(b) the location of all waste storage, loading, and handling areas and a certification that the storage areas meet the requirements of [NEW RULE VII];

(c) the location and identity of each person who receives waste from a transporter, including an intermediate point, treatment facility, disposal facility, or other person, and of each person from whom the applicant intends to receive waste;

(d) the vehicle identification number or serial number of all vehicles used to transport infectious waste;

(e) a certification that the vehicles and containers used to transport or store infectious waste meet the requirements of [NEW RULE V] and [NEW RULE VII];

(f) a certification that all vehicles contain a spill containment and decontamination kit;

(g) a certification that all employees involved in the transportation and management of infectious waste have the training required by [NEW RULE V(4)]; and

(h) a copy of the transporter's infectious waste transportation and management plan. The plan must meet the requirements of [NEW RULE IV].

(2) The department shall review the registration application to determine whether the application is adequate. If the application is adequate, the department shall issue a transporter registration number and a vehicle decal. The initial registration period is effective through June 30 following issuance of the registration number.

(3) By February 1 of each year, the department shall mail an annual renewal form to each registered transporter. A transporter who wishes to continue to transport shall submit the information required in (1) to the department with the completed renewal form on or before April 1 for the following twelve-month registration period that begins July 1 and ends June 30.

(4) This subchapter does not apply to a person who:

(a) transports only infectious waste generated from a household;

(b) transports less than 50 pounds of infectious waste a week; or

(c) is a solid waste management system that is licensed by the department to operate an infectious waste treatment facility under the provisions of ARM Title 17, chapter 50, subchapter 4.

AUTH: 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: The department proposes NEW RULE III to require certain infectious waste transporters to register with the department by submitting an application and certifying that the transporter is able to meet the minimum standards established in the rule. The department is required, under 75-10-208, MCA, to regulate the transportation of infectious waste not regulated under 75-10-1006, MCA. The registration process allows the department to identify individuals engaged in the transportation of infectious waste and ensure that they have appropriate vehicles, containers, plans, and training in place to protect human health and the environment. The registration requirement applies to transporters who also store infectious or treated infectious waste. The rules exempt from transporter registration requirements individuals who transport household-generated infectious waste, those individuals who transport less than 50 pounds of infectious waste a week, and individuals who are licensed to operate an infectious waste treatment facility or who transport infectious waste to their licensed treatment facility in accordance with the Solid Waste Management Act and its implementing rules. These exemptions are consistent with other exemptions in solid waste management and regulations adopted by other states.

NEW RULE IV GENERAL REQUIREMENTS – TRANSPORTATION AND MANAGEMENT PLAN (1) A transporter shall submit to the department for its review and approval, a management plan meeting the requirements of this subchapter that:

(a) describes the type, sources, and annual volume of infectious waste handled;

(b) describes how infectious waste is segregated from other solid waste, packaging, and labeling procedures;

(c) describes the collection, storage, and transportation procedures to ensure infectious waste is distinguished from noninfectious waste;

(d) describes the treatment or disposal methods used;

(e) identifies the name and location of the facility where the waste will be treated and disposed of;

(f) identifies the person responsible for the transportation and management of infectious waste; and

(g) includes an emergency spill response and decontamination plan that meets the requirements of [NEW RULE VIII].

(2) The management plan described in (1) must be updated and submitted to the department on an annual basis.

AUTH: 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: NEW RULE IV provides requirements for the content of the transportation and management plan required in NEW RULE III and establishes a consistent approach to the management of infectious waste by individuals regulated under this subchapter and individuals or facilities licensed by other licensing bodies or state agencies referred to in 75-10-1006, MCA. By requiring a transportation and management plan, the department ensures that persons who transport and manage infectious waste have adopted and abide by contingencies and protocols necessary to protect human health and the environment. Review of the plans required by this rule enables the department to recognize best current practices for management and transportation of infectious waste.

NEW RULE V TRANSPORTATION REQUIREMENTS (1) Infectious waste must be transported according to the provisions of 75-10-1005(6), MCA, and this subchapter.

(2) A transporter may not transport infectious waste in the same vehicle as noninfectious waste unless:

(a) infectious waste is enclosed in a separate container as provided in [NEW RULE VII]; or

(b) the infectious and any noninfectious waste being transported will be treated according to the requirements of 75-10-1005, MCA, and [NEW RULE VI].

(3) A transporter may not accept for transport any container of infectious waste that does not meet the requirements of [NEW RULE VII] or that shows visible signs of damage or leakage or is not properly sealed and labeled.

(4) A vehicle used to transport infectious waste must carry a spill

containment and cleanup kit. A person who transports infectious waste must be trained in the use of protective equipment, emergency response, and spill containment and cleanup procedures.

(5) Each vehicle and container used to transport infectious waste must be designed and constructed to preserve vehicle and container integrity in the event of a traffic accident and prevent releases of infectious waste to the environment.

(6) A transporter shall keep records of the loading dates, volumes, sources, waste descriptions, and final destinations of all waste transported. The records must be maintained for five years and be made available for inspection by department personnel upon request.

(7) U.S. Department of Transportation warning and signage requirements for vehicles transporting infectious waste are provided in 49 CFR 172.323.

AUTH: 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: In accordance with the legislative directive to adopt rules regulating transportation of infectious waste, NEW RULE V provides specific container, vehicle, and spill response requirements. These requirements are reasonably necessary to protect human health and the environment from contamination from spills of infectious waste.

NEW RULE VI INFECTIOUS WASTE TREATMENT AND DISPOSAL REQUIREMENTS (1) Infectious waste transported or managed under this subchapter must be treated and disposed of according to the provisions of 75-10-1005, MCA, and this section.

(2) Infectious waste that has been treated according to this section and 75-10-1005, MCA, may be disposed of in a licensed solid waste management facility approved by the department to accept treated infectious waste, provided the treated waste is not comingled with hazardous or radioactive waste.

(3) Infectious waste may be discharged into a sewage treatment facility as provided for in 75-10-1005(4)(b), MCA.

(4) Except as provided in (5), infectious waste must be treated using steam sterilization to the temperature, pressure, and time sufficient to ensure, within reasonable scientific probability, inactivation of geobacillus stearothermophilus spores and mycobacteria in the center of the waste load to achieve a 6 Log_{10} reduction or greater.

(5) The department may approve alternative treatment methods submitted by a person or facility treating infectious waste, if the methods meet the requirements of (6).

(6) An application for alternative treatment methods must be supported by the results of laboratory tests that meet the following requirements:

(a) the laboratory tests shall be conducted:

(i) by qualified laboratory personnel;

(ii) using recognized microbial sterilization techniques documented in peer-reviewed scientific publications;

(iii) using samples inoculated with test organisms and then subjected to the

proposed alternative treatment method; and

(b) the results of the tests must document and verify that the proposed alternative treatment method achieves the standards of inactivation provided in (2).

(7) Infectious waste consisting of recognizable human anatomical remains, including human fetal remains, shall be disposed of according to the provisions of 75-10-1005, MCA.

AUTH: 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: The department is proposing NEW RULE VI to implement the requirements of 75-10-1005, MCA, and establish treatment standards for infectious waste that would render the waste noninfectious for the purpose of disposal at licensed solid waste management and sewage treatment facilities. The department believes that the standards of inactivation set forth in NEW RULE VI reflect the current industry standards, guidance from public health organizations, and environmental regulatory agencies. The standards are achievable and reasonable in the industry and are sufficient and reasonably necessary to protect human health and the environment.

NEW RULE VII PACKAGING, CONTAINMENT, AND STORAGE REQUIREMENTS (1) Infectious waste must be packaged, contained, and stored according to the provisions of 75-10-1005, MCA.

(2) A transporter or a person who stores infectious waste who is not a generator of infectious waste under 75-10-1006, MCA, shall ensure that infectious waste, other than sharps and liquid or semi-liquid infectious waste, is kept in containers as follows:

(a) in double-walled corrugated fiberboard boxes or equivalent rigid containers such as pails, cartons, or portable bins securely sealed or with tight-fitting covers sufficient to prevent spills, leaks, emission of infectious agents, and degradation; and

(b) reusable containers must be constructed of heavy wall plastic or noncorrosive metal. Reusable containers must be decontaminated after each use.

(3) A transporter or person who stores infectious waste regulated under this subchapter shall ensure that it is stored:

(a) in containers that are packaged and labeled as provided in this subchapter;

(b) separately from noninfectious waste in accordance with this rule and otherwise in accordance with the requirements of 75-10-1005(1) through (3), MCA;

(c) under conditions that prevent rapid microbial growth or putrefaction, and:

(i) at a temperature of less than 45º Fahrenheit (F);

(ii) for no more than seven days at a temperature between 32º F and 45º F;

(iii) for no more than 30 days at a temperature of less than 32º F; and

(iv) with the temperature of the storage area logged daily in order to meet the requirements of this subsection. The transporter or person shall make the daily temperature logs and be made available to the department upon request.

(4) For (3)(c), time in transport is considered as time in storage.

(5) Infectious waste storage areas must:

(a) protect infectious waste containers from damage or degradation by moisture or from the elements;

(b) be ventilated to outside air;

(c) be accessible only to authorized persons;

(d) be marked with prominent warning signs identified by the biohazard symbol; and

(e) be designed to contain spills and have a spill kit that meets the requirements of [NEW RULE VIII] on site.

(6) Treated infectious waste must be bagged and labeled in accordance with 75-10-1005(5)(a), MCA.

(7) Compactors, grinders, or similar devices may not be used to reduce the volume of infectious waste during storage.

AUTH: 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: The department is proposing NEW RULE VII to implement the provisions of 75-10-1005, MCA, and establish specific requirements for transporters who store infectious waste prior to and after treatment. The packaging, containment, and storage requirements being proposed provide a clear framework for members of the regulated community to follow to ensure the protection of human health and the environment.

NEW RULE VIII EMERGENCY SPILL RESPONSE AND DECONTAMINATION PLAN -- REQUIRED EQUIPMENT (1) An emergency spill response and decontamination plan must describe, at a minimum, procedures for:

(a) preventing access or exposure to the spill location by unauthorized persons;

(b) the containment of spilled or leaking infectious waste;

(c) the safe repackaging and relabeling of spilled waste or broken or leaking containers; and

(d) reporting the spill or leak to the department and local authorities.

(2) A spill containment and cleanup kit must contain, at a minimum:

(a) absorbent material for spilled liquids;

(b) hospital grade disinfectant;

(c) packaging and labeling supplies;

(d) a shovel, broom, and bucket; and

(e) protective clothing, including gloves, masks, and protective eyewear.

(3) A spill or release of infectious waste during transport, storage, or treatment must be reported to the department within 24 hours of the spill or release.

AUTH: 75-10-208, MCA
IMP: 75-10-1004, 75-10-1005, MCA

REASON: The department believes that these minimum requirements for an emergency spill response and decontamination plan and for spill containment and

clean up kits is an efficient and effective means of protecting human health and the environment. Many transporters may not be familiar with the industry standards for contingencies in the event of a spill or leak of infectious waste.

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., September 16, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Dana David, attorney, has been designated to preside over and conduct the hearing.

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

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

8. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses, because the rules do not impose any fees and require persons regulated under the rule to provide information that those persons already maintain in the course of business operations.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: */s/ Tracy Stone-Manning*
TRACY STONE-MANNING, Director

Certified to the Secretary of State, July 29, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.201 and 17.56.202 pertaining to performance standards for new UST systems and upgrading of existing UST systems	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On August 28, 2013, at 1:00 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The 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., August 19, 2013, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

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

(b) the piping that ~~may contain~~ routinely contains regulated substances, ~~including vent lines and fill lines,~~ and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory identified in (1)(b)(i) and (ii):

(i) through (2) remain the same.

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

REASON: The department is proposing to remove the requirement in ARM 17.56.201(1)(b), requiring corrosion protection for pipes that may contain regulated substances. The department believes that the remaining spill and overfill protection rules will be protective of human health and the environment because spill and overfill equipment will prevent regulated substances from entering components of

the UST system, such as vent and fill pipes, that are not designed to routinely contain product. Based on its experiences over the past ten years, the department has determined that no significant additional environmental benefit is gained by requiring corrosion protection for system components that are prevented from routinely containing regulated substances by the proper operation of required spill and overfill protection on tank systems. The department has further determined that enforcement of the provisions in ARM 17.56.201(1)(b), requiring corrosion protection for pipes that may contain regulated substances, represents a significant cost to tank system owners and operators while providing little additional environmental benefit.

In addition to leak prevention equipment standards, department rules establish general operating requirements requiring owners and operators to "ensure that releases due to spilling or overfilling do not occur" by determining that the "volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly" (ARM 17.56.301(1)). The U.S. Department of Transportation has also adopted rules stating that delivery drivers must identify and gauge receiving tanks and calculate the volume of regulated product that can be safely pumped into the tank without the danger of overfill.

Requiring piping that may contain regulated substances to have corrosion protection identical to tanks and piping that routinely contain product is more stringent than current Environmental Protection Agency (EPA) requirements. Adopting the proposed amendment would put department rules in line with current EPA requirements without weakening state environmental protection standards.

In 1989, the Department of Health and Environmental Sciences (DHES) proposed a set of administrative rules (MAR Notice No. 16-2-349) necessary to implement the provisions of Chapter 384, Laws of 1989 (HB 603) and secure the approval of the EPA for an underground storage tank release detection, prevention, and correction program.

Among the proposed rules were provisions requiring corrosion protection for piping and vents that may contain regulated substances (ARM 16.45.201 and 16. 45.202) and a process for the department to grant a variance from regulatory requirements. The rules further stated that all underground storage tank systems must comply with the new rules before December 1998. The statement of reasonable necessity included with the rule package did not specifically address the reason for individual rules provisions, but concluded the standards were necessary to reduce the likelihood of a tank release and for the protection of human health and the environment. Public comments raised concerns that some of the proposed rules were more stringent than EPA regulations, but no comments specifically identified the corrosion protection requirements.

Prior to the 1998 compliance deadline, the regulated community raised objections to the enforcement of corrosion protection requirements on portions of tank systems that do not routinely contain product on the grounds that the additional corrosion protection requirement was not necessary for protecting the environment from tank releases and was an economic burden to owners and operators. In 2002, the department responded by proposing a department-initiated variance to the 1989 corrosion protection rule giving owners and operators another ten years to bring tank systems into compliance with the corrosion protection requirements. The ten-year

compliance variance expired in October 2012. During the period the variance was in effect, the department reviewed the compliance and inspection reports for the nearly 1300 tank facilities in Montana, information from other regulatory agencies, and documentation from industry experts to determine whether the additional corrosion protection on system components that do not routinely contain product offered a substantial improvement in leak prevention. The information gathered by the department demonstrated no significant additional benefit to human health or the environment related to these additional corrosion protection requirements for system components that do not routinely contain regulated substances.

The department estimates less than 15 percent of regulated tank systems remain out of compliance with the corrosion protection requirements in ARM 17.56.201(1)(b). These noncompliant systems must come into immediate compliance at a significant cost to owners or operators if this proposed rule is not adopted. The department will be required to redirect financial and staff resources from other program areas, creating the potential for delay in permitting and other compliance assistance activities. Maintaining the corrosion protection requirement in ARM 17.56.201(1)(b), may also affect the standing of tank system owners and operators with the Petroleum Tank Release Compensation Fund (Fund). The Fund's current practice is to suspend or reduce any payment of claims to owners or operators if the owner or operator is in violation of underground storage tank program statutes and rules. An otherwise compliant owner or operator, who is eligible to receive compensation from the Fund, may face a reduction in claim reimbursement or the complete suspension or elimination of reimbursement of otherwise eligible corrective action costs if the owner or operator receives a notice of noncompliance from the department for the failure to meet the existing corrosion protection requirements.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) ~~No later than December 22, 1998, a~~ All existing UST systems must comply with one of the following requirements:

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

(3) Metal piping that ~~may contain~~ routinely contains regulated substances, ~~including vent lines and fill lines,~~ and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201(2)(p) through (s) and must meet the requirements of ARM 17.56.201(1)(b)(ii)(B), (C), and (D).

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

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

REASON: The amendment to ARM 17.56.202(1) proposes to strike the date reference for existing tank systems to come into compliance. The compliance deadline has passed and is no longer relevant to existing tank systems. The reason for the proposed amendments to ARM 17.56.202(3) is the same as set forth in the statement of reasonable necessity for the proposed amendments to ARM 17.56.201(1).

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., September 6, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Kirsten Bowers, attorney, has been designated to preside over and conduct the hearing.

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

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

8. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: */s/ Tracy Stone-Manning*
TRACY STONE-MANNING, Director

Certified to the Secretary of State, July 29, 2013.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.1308 pertaining to an exterior plant health quarantine for Japanese beetle	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 29, 2013, the Department of Agriculture published MAR Notice No. 4-14-212 pertaining to a public hearing on the proposed amendment of the above-stated rule at page 739 of the 2013 Montana Administrative Register, Issue Number 9. On June 20, 2013, the department published a notice pertaining to the extension of the comment period and a second public hearing on the proposed amendment of the above-stated rule at page 983 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

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

COMMENT #1: The bond amount listed is too high at $1 million.

RESPONSE #1: The department will lower the bonding amount in the quarantine to $500,000, half of that originally proposed. The department does not require that all listed quarantine options be met. The bonded compliance agreement is one of six options available under the quarantine.

COMMENT #2: If the quarantine is fully implemented, the availability of nursery stock will decrease.

RESPONSE #2: Montana's experience should be no different than other states that also have a Japanese beetle quarantine. The availability of nursery stock should not be greatly impacted given the available options under the proposed quarantine that allow nursery stock into the state. The bonded compliance agreement option may provide a way to allow shipment of large trees into Montana, putting us at a comparative advantage when getting nursery stock to most other western states.

COMMENT #3: Will smaller businesses be able to comply with the new quarantine requirements?

RESPONSE #3: All out-of-state providers will be impacted by the quarantine and will be expected to meet one of the options for nursery stock shipments into Montana. Out-of-state nurseries shipping to western states are complying with other

western state quarantines, which are similar to the proposed quarantine. The bonded compliance agreement option is not available in other western state Japanese beetle quarantines.

COMMENT #4: There was widespread agreement that Montana should remain as free from Japanese beetles as possible.

RESPONSE #4: The department concurs.

COMMENT #5: Montana should be more like Idaho as to how it deals with Japanese beetles.

RESPONSE #5: Western states, including Idaho, have established quarantines with similar restrictions and options to allow nursery stock movement. The proposed Montana quarantine offers an additional option, the bonded compliance agreement. Idaho's quarantine also addresses houseplants, which the proposed Montana quarantine does not. Montana, like Idaho, also needs the help of Montana nurseries and homeowners in identifying and reporting the presence of Japanese beetle and other invasive pests. Such reporting aids the department in planning, trapping, monitoring, and designing response activities.

COMMENT #6: Requests for minor wording, spacing, and spelling changes in the quarantine order.

RESPONSE #6: All typographical errors have been corrected and requested language changes have been made in the quarantine order.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State July 30, 2013

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of a temporary emergency rule closing Bannack State Park in Deer Lodge County	))))	NOTICE OF ADOPTION OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) On July 17, 2013, a flash flood occurred at Bannack State Park.

(b) Bannack State Park is comprised of 60 historic buildings and other structures. The flash flood caused structural damage to 80 percent of the buildings including a portion of one building which was physically moved by the rushing water.

(c) Montana State Parks is concerned about the possible movement or collapse of buildings due to the structural damage resulting from the flood. Movement or collapse of the buildings poses imminent threat of bodily harm or death.

(d) Montana State Parks is also concerned with large objects and debris that are partially buried or obscured by the mud and thereby pose a threat of serious bodily injury.

(e) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 15 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 23, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective July 18, 2013, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

<u>RULE I BANNACK STATE PARK TEMPORARY EMERGENCY CLOSURE</u>

(1) Bannack State Park is located in Deer Lodge County.

(2) Bannack State Park is closed to all public occupation.

AUTH: 2-4-303, 23-1-106, MCA
IMP: 2-4-303, 23-1-106, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule is in effect as long as the danger exists. Posted signs regarding the emergency closure will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Department of Fish, Wildlife and Parks, PO Box 200701, Helena, MT 59620-0701; fax (406) 444-7456; or e-mail jesssnyder@mt.gov. Any comments must be received no later than September 6, 2013.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State July 18, 2013.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of a temporary emergency rule closing the Clark Fork River from Big Eddy Fishing Access Site to Dry Creek Fishing Access Site in Mineral County	))))	NOTICE OF AMENDMENT OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. On July 15, 2013, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-394 pertaining to the adoption of a temporary emergency rule closing the Clark Fork River in Mineral County at page 1335 of the 2013 Montana Administrative Register, Issue Number 14. The department had determined the following reasons justified the adoption of a temporary emergency rule:

(a) The West Mullan wildfire is burning near Superior, Montana.

(b) Fire suppression efforts include several helicopters bucketing water from the Clark Fork River.

(c) The Assistant Fire Management Officer has requested the closure and the department has determined the closure is necessary so helicopter crews can safely operate and maneuver without potential collisions with recreationists on the river. The closure is also necessary so recreationists, including those with limited maneuverability, are not subject to potential collision with large, heavy water buckets suspended from helicopters.

(d) The wildfire has increased in size and the area helicopter crews are using to bucket water has been increased. A retardant station has been established at Big Eddy Fishing Access Site requiring the department to close the area to members of the public.

(e) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following amendment of a temporary emergency rule. The amended emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The amended rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 15 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 23, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The amendment of the temporary emergency rule is effective July 19, 2013, when this rule notice is filed with the Secretary of State.

4. The department has adopted RULE I as follows, stricken matter interlined, new matter underlined:

RULE I CLARK FORK RIVER TEMPORARY EMERGENCY CLOSURE

(1) A portion of the Clark Fork River is located in Mineral County.

(2) The Clark Fork River is closed from Big Eddy Fishing Access Site to ~~Dry Creek Fishing Access Site~~ the United States Forest Service's Slowey Campground to all public occupation and recreation including, but not limited to, floating, swimming, wading, fishing, and boating.

(3) Big Eddy Fishing Access Site and Dry Creek Fishing Access Site are closed to all public occupation.

~~(3)~~(4) This rule is effective as long as this stretch of river is needed as a source of water for fire suppression efforts.

AUTH: 2-4-303, 87-1-303, MCA
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule is in effect as long as the stretch of river and fishing access sites are needed as a source of water for fire suppression and the department determines the Clark Fork River and fishing access sites are again safe for occupation and recreation. This will depend on the extent and duration of the fire in the area. Posted signs regarding the emergency closure will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Department of Fish, Wildlife and Parks, PO Box 200701, Helena, MT 59620-0701; fax (406) 444-7456; or e-mail jesssnyder@mt.gov. Any comments must be received no later than September 6, 2013.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to

the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky
Mike Volesky
Deputy Director
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State July 19, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.301 pertaining to state solid waste management and resource recovery plan	)))	NOTICE OF AMENDMENT (SOLID WASTE)

TO: All Concerned Persons

1. On April 11, 2013, the Department of Environmental Quality published MAR Notice No. 17-345 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 465, 2013 Montana Administrative Register, Issue Number 7.

2. The department has amended the rule exactly as proposed.

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

COMMENT NO. 1: The short- and long-term goals in the 2013 Integrated Waste Management Plan (IWMP or Plan) being adopted by reference in the proposed rule amendment should be broken down into specific objectives that can be measured at the local, regional, and state level. The commenter proposed an example: Establishing four regional tire shredding operations in Montana (north, south, east, west) within 24 months, with an increased landfill diversion rate of 10 percent in year two and 20 percent in year three.

RESPONSE: The department appreciates this comment, but does not believe short-term or more specific objectives are appropriate for this document. Broad goals are necessary so that short-term goals and objectives can be made at the local level where factors, such as population, geography, transportation, and volume of commodities generated, are taken into consideration. No modification to the Plan has been made.

COMMENT NO. 2: The goals and objectives in the IWMP need to be more ambitious to challenge and motivate communities and that Montana needs the inspiration and leadership from major players across the state. Greater expectations can commence with a couple of specific projects that DEQ may decide to spearhead through the IWMP. The proposed plan is fairly comprehensive, but gets diluted rather quickly, and does not generate excitement and the essential consumer activism needed. The IWMP should contain more substantive goals and objectives.

RESPONSE: The department appreciates this comment, but notes that county and local governments are not bound to follow the actions described in the plan. Therefore, the goals and objectives are kept broad so that each community can set smaller goals that are achievable for that specific community and that are also based upon the enthusiasm and engagement of that community's citizens.

The department develops inspiration and leadership at the local level through individual interaction, training, conferences, newsletters, workshops, and public

outreach. Citizen engagement and activism receive support through assistance to community programs and volunteers, as well as department participation in local recycling events. The department also supports Recycle Montana, a nonprofit organization providing public education and outreach.

The department introduces major initiatives that are embraced by local communities based upon their level of public engagement. The "Hub and Spoke" initiative encourages communities to form alliances that combine the volumes of recyclables collected and increase revenue returned to the communities through recycling. No modification to the Plan has been made.

COMMENT NO. 3: The purported rationale for the 2013 Plan is to serve as "a planning document for department activities as well as an educational document for state and local governments." The commenter stated that it falls short on inspiring a shared Montana vision for solid waste management. The commenter praised the educational content of the plan concerning batteries, cathode tubes, and composting efforts, but felt that it does not energize readers towards action. The commenter stated that the Plan should have some creative and innovative strategies that promote source reduction and waste minimization. The commenter referred to the waste-tire-shredding example in Comment No. 1, and suggested that if the IWMP grasps onto several key waste issues and provides opportunities for local and regional action, there will be a significantly improved chance of project success and measurable environmental impact.

RESPONSE: The department appreciates this comment. The legislative intent for the IWMP is to provide statewide policy on an integrated waste management strategy for the state. The 2013 revised Plan does include information on alternative technologies for solid waste management and provides the basics from which decision-makers may choose, at the local level, what is best for their communities. Throughout the five-year period between IWMP publications, the department continually seeks out innovations and strategies that are introduced to solid waste managers and stakeholders through workshops, webinars, conferences, and more. The department believes that these activities are appropriate and that more specific tactics and actions are best developed and implemented at the local level. No modification to the Plan has been made.

COMMENT NO. 4: Source reduction is prioritized, as it should be, and waste minimization needs to be promoted in terms of greater efficiencies. Environmental costs should be emphasized to a greater extent, in terms of whole-life product cycles.

RESPONSE: The department appreciates this comment and does incorporate life-cycle cost analyses into agency actions and outreach. The IWMP addresses life-cycle analyses under the concept of product stewardship. See IWMP pages 26 and 28. The department will continue to educate businesses and citizens about life-cycle analysis of products and services. The department believes that the level of emphasis in the Plan on environmental costs and life-cycle analysis is appropriate. No modification to the Plan has been made.

COMMENT NO. 5: The commenter stated that five steps are the crux of the program and suggested that the department promote them in a graphic format as fingers on a hand: reduce, reuse, recycle, compost, landfill.

RESPONSE: The department appreciates this comment and will consider incorporating this idea into public outreach materials and presentations. No modification to the Plan is necessary to implement the comment.

COMMENT NO. 6: The commenter stated that the hub-and-spoke approach to rural recycling is excellent and should be promoted continuously.

RESPONSE: The department agrees with the comment. The department intends to strengthen the existing programs, as well as implement this strategy in additional communities. No modification to the Plan is necessary to carry this out.

COMMENT NO. 7: The local government framework for implementing IWM systems will rely heavily on department leadership and promotion in the field. If the department aggressively promotes uses for products such as pulverized glass for asphalt projects, community assistance for E-waste, alternative uses for carpet products, and biogas collection at landfills, then local and regional efforts can take a path towards greater involvement, improved communications, and collaboration on projects.

RESPONSE: The department believes that the IWMP proposes an appropriate level of emphasis at the state level for community assistance for E-waste recycling (pages 19-20) and recycling of, and alternative uses for, carpet products (pages 16-17, 28).

The department maintains web pages to promote the recycling of glass, http://deq.mt.gov/Recycle/Glass/default.mcpx, and the use of pulverized glass, http://deq.mt.gov/Recycle/Glass/pulverizer.mcpx, but the task force that helped the department set the priorities to be addressed in the IWMP did not identify the recycling or diversion of glass from the waste streams as high priorities, so the department did not address them in the IWMP. Biogas collection at two landfills was mentioned at page 7 of the IWMP, but was not identified by the task force as a priority and was not further addressed. Furthermore, biogas collection is not a waste diversion activity; it is an energy recovery activity. The department will work with local communities to help them address appropriate activities to promote waste reduction and diversion. No modification to the Plan has been made.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North By: */s/ Tracy Stone-Manning*
JOHN F. NORTH TRACY STONE-MANNING, DIRECTOR
Rule Reviewer

Certified to the Secretary of State, July 29, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.5.103, 18.5.104, 18.5.105, 18.5.112 and repeal of ARM 18.5.101, 18.5.102, and 18.5.113 pertaining to highway approaches	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 20, 2013, the Department of Transportation published MAR Notice No. 18-143 pertaining to the proposed amendment and repeal of the above-stated rules at page 985 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State July 29, 2013.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.225.401 fee schedule	))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 23, 2013, the Board of Veterinary Medicine (board) published MAR Notice No. 24-225-36 regarding the public hearing on the proposed amendment of the above-stated rule, at page 814 of the 2013 Montana Administrative Register, Issue No. 10.

2. On June 13, 2013, a public hearing was held on the proposed amendment of the above-stated rule in Helena. In response to public request, the board decided to extend the public comment period deadline from 5:00 p.m., June 21, 2013, to 5:00 p.m., July 19, 2013.

3. On July 11, 2013, the board published the notice of extension of comment period for MAR Notice No. 24-225-36 at page 1171 of the 2013 Montana Administrative Register, Issue No. 13. Several comments were received by the July 19, 2013, comment deadline.

4. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Three commenters supported the fee increase and thanked the board for its work, including policing the profession. One commenter said that an even higher fee would have been supportable if it would help Montana veterinarians do their jobs better and suggested setting up a web site for reportable diseases.

RESPONSE 1: The board acknowledges the comments, but concluded it is not the appropriate entity to provide a web site for reportable diseases. The board suggests the commenter contact the Montana Department of Livestock and its federal counterpart.

COMMENT 2: One commenter reluctantly supported the fee increase, but stated that something needs to be done to manage legal expenses. The commenter suggested that fines should be used to pay legal fees, and if fees continue to increase due to legal issues, the board should just function less effectively, rather than increase fees yet again.

RESPONSE 2: The board notes that its mandate is to protect the public and legal work is integral to doing that. The board always seeks to be as efficient as possible, but cannot be effective without the requisite investigations and prosecutions. The board is unable to deposit fines in the board's funds, as all fines are statutorily

mandated to be deposited into the general fund. A legislative initiative would be required to change this and the board encourages the commenter to contact a legislator.

COMMENT 3: Three commenters opposed the fee increase, stating there is no justification for it, and asked how expenses could increase by $24,000 or nearly 50 percent in one year and be labeled "other expenses." The commenters noted that fees increased just two years ago, and that the proposed fees are more than other western states' licensing fees. The commenters recommended a two-year renewal program to save money and cutting costs in a state with the lowest per capita veterinary income in the United States.

RESPONSE 3: The board has provided spreadsheets to all interested individuals that outline how fees have increased and for what purposes. Increased expenses have been due to a legislative audit several years ago that changed the department's method of allocating costs to the boards, addition of a new computer database system that is shared among all boards, and increased legal investigations. A two-year renewal cycle has generally been shown not to substantially reduce costs and boards have moved away from that.

COMMENT 4: One commenter asserted that a ten percent annual increase in income would be enviable for most vets, yet the board demands more and fails to explain the "other expenses" of $20,000.

RESPONSE 4: The board has provided an explanation of the "other expenses" in materials provided in a spreadsheet made available upon request. Additional costs have been due to a legislative audit that changed the method of allocating costs within the department, a new shared computer database system, and increased legal costs.

COMMENT 5: One commenter said the proposed fee increase is outrageous and asserted that operating costs should go down when more work is done electronically. The commenter asked whether poor decision-making and management versus the "DLI trickledown effect" actually necessitated the increase, and noted that Montana already has higher licensing fees than neighboring states.

RESPONSE 5: The board notes that operating costs increase annually for boards as well as for most other enterprises, and the shared expense of a new computer database system was incurred over the past several years. Montana boards are mandated by the legislature to set and maintain fees commensurate with associated costs, so fees among neighboring states are not considered in assessing the relationship between fees and costs in Montana. The board has no control over costs associated with boards in other jurisdictions.

COMMENT 6: One commenter opposed the fee increase primarily because there was no clear reason given for the increase, noting that even the budget information provided was vague and in the "dubious category" of other expenses. The

commenter suggested that the board share numbers of cases, investigations, etc., with licensees.

RESPONSE 6: The board plans to act on the suggestion to share more information with licensees about numbers of cases, investigations, etc., in a manner that preserves confidentiality. Some of the increased expenses, as outlined in previous responses, include a new shared computer database system and increased operating and legal expenses.

COMMENT 7: One commenter opposed the fee increase, stating that it is the second licensing fee increase in three years and requested more information and a better understanding of the overall budget. The commenter asserted that the reasons given for the fee increase were vague and that a 32 percent increase for individual veterinarians is a substantial cost for new veterinarians with student loans to service.

RESPONSE 7: The board has provided budget information to all interested individuals who requested the information. The increase is necessary to keep fees commensurate with costs, which have increased in the past three years due to a new shared computer database system, a legislative audit that required reallocation of expenses amongst boards, and increased legal costs for investigations and prosecutions. The board recognizes that new veterinarians have student loans to service, but the board is mandated to protect the public and cannot accomplish that mandate without appropriate funding through fees that are commensurate with associated costs.

5. The board has amended ARM 24.225.401 exactly as proposed.

BOARD OF VETERINARY MEDICINE
JEAN LINDLEY, DVM, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 29, 2013

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.201, 32.3.501, 32.3.502, 32.3.503, 32.3.505, 32.3.506, 32.3.507, and 32.3.508 pertaining to definitions, official trichomoniasis testing and certification requirements, reporting trichomoniasis, movement of animals from test-positive herds, epidemiological investigation and exposed herd notification, common grazing and grazing associations, and penalties	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 20, 2013, the Department of Livestock published MAR Notice No. 32-13-235 pertaining to the proposed amendment of the above-stated rules at page 1008 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rules as proposed.

3. The department has thoroughly considered the comment received and there are no revisions to the proposed amendment.

COMMENT #1: On behalf of the Judith Basin Stockgrowers, we support the proposed changes to tighten the existing rules and develop timelines for Trich-positive herds to follow. This disease has a devastating financial impact and the DOL's proposed rule can help clean up current Trich-positive herds and potentially force producers to develop better practices.

RESPONSE #1: The department thanks the Judith Basin Stockgrowers for their comment.

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 July 29, 2013

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

In the matter of the amendment of ARM 37.86.5101, 37.86.5102, 37.86.5103, 37.86.5104, 37.86.5110, 37.86.5111, and 37.86.5112 pertaining to passport to health	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 20, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-638 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1016 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rules as proposed.

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

COMMENT #1: A commenter discussed the lack of timely updating of the Medicaid eligibility system and how this makes it difficult to operationalize the Passport Program.

RESPONSE #1: These concerns have been forwarded to the Human Community Services Division, which includes the Public Assistance Policy/Services Bureau.

COMMENT #2: A commenter asked for the rationale of the requirement to "keep a paper or electronic log, spreadsheet, or other record of all Passport referrals given and received."

RESPONSE #2: The requirement is in current Passport provider agreements and should be standard operating procedure for all Passport providers. The requirement protects a Passport provider from a referred-to provider storing and using a Passport number for services not in the referral. Montana Medicaid performs monthly audits of selected providers' referral logs to make sure that the referral process is not being abused.

COMMENT #3: A commenter suggested that the department consider a rule that would allow providers to opt out of the Passport Program.

RESPONSE #3: The comment is not applicable to the rules being amended in this notice; however, Montana Medicaid is active in and will continue to be involved in discussions of the Patient-Centered Medical Home Advisory Council.

COMMENT #4: A commenter stated that there should be no barriers to a family choosing the right primary care provider for their child, including a provider's current Passport caseload.

RESPONSE #4: Montana Medicaid cannot force a provider to take Passport members beyond the caseload capacity the provider sets. The department is eliminating the pending status of members that could potentially be used by providers to pick and choose from among the members. The department believes that all Medicaid members should have the assurance that they will be able to see the Passport provider they choose. There is currently no restriction of member access to a primary care provider in Montana due to provider caseload capacities.

/s/ John Koch
John Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 29, 2013.

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

In the matter of the amendment of ARM 37.57.102, 37.57.106, 37.57.111, and 37.57.118 pertaining to the update of children's special health services	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 20, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-641 pertaining to the proposed amendment of the above-stated rules at page 1050 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 29, 2013.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.301 relating to residential property tax credits	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 6, 2013, the department published MAR Notice Number 42-2-893 regarding the proposed amendment of the above-stated rule at page 959 of the 2013 Montana Administrative Register, Issue Number 11.

2. A public hearing was held on July 8, 2013, to consider the proposed amendment. Oral testimony was received at the hearing and is summarized as follows along with the response of the department:

COMMENT NO. 1: Ms. Nancy Higgins Schlepp, President of the Montana Taxpayers Association, appeared at the hearing and testified that she supports the amendment and commented that it makes the rule more user-friendly.

RESPONSE NO. 1: The department appreciates Ms. Schlepp's interest, support, and comments on the proposed amendment.

3. The department amends ARM 42.4.301 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/ Alan Peura for
MIKE KADAS
Director of Revenue

Certified to the Secretary of State July 29, 2013

VOLUME NO. 55 OPINION NO. 1

COUNTIES - Only the board of county commissioners "has general supervision over the county roads within the county";
COUNTY COMMISSIONERS - Only the board of county commissioners "has general supervision over the county roads within the county";
HIGHWAYS - Only the board of county commissioners "has general supervision over the county roads within the county";
LOCAL GOVERNMENT - A local government unit possesses only those "powers provided by law;"
TAXATION AND REVENUE - An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border;
TRANSPORTATION, PUBLIC - An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border;
MONTANA CODE ANNOTATED - Sections 7-4-2102, -2121(1), (2), 7-14-102, -201, -221;
MONTANA CONSTITUTION OF 1972 - Article XI, section 4(1)(c).

HELD: An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border.

July 17, 2013

Mr. Scott Twito
Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Dear Mr. Twito:

You have requested my opinion as to three related questions, but I have determined that an answer to the first question, which I have restated below, is dispositive:

> Is an urban transportation district authorized to tax and manage county roads within its border or is it restricted to operating general public transportation systems?

Your letter informs me that in 1983 the "Lockwood Urban Transportation District" was formed to facilitate construction of the "Johnson Lane Interchange." In 1984 the Board of County Commissioners of Yellowstone County and the board of the Lockwood District met and agreed that the mill levy raised for the district would be dissolved when the interchange was completed. The district subsequently, in 1987, informed the Board that the interchange project was complete and the mill levy

should be discontinued. Since that time no levy has been imposed or collected for the Lockwood District.

The Lockwood District was inactive for the next 14 years until the District requested a portion of the County's gas tax revenues for use within the District. The renewed request raised the question of whether an urban transportation district may tax and manage county roads and, if so, whether the Lockwood District may do so at the present time without a new election.

A local government unit possesses only those "powers provided by law." Mont. Const. art. XI, § 4(1)(c). Here, the Lockwood District is limited to the powers and purposes designated by Mont. Code Ann. § 7-14-201 to -246, which establishes urban transportation districts. The general purpose of an urban transportation district is provided in Mont. Code Ann. § 7-14-201: "to supply transportation services and facilities to district residents and other persons." Unfortunately, "transportation services and facilities" is not separately defined, but the use of the terms "services and facilities" logically denotes a public transportation system, such as public bus service (often referred to as "mass transit"), as opposed to road creation or maintenance.

Reading Mont. Code Ann. § 7-14-201 to limit the purpose and authority of urban transportation districts to operating public transportation systems is supported by Mont. Code Ann. § 7-14-102, which provides that the Department of Transportation shall allocate certain funds "among the cities and urban transportation districts of the state that operate . . . *general public transportation systems*." Emphasis added. Consequently, each of the six districts that DOT provides funding to, such as Helena Area Transit Services, runs a mass transit type of public transportation system. Likewise, Mont. Code Ann. § 7-14-221, provides that a district "shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate." Authorizing service outside the district boundary makes sense in reference to public transportation services, where, for example, a bus route may run past the district line, but is incongruous with building or maintaining roads.

This interpretation is further supported by the fact that only the board of county commissioners "has general supervision over the county roads within the county," including the ability to "survey, view, lay out, record, open, work, and maintain county roads." Mont. Code Ann. § 7-4-2102. More specifically, the board may divide the county into "road districts." Mont. Code Ann. § 7-4-2121(1). If the board opts not to divide the county into road districts, "the county constitutes one road district." Mont. Code Ann. § 7-4-2121(2). To consider urban transportation districts as having the power to create, manage or levy taxes for public roads conflicts with the express power granted to the board of county commissioners to control county roads and divide the county into road districts.

You also ask whether the Lockwood District may tax "District properties for road improvements/maintenance without a new election," and whether any such future

levy would be subject to statutory levy limitations. As I have determined that the Lockwood District, as an urban transportation district, is not statutorily authorized to improve or maintain roads, it is unnecessary that I address these remaining questions.

THEREFORE, IT IS MY OPINION:

> An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border.

Sincerely,

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General

tcf/jss/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2013. This table includes those rules adopted during the period April 1, 2013, through June 30, 2013, 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 March 31, 2013, 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 2013 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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