ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ARM 17.56.607 pertaining to release categorization	))))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On August 7, 2014, the Department of Environmental Quality published MAR Notice No. 17-364 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1663, 2014 Montana Administrative Register, Issue Number 15. The department is publishing this amended notice to correct an error in the original notice. On September 24, 2014, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule in the manner shown below. The rule should have been and is now proposed as follows, stricken matter interlined, new matter underlined:

17.56.607 RELEASE CATEGORIZATION (1) through (9)(g) remain the same.

(10) The department may categorize a release as resolved with a petroleum mixing zone and send a letter to the owner or operator in accordance with (11), if the department has determined that conditions at the site ensure present and long-term protection of human health, safety, and the environment and that residual petroleum in soil and ground water will continue to be remediated through natural attenuation processes without additional intervention, active cleanup, or monitoring. The following requirements must also be met before a release may be categorized as resolved with a petroleum mixing zone:

(a) through (h) remain the same.

(i) at the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent does not exceed a water quality standard adopted by the Board of Environmental Review pursuant to 75-5-301, MCA. The downgradient boundary of a petroleum mixing zone must be determined by documented investigations conducted in accordance with ARM 17.56.604.

(j) ~~A~~ a petroleum mixing zone must remain within the facility property boundary unless a recorded easement approved by the department allows the mixing zone to extend off the facility property. ~~A petroleum mixing zone may extend no further than 500 feet from the origin of the release.~~ For purposes of this rule, the term "facility property" means a single parcel or contiguous parcels on which one or more petroleum storage tanks are or were located, provided that contiguous parcels must be under single ownership at the time the petroleum mixing zone is established;

~~(j) a petroleum mixing zone may not extend to within 500 feet of an existing drinking water well or surface water;~~

(k) a petroleum mixing zone may not extend either beyond 500 feet from the origin of the release or within 500 feet of an existing drinking water well or surface water unless the department determines, in writing and based on site-specific circumstances, that distances not meeting the 500-foot criteria, as specified in the determination, will ensure present and long-term protection of human health and safety and of the environment in the specific circumstances. In making this determination, the department shall consider the following factors:

(i) the specific contaminants and concentrations involved;

(ii) the nature, hydrogeologic characteristics, and quality of the aquifer(s) involved;

(iii) the nature and quality of any well or surface water potentially affected;

(iv) the degree of certainty that site-specific scientific data supports the determinations made pursuant to (c), (d), (g), and (h); and

(v) any other consideration determined by the department to be relevant in the particular circumstances.

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

~~(l)~~ (m) a notice is placed on the deed of all parcels of real property on which the facility is located that ~~is~~ the source of the release is resolved with a petroleum mixing zone ~~release is located~~. This deed notice must describe the nature and location of the residual contamination remaining in the soil and ground water at the facility and must describe all institutional controls, engineering controls, physical conditions, or other controls or conditions required to maintain the petroleum mixing zone.

(11) and (12) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

3. This change is being made because, as indicated in the statement of reasonable necessity, the purpose of the rulemaking is to allow mixing zones in certain instances to (a) come closer than 500 feet to an existing drinking water well or surface water or (b) extend more than 500 feet from the source of the contamination. Use of the term "a shorter distance" in proposed ARM 17.56.607(10)(k) was not consistent with the second purpose.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., September 15, 2014, 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.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be

submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., October 2, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Becky Convery, attorney, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

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, August 25, 2014.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.213.301 definitions, 24.213.402 application for licensure, 24.213.408 examination, 24.213.415 inactive status, 24.213.504 authorization to perform testing, 24.213.2101 continuing education requirements, 24.213.2104 and 24.213.2107 traditional education by organizations, 24.213.2111 teaching - category III, 24.213.2114 papers, publications, journals, and course work, and 24.213.2301 unprofessional conduct, the adoption of NEW RULE I training–conscious sedation, and the repeal of ARM 24.213.501 institutional guidelines concerning education and certification	))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On September 29, 2014, at 1:30 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Respiratory Care Practitioners (board) no later than 5:00 p.m., on September 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrcp@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The board conducted a top-to-bottom review of all of its administrative rules in 2013, and concluded that it is necessary to update the rules throughout to reflect the current regulatory and practice environment and to better clarify and organize the board's administrative rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete

unnecessary or redundant sections, and amend rules for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation citations are amended throughout to accurately reflect all statutes implemented through the rules, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes. Accordingly, the board has determined that it is reasonably necessary to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.213.301 DEFINITIONS ~~(1)~~ (3) ~~The board defines~~ "~~emergency~~ Emergency procedures" as that term is used in 37-28-102, MCA, ~~to include~~ includes, but is not ~~be~~ limited to, ~~known and~~ physician-approved protocols relating to life-sustaining procedures in emergency situations in the absence of the immediate direction of a physician. Emergency respiratory care may also be provided during transportation of a patient and under any circumstances where an epidemic, public disaster, or other emergency necessitates respiratory care.

~~(2)~~ (8) For the purposes of 37-28-102(3)(a), MCA, "respiratory care" does not include the delivery, assembly, testing, simulated demonstration of the operation, or demonstration of safety and maintenance of respiratory therapy equipment by home medical equipment ("HME") personnel to a client's home, pursuant to the written prescription of a physician. "Respiratory care" does include any instruction to the client regarding clinical use of the equipment, or any monitoring, assessment, or other evaluation of therapeutic effects.

~~(3)~~ (1) ~~The board defines~~ "~~clinical~~ Clinical supervision" ~~as~~ means the availability of a licensed respiratory care practitioner for purposes of immediate communication and consultation.

~~(4)~~ (7) ~~The board defines~~ "~~pulse~~ Pulse oximetry," "pulmonary function testing," and "spirometry" ~~as~~ mean diagnostic procedures that, pursuant to the orders of a physician, may be performed only by~~,~~ or under clinical supervision of~~,~~ a licensed respiratory care practitioner and/or other licensed health care provider who has met the minimum competency standards. The individual performing pulmonary function testing and spirometry must meet minimum competency standards, as they currently exist, as established by the National Institute for Occupational Safety and Health (NIOSH) or the National Board for Respiratory Care (NBRC) certification examination for entry level respiratory therapist, certification examination for entry level pulmonary function technologist (CPFT) credential, or registry examination for Advanced Pulmonary Function Technologists (RPFT) specific to pulmonary function testing.

~~(5)~~ (4) ~~The board defines~~ "~~formal~~ Formal pulmonary function testing" ~~to include~~ includes, but is not ~~be~~ limited to:

(a) and (b) remain the same.

~~(6)~~ (5) ~~The board defines~~ "~~informal~~ Informal screening spirometry" ~~to include~~ includes, but is not ~~be~~ limited to:

(a) through (d) remain the same.

(2) "Conscious sedation" means the administration of a pharmacological agent by a respiratory care provider as prescribed by a physician.

(6) "NRBC" means the National Board for Respiratory Care.

AUTH: Sections ~~(2)~~ (8) and ~~(3)~~ (1) are advisory only, but may be a correct interpretation of the law, 37-28-104, MCA

IMP: 37-28-101, 37-28-102, MCA

REASON: The board is amending the definition of "emergency procedures" after determining that the term "known" protocols is overly vague and could be interpreted as meaning surface awareness of protocols, rather than established knowledge and acceptance. The board notes that use of "known" raises the question "known by whom?" The board concluded that physician-approved protocols should be the only protocols referenced for emergency procedures and is amending (3) accordingly.

The board is adding (2) to define "conscious sedation" as used in proposed New Rule I. The board notes that ARM 24.213.501 outlined guidelines for conscious sedation without defining the term. The board is repealing ARM 24.213.501 and adopting New Rule I to clarify the application of health facility guidelines to licensees administering conscious sedation.

The board is adding (6) to define the National Board for Respiratory Care and its acronym since the NBRC is referenced multiple times in board rules.

24.213.402 APPLICATION FOR LICENSURE (1) remains the same.

(2) The application must be ~~typed or legibly written in ink,~~ accompanied by the appropriate ~~application and~~ license fees, and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 28, MCA, and rules promulgated thereunder. Pursuant to 37-28-202, MCA, ~~a copy of the National Board for Respiratory Care (NBRC) card, showing that the applicant has successfully completed~~ passage of the NBRC examination~~,~~ demonstrates that the applicant has completed the examination requirements for licensure.

(3) The board shall require the applicant to submit the original hard copy or electronic certified documents in support of the application. ~~The board may permit such documents to be withdrawn upon substitution of a true copy.~~

~~(4) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.~~

~~(5)~~ (4) The board or department, at the board's discretion, shall review fully completed applications for compliance with board law and rules and shall notify the applicant in writing of the results of the evaluation of the application. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. ~~Incomplete applications shall be returned to the applicant with a statement regarding~~ Applicants will be notified of incomplete portions of an application and will be asked to provide the missing information.

~~(6)~~ (5) The applicant shall correct any deficiencies and ~~resubmit the application~~ submit the missing information to the board. ~~Failure to resubmit the application~~ Applications that are not completed within ~~60 days shall be treated as a voluntary withdrawal~~ one year from the date of the application shall expire. ~~After~~

~~voluntary withdrawal, an~~ and the applicant will be required to submit an entirely new application to begin the process again.

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

~~(8)~~ (7) An applicant who has been away from the practice of the profession of respiratory care for more than three years shall provide evidence of competency. The applicant may demonstrate competency by:

~~(a) providing proof of completion (within the last 60 months) of a minimum of 30 hours of continuing education acceptable to the board;~~

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

~~(c)~~ (b) passing an ~~another National Board for Respiratory Care (~~NBRC~~)~~ credentialing examination~~,~~ not previously completed.

AUTH: 37-1-131, ~~37-1-134, 37-1-141,~~ 37-28-104, MCA
IMP: 37-1-101, 37-1-104, 37-1-131, 37-1-134, 37-1-141, 37-28-201, 37-28-202, MCA

REASON: The board determined it is reasonably necessary to amend (2) after concluding that requiring typed or ink-written applications is anachronistic. Noting that applications may be completed using computers and printers, or submitted through the department's online application system, the board decided to no longer limit the means for submitting applications. The board is further amending (2) after determining that the language regarding the NBRC examination is flawed in that a NBRC card alone does not satisfy all aspects of 37-28-202, MCA. The board determined that there are other forms of proof of NBRC examination passage besides a card issued by NBRC, and that proof of exam passage should be the only means to fulfill the examination requirement of 37-28-202, MCA.

The board is amending (3) to no longer require that applicants submit physical "hard copy" documents. The board determined that this requirement is obsolete in the current environment of electronic documents and that it is reasonable to allow both physical and electronic documents to be submitted in support of an application. The board is also eliminating the second sentence regarding a "true copy" as unnecessary, especially for electronic documents.

The board is striking (4) as the board determined that a photograph is not necessary to process an application. The department has advised the board that photographs do not reproduce well once applications are scanned for inclusion in the department's database.

The board is amending new (4) to reflect the current licensure process in which the department's licensing bureau reviews applications for completeness and compliance with licensure requirements. Also in accordance with current department procedures, the board is amending (4) to no longer return incomplete applications. Licensing bureau staff will notify applicants of missing items while retaining application materials.

It is reasonably necessary to amend (5) to align with the department's standardized policy that applications remain active for one year after receipt. The board wishes for its rule to be consistent with that policy. The board is further amending (5) to be consistent with (4) regarding request for and submission of missing application items.

The board is amending (7) after determining that 30 hours of continuing education (CE) over a five-year period is an inadequate standard for re-entry into the profession. The board concluded that removing the CE option and relying solely on examination will better measure an individual's continued competency to practice.

24.213.408 EXAMINATION (1) The ~~board determines that a scaled score of 75 on a 0 to 99 scale of the~~ certification examination for entry-level respiratory therapy practitioners ~~examination, or the registry examination, utilized~~ offered by the ~~National Board for Respiratory Care, (~~NBRC~~)~~ shall be ~~prescribed as the accepted testing requirement~~ the exam prescribed for licensing in this state.

(2) Applicants for original licensure shall provide evidence that they have successfully passed the examination. ~~A copy of the National Board for Respiratory Care (NBRC) card, showing that the applicant has successfully completed the NBRC examination, is evidence that the applicant has successfully passed the examination requirement for licensure.~~

AUTH: 37-1-131, ~~37-1-134, 37-1-141,~~ 37-28-104, MCA
IMP: 37-1-131, ~~37-28-104,~~ 37-28-202, MCA

REASON: The board is amending (1) to clearly delineate that passage of the NBRC exam is governed by the NBRC and the board should not have its own standard.

The board is amending (2) to remove the requirement for an applicant to present the NBRC card, since the requirement is being stricken elsewhere in the rules. The board determined that there are other means to prove passage of the NBRC exam than the card.

24.213.415 INACTIVE STATUS (1) A licensee who wishes to retain a license, but who will not be practicing respiratory care, may obtain inactive status by indicating this intention on the annual renewal form ~~or by submission of an application~~ and ~~payment of~~ paying the appropriate fee. An individual licensed on inactive status may not practice respiratory care during the period in which the licensee remains on inactive status.

(2) An individual licensed on inactive status may convert this license to active status by submission of ~~an appropriate application~~ a request to reactivate and payment of the renewal fee for the year in question. The ~~application~~ request to reactivate must contain evidence of ~~one of the following:~~

~~(a) full-time~~ practice of respiratory care in another state and completion of continuing education for each year of inactive status, substantially equivalent, in the opinion of the board, to that required under these rules~~; or~~.

~~(b) completion of a minimum of 12 continuing education units within one year prior to application for reinstatement.~~

(3) ~~In no case may an~~ An individual ~~remain on~~ whose license has been inactive ~~status~~ for more than ~~two~~ three years in all jurisdictions must retake the examination required under ARM 24.213.408. ~~Documentation of the continuing education that would have been submitted had the license been renewed in a timely manner shall be required.~~

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, ~~37-1-141,~~ 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend (1) and (2) to reflect current processes, as the board has no specific application for changing to inactive status. The board decided that a "request to reactivate" is more appropriate.

The board is further amending (2) after determining that 12 hours of continuing education in the year prior to requesting reactivation is inadequate to prove clinical competency as a basis for reactivation. The board concluded that safe practice of respiratory care requires continual, but not necessarily full-time, active practice and continuing education, and is amending (2) to reflect this decision.

The board is amending (3) to allow licensees on inactive status up to three years to resume active status by retaking and passing the examination. The board determined that the two year limit is unnecessarily punitive and concluded that long-term, completely inactive RCPs should have the option of returning to active practice and that examination is the best means to ensure clinical competency.

24.213.504 AUTHORIZATION TO PERFORM FORMAL PULMONARY FUNCTION TESTING AND INFORMAL, BASIC SCREENING SPIROMETRY

~~(1) Properly licensed health care providers performing informal pulmonary function testing or spirometry should meet minimum competency standards as established by the National Institute for Occupational Safety and Health (NIOSH) or the National Board for Respiratory Care (NBRC).~~

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

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-102, ~~37-28-104,~~ MCA

REASON: The board determined that the provisions in (1) are advisory only, and subject to interpretation by licensees and, thus, should be removed. Following amendment, the board will rely on the standards in (2) when determining whether licensees are qualified to perform informal pulmonary function testing and spirometry.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS (1) Upon renewal of licensure, each respiratory care practitioner must affirm on the renewal form in each even numbered year beginning in 2008 that the licensee ~~will have~~ completed 24 continuing education units in the preceding 24 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement~~,~~ and to provide documentation of this compliance if so requested during a random audit. The random audit will be conducted on a biennial basis.

(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the ~~National Board of~~

~~Respiratory Care~~ NBRC entry level exam or the registered respiratory advanced practitioner examination during the preceding 24 months.

(4) through (6) remain the same.

(7) ~~If documentation of the continuing education requirement is improper or inadequate, the respiratory care practitioner shall correct the deficiency. If the requirement is not completed within 90 days, the license shall be expired and the renewal fee forfeited.~~ Misrepresentation of compliance shall constitute grounds for disciplinary action.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, ~~37-28-104,~~ MCA

REASON: The board is deleting language in (7) regarding forfeiture of renewal fees and forced license expiration as these provisions are contrary to department renewal policy and rules. The board concluded that it is unnecessary to repeat these standardized department procedures in board rule.

24.213.2104 TRADITIONAL EDUCATION BY SPONSORED ORGANIZATIONS -- CATEGORY I (1) Continuing education programs sponsored by the following organizations, which are germane to the profession of respiratory care~~,~~ and are approved by the board:

(a) Institutions approved by the Joint Review Committee for Respiratory Therapy Education, Respiratory Care Accreditation Board or other successor accreditation organizations and courses approved by the American Association for Respiratory Care~~, the Montana Society for Respiratory Care~~ and its affiliates, the American Thoracic Societies, the American College of Cardiology, the American College of Chest Physicians, the American Nurses Association, the National Society for Cardiopulmonary Technologists, the American Lung Association, the American Lung Association of Montana, the Montana Heart Association, the Montana and American Medical Association, the Montana Hospital Association and Respiratory Care Journal (American Association of Respiratory Care sponsored).

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

(v) online courses, webinars, and correspondence courses ~~accompanied by a study guide, syllabus, bibliography and/or examination~~.

(2) remains the same.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-28-104, 37-28-203,~~ MCA

REASON: The board determined it is reasonably necessary to amend (1)(a) and no longer list the Montana Society of Respiratory Care (MSRC) by name. Since the MSRC is an affiliate of the AARC, the board is adding "and its affiliates" which will suffice and allow for any AARC affiliate by any name to qualify.

The board is adding (1)(b)(v) to accept online continuing education (CE) courses or webinars that are sponsored by board-approved entities. The board also recognizes that current CE programs often do not come with a study guide or other

printed materials, and may not conclude with an examination. The board is amending this subsection to match the current CE environment.

24.213.2107 TRADITIONAL EDUCATION BY NONSPONSORED ORGANIZATIONS -- CATEGORY II (1) Continuing education activities which do not meet the definition of ARM 24.213.2104 may be submitted for review by the ~~Montana Board of Respiratory Care Practitioners~~ board for prior approval.

(2) Approved activities in this category may include seminars, workshops, conferences, in-service programs, online courses, webinars, and correspondence courses accompanied by a study guide, syllabus, bibliography, and examination.

(3) remains the same.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-28-104,~~ MCA

REASON: The board is amending (2) to allow online CE courses and webinars for the same reasons as for the amendments to ARM 24.213.2104.

24.213.2111 TEACHING -- CATEGORY III (1) No more than eight credit units may be ~~applied~~ earned in this category based on a self-report by the licensee~~, with credit units being awarded on a two-to-one ratio. For a one hour presentation, the presenter will be awarded two credit units.~~ Two credits will be awarded for each hour of presentation.

(2) This category includes teaching ~~addressed to~~ allied health professionals. Any given activity may be submitted for continuing education credit units only once.

(3) Credit units spent in preparation, review, and/or evaluation of activities, which are different from the applicant's usual and customary professional employment, and which are not requested as credits in any other category, may be submitted under this section.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-28-104, 37-28-203,~~ MCA

REASON: The board is amending this rule to more clearly describe how credits are awarded for licensee presentations and teaching.

24.213.2114 PAPERS, PUBLICATIONS, JOURNALS, EXHIBITS, ~~VIDEOTAPES~~ VIDEOS, INDEPENDENT STUDY, AND COLLEGE COURSE WORK -- CATEGORY IV (1) A maximum of eight credit units not sponsored by organizations listed by ARM 24.213.2104, may be ~~applied~~ earned in this category based upon a self-report by the licensee.

(2) An outline of the objectives or a reference citation for the paper, journal, ~~videotape~~ video, etc., germane to the profession must be submitted to the board.

(3) and (4) remain the same.

(a) one semester-hour is equal to 1.5 continuing education units; or

(b) one quarter-hour is equal to one continuing education unit.

(5) remains the same.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-28-104, 37-28-203,~~ MCA

24.213.2301 UNPROFESSIONAL CONDUCT ~~In addition to 37-1-316, MCA,~~ The board defines ~~"~~unprofessional conduct~~"~~ as follows:

(1) Intentional or negligent physical, verbal, or mental abuse of a client in a clinical setting;

(2) remains the same.

(3) Diverting drugs, supplies, or property of patients or health care providers;

(4) Falsifying, altering, or making incorrect essential entries, or failing to make essential entries of client records;

(5) Using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist;

(6) through (11) remain the same.

(12) Violating any state, federal, provincial, ~~or~~ tribal statute, or administrative rule governing or affecting the professional conduct of any licensee;

(13) Being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;

(14) remains the same.

(15) Acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

(16) remains the same.

(17) Performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure;

(18) Failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience, or competence;

(19) Maintaining a relationship with a client that is likely to impair the licensee's professional judgment or increase the risk of client exploitation, including providing services to employees, supervisees, close colleagues, or relatives;

(20) Exercising influence on or control over a client, including the promotion or the sale of services, goods, property, or drugs for the financial gain of the licensee or a third-party;

(21) Promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;

~~(22) Charging a fee that is clearly excessive in relation to the service or product for which it is charged;~~

~~(23)~~ (22) Failing to render adequate supervision, management, training, or control of auxiliary staff or other persons, including the licensee~~,~~ practicing under the licensee's supervision or control according to generally accepted standards of practice;

~~(24)~~ (23) Discontinuing professional services, unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given a reasonable opportunity to arrange alternative or replacement services;

~~(25)~~ (24) Delegating a professional responsibility to a person when the licensee knows~~,~~ or has reason to know~~,~~ that the person is not qualified by training, experience, license, or certification to perform the delegated task. A professional responsibility that may not be delegated~~,~~ includes, but is not limited to, pulse oximetry;

~~(26) Accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;~~

(27) and (28) remain the same, but are renumbered (25) and (26).

~~(29)~~ (27) Failing to obtain informed consent from patient or patient's representative prior to providing any therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related care;

(30) and (31) remain the same, but are renumbered (28) and (29).

~~(32)~~ (30) Ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments, or services;

~~(33)~~ (31) Possessing, using, prescribing for use, or distributing controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diverting controlled substances or legend drugs, violating any drug law, or prescribing controlled substances for oneself;

~~(34)~~ (32) Prescribing, dispensing, or furnishing any prescription drug without a prior examination and a medical indication ~~therefore~~;

~~(35)~~ (33) Failing to provide to a patient, patient's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the medical record relating to the patient which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;

~~(36)~~ (34) Engaging in sexual contact, sexual intrusion, or sexual penetration, as defined in Title 45, chapter 2, MCA, with a client during a period of time in which a professional relationship exists; or

~~(37) Failing to account for funds received in connection with any services rendered or to be rendered.~~

~~(38)~~ (35) Failure to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.213.2101, or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, ~~37-28-210,~~ MCA

REASON: The board determined it is reasonably necessary to delete (22) as the board concluded the provision is too open to interpretation and therefore difficult to enforce in compliance actions.

The board is also removing (26), because in current RCP employment opportunities, licensees may be employed by hospitals or other entities that would not meet the language of this section.

After concluding that the board is ill-prepared to make any judgment on the accounting practices or abilities of licensees, the board is striking (37) from unprofessional conduct.

5. The proposed new rule provides as follows:

NEW RULE I TRAINING–CONSCIOUS SEDATION (1) Respiratory care practitioners shall meet the guidelines and protocols regarding education and training of those health care facilities that use or employ those respiratory care practitioners to administer intravenous (IV) conscious sedation.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-101, 37-28-102, MCA

REASON: The board is adopting New Rule I to reflect current practice within the profession of respiratory care regarding training for administration of IV conscious sedation. The board concluded that this new rule will help ensure that such licensees are adequately trained and work within standards of care.

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

24.213.501 INSTITUTIONAL GUIDELINES CONCERNING EDUCATION AND CERTIFICATION - WHEN REQUIRED located at page 24-24535, Administrative Rules of Montana.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-28-101, 37-28-102, MCA

REASON: After determining that the provisions in ARM 24.213.501 are almost entirely advisory in nature and therefore, not binding on licensees, the board is proposing to repeal this rule. Because the current rule is open to broad interpretation, the board also notes that the standards are difficult to enforce in a compliance action. The board is repealing this rule and adopting New Rule I, which clearly and succinctly states that RCP licensees are subject to the guidelines and protocols of their employing health facilities.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrcp@mt.gov, and must be received no later than 5:00 p.m., October 6, 2014.

8. An electronic copy of this notice of public hearing is available at www.respcare.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrcp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.213.301, 24.213.402, 24.213.408, 24.213.415, 24.213.504, 24.213.2101, 24.213.2104, 24.213.2107, 24.213.2111, 24.213.2114, and 24.213.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.213.501 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination(s) is available upon request to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, facsimile (406) 841-2305, or e-mail dlibsdrcp@mt.gov.

12. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
MARIA CLEMONS, PRESIDING OFFICER

/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 August 25, 2014

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.603 definitions, 24.301.606 plan review and permit fee, and 24.301.607 inspections - certificates - fees	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 2, 2014, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Building Codes Bureau no later than 5:00 p.m., on September 26, 2014, to advise us of the nature of the accommodation that you need. Please contact David White, Building Codes Bureau, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2009; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or dlibsdbcb@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The department determined it is reasonably necessary to amend several Elevator Safety Program (program) rules to remain compliant with the requirements of 37-1-134, MCA. Following an extensive program analysis and valid budgetary projections, the department concluded that the program is not operating in the manner required to keep the program's fees commensurate with associated costs.

Currently, the costs associated with a multi-story elevator are the same as the costs for a double stop device. Because actual inspection costs vary with the number of building floors and stops, the department is proposing to add a fee per stop for elevator plan review and permits, inspections, and reinspections. These fee adjustments will more accurately reflect the actual costs of the required inspections. The department is also defining an elevator "stop" to address confusion as to where passengers or freight may enter or depart, as this is directly related to the fee calculation.

The department estimates that the proposed fee changes will affect approximately 2,745 devices and result in additional annual revenue of $464,000.

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

24.301.603 DEFINITIONS (1) through (3) remain the same.

(4) "Stop" for the purpose of fee calculation is any vertical or horizontal location of the elevator opening, escalator, or moving walk which is used to receive or discharge passengers or freight.

AUTH: 50-60-203, 50-60-705, 50-60-715, MCA
IMP: 37-73-201, 37-73-203, 37-73-208, 37-73-212, ~~50-60-703,~~ 50-60-704, 50-60-705, 50-60-715, MCA

REASON: Implementation citations are amended to accurately reflect all statutes implemented through the rule by deleting reference to a repealed statute.

24.301.606 PLAN REVIEW AND PERMIT FEE (1) and (2) remain the same.
(a) valuation up to and including $40,000 $200 plus $50 per stop excluding lifts
(b) valuation over $40,000 $200 plus $50 per stop excluding lifts, plus $3 for each $1,000 or fraction thereof over $40,000
(3) through (6) remain the same.

AUTH: 50-60-705, 50-60-709, MCA
IMP: 50-60-105, 50-60-709, 50-60-711, MCA

24.301.607 INSPECTIONS - CERTIFICATES - FEES (1) through (7) remain the same.
(8) The fee for each separate department of inspection (~~initial,~~ annual, biennial, accident, or reinspection) is:
(a) elevator, escalator, and moving walk $140 per conveyance plus $50 per stop
(b) lifts $100 per conveyance
(c) department processing fee for a condition report issued by licensed private inspector $10 per conveyance
(d) certificate of inspection fee $10 per conveyance
(e) initial inspection for elevator, escalator, or moving walk $300 per conveyance plus $50 per stop
(f) reinspection of initial inspection $300 per conveyance plus $50 per stop
(9) remains the same.

AUTH: 50-60-705, 50-60-711, MCA
IMP: 50-60-103, 50-60-705, 50-60-706, 50-60-711, 50-60-715, MCA

REASON: In addition to the new $50 per stop fees, the department is amending this rule to more accurately reflect the costs for initial inspections and reinspection of initial inspections. Because these types of inspections are more involved and labor-intensive for inspectors, it is reasonably necessary to increase the fees to a level commensurate with the associated costs. The department is presenting these fees separately in this rule for added clarity.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or e-mail to dlibsdbcb@mt.gov and must be received no later than 5:00 p.m., October 10, 2014.

6. An electronic copy of this notice of public hearing is available at www.buildingcodes.mt.gov (department and program's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board or program administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dlibsdbcb@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.301.603, 24.301.606, and 24.301.607 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dlibsdbcb@mt.gov.

10. Colleen White, attorney, has been designated to preside over and conduct this hearing.

/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 August 25, 2014

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.405 pertaining to department of livestock miscellaneous fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 6, 2014, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: cmackay@mt.gov.

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

32.2.405 DEPARTMENT OF LIVESTOCK MISCELLANEOUS FEES

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

(m) Livestock inspection before removal from a county or before change of ownership ~~75 cents~~ $1.00 a head

(i) cow/calf pairs-spring going to pasture only ~~75 cents~~ $1.00 ~~per~~ a pair

(n) Livestock inspection before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse ~~75 cents~~ $1.00 a head

(o) through (p)(i) remain the same.

(q) Releasing an animal, except horses, mules, or asses, for the purpose of removal from a licensed livestock market ~~75 cents~~ $1.00 a head

(r) and (s) remain the same.

AUTH: 81-1-102, ~~81-22-102,~~ MCA
IMP: 81-3-107, 81-3-205, 81-3-211, 81-8-304, ~~81-9-112,~~ 81-9-113, MCA

REASON: The department proposes to amend the above-stated rule to ensure fees are commensurate with the costs of the inspection as required by 81-1-102(2), MCA.

The proposed $0.25 fee increase on livestock inspections provided by the department brand enforcement division will potentially affect approximately 15,000 producers seeking livestock inspections on approximately 952,000 head of livestock. The cumulative amount of the fee increase will be approximately $238,000 annually, based on these numbers.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., October 6, 2014.

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 a written request for a hearing and submit this request along with any written comments to the same address as above. The written request for hearing must be received no later than 5:00 p.m., October 6, 2014.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1500, based upon the estimate that 15,000 producers may request livestock inspection.

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

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

DEPARTMENT OF LIVESTOCK

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

BY: /s/ Robert Stutz
Robert Stutz
Rule Reviewer

Certified to the Secretary of State, August 25, 2014

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.104, 42.11.105, 42.11.106, 42.11.211, 42.11.213, 42.11.243, 42.11.245, and 42.11.402, and the repeal of ARM 42.11.205, 42.11.212, 42.11.214, 42.11.215, and 42.11.217 pertaining to liquor vendors	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 29, 2014, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 15, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.11.104 ~~WHOLESALE~~ CALCULATION OF POSTED PRICE (1) The ~~wholesale~~ posted price of liquor~~, other than fortified wine~~ is determined by ~~adding~~:

(a) ~~the department's base case cost; and~~ adding:

(i) the wholesale price as set forth in (2);

(ii) the liquor excise tax as determined under 16-1-401, MCA; and

(iii) the liquor license tax as determined under 16-1-404, MCA;

(b) ~~the state mark-up of 40 percent~~ dividing the total from (a) by the number of individual units within the case; and

(c) rounding the total from (b) up to the next nickel increment.

(2) The wholesale ~~selling~~ price ~~of fortified wine containing more than 16 percent but no greater than 24 percent alcohol by volume~~ is determined by ~~adding~~:

(a) adding:

(i) the ~~department's base~~ vendor's current quoted price per case ~~cost~~; and

(ii) the department's current freight rate per case to agency liquor stores; and

(b) multiplying the total from (a) by the state ~~mark-up of~~ markup as set forth

in (3).

(3) Unless a vendor qualifies for a reduced state markup under ARM 42.11.106, the state markup is as follows:

(a) 40 percent on any liquor other than fortified or sacramental wine;

(b) 51 percent on fortified wine containing more than 16 but no greater than 24 percent alcohol by volume; and

(c) 20 percent on sacramental wine containing more than 16 but no greater than 24 percent alcohol by volume.

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

AUTH: ~~16-1-103,~~ 16-1-303, MCA
IMP: ~~16-1-103, 16-1-106,~~ 16-1-302, ~~16-1-401, 16-1-404, 16-1-411, 16-2-301,~~ MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.11.104 to create better transparency in how the posted price of liquor is determined.

Because "wholesale price" is only one of the components used to determine the posted price of liquor, the department also proposes amending the rule title to better reflect the content of the rule as amended.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.11.105 DEFINITIONS ~~As used in~~ The following definitions apply to subchapters 1, 2, and 4~~, the following definitions apply~~:

(1) through (3) remain the same.

~~(4) "Base case cost" as it applies to liquor and fortified wine means the supplier's quoted price and the department's current freight rate to state agency liquor stores.~~

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

~~(13) "Posted price" as it applies to liquor and fortified wine, means the wholesale price of liquor and fortified wine sold to persons holding a liquor license issued by the department, and an excise tax and license tax as provided in Title 16, chapter 1, part 4, MCA, the total of which is rounded up to the next nickel increment.~~

(14) through (23) remain the same, but are renumbered (12) through (21).

AUTH: ~~16-1-103, 16-1-104,~~ 16-1-303, MCA
IMP: ~~16-1-103, 16-1-104,~~ 16-1-302, ~~16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107,~~ MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.11.105 to strike the term "base case cost" because it is no longer used in a rule and to strike the term "posted price" because it is already defined in statute.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.11.106 REDUCTION IN STATE ~~MARK-UP~~ MARKUP FOR DISTILLERIES AT OR BELOW 25,000 PROOF GALLONS (1) For purposes of applying 16-2-211, MCA, a reduced ~~mark-up~~ markup rate of 20 percent will be applied to all liquor products acquired from a distillery that manufactures, distills, rectifies, bottles, or processes 25,000 proof gallons or less of liquor nationwide annually.

(2) The 20 percent reduced ~~mark-up~~ markup rate is determined using a 100 percent reduction in ~~mark-up~~ markup after agency liquor store commissions and discount costs and the costs to operate the state liquor warehouse have been accounted for. These costs account for half of the standard ~~mark-up~~ markup normally collected on product sold by the department. The department will annually review the associated agency liquor store commissions and discount rate costs and the costs to operate the state liquor warehouse to ensure these costs do not exceed the reduced ~~mark-up~~ markup. The department will publish any adjustments to the reduced ~~mark-up~~ markup based on the results of the annual review.

(3) A distillery requesting a reduction in the state ~~mark-up~~ markup must certify with a sworn statement, on a form supplied by the department, that the number of proof gallons they have manufactured, distilled, rectified, bottled, or processed nationwide annually is at or below the 25,000 proof gallon threshold.

(4) A distillery requesting a reduced ~~mark-up~~ markup rate must submit this form and meet the specified requirements at the time of initially registering with the department and by February 15 of each of the following calendar years in order to receive the reduced ~~mark-up~~ markup rate.

(5) The following effective dates will apply for those distilleries that meet the reduced ~~mark-up~~ markup rate criteria:

(a) the department will apply the reduced ~~mark-up~~ markup rate to existing liquor products effective November 1, 2011;

(b) for each liquor product introduced thereafter, the distillery's current applicable ~~mark-up~~ markup rate will apply with an immediate effective date;

(c) each subsequent year, the distillery's applicable ~~mark-up~~ markup rate will be effective May 1 with the department's May, June, and July quarterly price book or the next available price book if the form is submitted after the February 15 annual deadline; and

(d) failure to submit the form annually to the department by February 15 will result in a 40 percent ~~mark-up~~ markup rate for liquor products, 20 percent for sacramental wine products, and 51 percent for fortified wine products.

(6) and (7) remain the same.

AUTH: ~~16-1-103,~~ 16-1-303, ~~16-2-211,~~ MCA
IMP: 16-2-211, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.11.106 to change "mark-up" to "markup" for formatting consistency with other rules and statutes.

Furthermore, the department reviewed the current authorization statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.11.211 ~~REGISTRATION OF~~ VENDOR REPRESENTATIVES (1) A

vendor ~~must~~ who desires to promote the sale of its liquor in Montana shall register ~~a~~ at least one representative with the department ~~in accordance with the provisions of ARM 42.11.212 through 42.11.215~~. A vendor may register a maximum of three representatives.

(2) ~~No person may be registered as a representative if he or she:~~

~~(a) has a direct or indirect financial interest in:~~

~~(i) an alcoholic beverage retail license;~~

~~(ii) a state agency liquor store;~~

~~(iii) a beer wholesaler's license;~~

~~(iv) a table wine distributor's license;~~

~~(v) a brewery; or~~

~~(vi) a licensed winery;~~

~~(b) is an officer, director, agent, or employee of an alcoholic beverage retail licensee, licensed beer wholesaler, table wine distributor, brewer, or licensed winery;~~

~~(c) is under the age of 18 years;~~

~~(d) has a history that would affect the performance of the representative; or~~

~~(e) is a nonresident of Montana~~ Liquor may only be promoted by the vendor's registered representative or a party accompanied by the vendor's registered representative, except as provided in (8).

(3) ~~Individuals seeking registration as a representative must submit a properly completed application to the department and supply proof of residency, as per 16-3-107, MCA. The completed application, proof of residency, and the requirements in (2) will be reviewed by the department for the purpose of approving a registration of representative~~ An applicant seeking to represent a vendor must submit an application and the vendor representative registration fee.

(4) ~~An application to register a representative must be signed by the vendor or an official of the vendor or the vendor's broker~~ The department shall approve an application upon determining that the applicant:

(a) possesses no ownership interest in any Montana alcoholic beverage retail license or a state agency liquor store;

(b) is 18 years of age or older; and

(c) is a resident of Montana.

(5) ~~Registration of a representative~~ A representative's registration is effective upon the department's approval ~~by the department~~ of the application. All registrations expire on September 30.

(6) ~~In addition to the definition of "resident" found in ARM Title 42, chapter 2, evidence of residency includes:~~

~~(a) qualification to vote in a Montana election;~~

~~(b) filing a Montana income tax return; or~~

~~(c) having a current Montana driver's license~~ A representative seeking registration renewal shall submit a renewal application and the vendor representative registration fee, postmarked by September 1.

(7) The department shall cancel the registration of a vendor's representative if requested in writing by the vendor.

(8) A vendor shall fill the one required representative position within 60 days of a vacancy. To promote its liquor during this 60-day period, the vendor must provide the department with advance written notice identifying the unregistered

representative.

(9) The annual registration fee for each vendor representative is $50. This fee must be paid when the applicant first seeks approval to represent a vendor and upon each renewal of the registration thereafter.

AUTH: ~~16-1-103,~~ 16-1-303, MCA
IMP: 16-3-103, 16-3-107, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.11.211 to revise the structure of the rule for improved readability, and to incorporate vendor representative and representative fee information currently found in other rules. The department's intent is to reduce the number of rules regarding similar subject matter by repealing rules with related or redundant content and relocating the relevant information into a single rule.

The department also proposes increasing the vendor representative registration fee and the annual renewal fees, which have existed unchanged since the mid-1970s, from $25 to $50. The department determined that this increase is necessary to more closely align the fees with present costs associated with processing vendor representative applications.

The department has determined that the proposed fee increase will impact 14 Montana distilleries with approximately 30 representatives between them, for a total combined increase in revenue of $750 annually. For the nearly 100 out-of-state vendors, the industry increase for the vendor registration fee will be approximately $7,425. With the data available it is not possible to determine which out-of-state vendors are small businesses. Therefore, this estimate includes all of the out-of-state vendors currently paying the vendor representative registration fee in Montana.

The department further proposes amending the title to better reflect the amended rule content, and striking an unnecessary authorization statute citation from the rule.

42.11.213 ~~APPLICATION FOR~~ VENDOR PERMIT (1) A vendor who desires to promote the sale of ~~the vendor's brands of~~ its liquor in Montana shall obtain a ~~through a representative must be the holder of a Montana~~ vendor permit from the department. ~~To hold a permit, vendors must register at least one representative in accordance with ARM 42.11.211 through 42.11.215. The vendor shall apply for the registration of a representative on forms provided by the department.~~

(2) ~~In considering an application for a vendor permit, the department shall review all matters pertaining to the general reputation of the vendor~~ An applicant for a vendor permit must submit an application and the vendor permit fee.

(3) The department shall deny an application upon determining that the applicant possesses an ownership interest in any Montana alcoholic beverage retail license or state agency liquor store.

(4) A vendor permit is effective upon the department's approval of the application. All vendor permits expire on September 30.

(5) A vendor seeking renewal of its vendor permit shall submit a renewal application and the vendor permit fee, postmarked by September 1.

(6) The annual vendor permit fee is based upon the total number of cases the

vendor sold to the department during the preceding fiscal year (July 1 to June 30) as follows:

(a) 0-24 cases = no charge;
(b) 25-100 cases = $100;
(c) 101-1,000 cases = $200;
(d) 1,001 - 2,000 cases = $300; and
(e) 2,001 or more cases = $400.

AUTH: 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.11.213 to provide more information about the permit required for vendors to promote liquor in Montana; to revise the structure of the rule for improved readability; and to incorporate related vendor permit information currently found in other rules. The department's intent is to reduce the number of rules regarding similar subject matter by repealing rules with redundant content and relocating the relevant information into other rules where appropriate.

The department also proposes changing the annual vendor permit fee from a $100 flat fee, which has existed unchanged since 2001, to a progressive fee schedule based upon volume sold. This proposed change will bring the vendor permit fee more in line with the fees charged to foreign wineries and wine importers.

The department has determined that the proposed sliding scale fee schedule will impact 14 Montana distilleries. Five will pay less than $200; seven will have an increase to $200, and two will pay more than $200, for a combined total increase of $900. For the nearly 100 out-of-state vendors, the industry increase for the vendor permit fee will be approximately $8,900. Forty-two will pay less than $200; 26 will pay $200; and 31 will pay more than $200. With the data available it is not possible to determine which out-of-state vendors are small businesses. Therefore, this estimate includes all of the out-of-state vendors currently paying the vendor permit fee in Montana.

The department further proposes to amend the title to better reflect the rule content as amended.

42.11.243 SAMPLES (1) through (8) remain the same.

(9) Sample products must meet the following criteria:

(a) samples are limited to ~~bottles~~ primary packaging containing no more than 750 milliliters; and

(b) through (10) remain the same.

(11) In order to distribute samples, the vendor's representatives must be registered as required under ARM 42.11.211, and the vendor must hold a current vendor permit as required under ARM 42.11.213.

AUTH: ~~16-1-103,~~ 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM

42.11.243 to replace the term "bottles" with "primary packaging" in (9), because bottles are not the only type of container approved for use with distilled spirits. "Primary packaging" is defined in ARM 42.11.105 and provides for the approved container types.

The department also proposes adding new (11) as a reminder within the samples rule that a vendor must register its representatives and hold a current vendor permit to distribute samples in the state.

The department further proposes striking an unnecessary authorization statute citation from the rule.

42.11.245 ADVERTISING SPECIALTIES (1) remains the same.

(2) Registered representatives may not directly or indirectly pay or credit the retailer for using ~~or distributing~~ these materials ~~or for any expense incidental to their use~~.

AUTH: ~~16-1-103,~~ 16-1-303, MCA
IMP: ~~2-4-307,~~ 16-3-103, MCA

REASONABLE NECESSITY: The department proposes amending the language in ARM 42.11.245 for clarity by striking "or distributing" and "or for any expense incidental to their use" from (2).

While registered representatives are permitted to distribute point of sale advertising materials and consumer advertising specialties to retailers for use in their establishments (without also providing any type of compensation), the retailers are not permitted to redistribute the materials because they are not registered or allowed to promote products. The rule does not otherwise prohibit the retailer from using the advertising materials or specialties in their establishment as intended.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer apply.

42.11.402 INVENTORY POLICY (1) remains the same.

(2) Each product a vendor desires to sell in the state of Montana must be approved by the department ~~prior to being accepted into the state liquor warehouse~~. In order to consider the product for approval, the department must receive a picture copy of the product's primary packaging.

(3) and (4) remain the same.

AUTH: ~~16-1-103,~~ 16-1-303, MCA
IMP: ~~16-1-103,~~ 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.11.402 to clarify that the rule pertains to all liquor sold in the state and not just product shipped through the state liquor warehouse.

Furthermore, the department reviewed the current authorization and implementing statutes as cited for the rule and proposes striking any that serve no purpose or no longer apply.

4. The department proposes to repeal the following rules:

42.11.205 VENDORS' EMPLOYMENT OF REPRESENTATIVES

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-103, 16-3-107, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.11.205 and relocating information regarding vendor representatives to ARM 42.11.211. It is the department's intention to eliminate redundancy and improve the readability of the rules by providing all information about vendor representatives in a single rule.

42.11.212 RESTRICTION ON NUMBER OF REPRESENTATIVES

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-103, 16-3-107, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.11.212 and relocating information regarding vendor representatives to ARM 42.11.211. It is the department's intention to eliminate redundancy and improve the readability of the rules by providing all information about vendor representatives in a single rule.

42.11.214 PERMIT AND REGISTRATION FEES

AUTH: 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.11.214 and relocating information regarding vendor representatives to ARM 42.11.211 and relocating information regarding vendor permits to ARM 42.11.213. It is the department's intention to eliminate redundancy and improve the readability of the rules by providing all information about vendor representatives in one rule and all information about vendor permits in another rule.

42.11.215 EXPIRATION AND RENEWAL OF REGISTRATION

AUTH: 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.11.215 and relocating information regarding vendor representatives to ARM 42.11.211 and relocating information regarding vendor permits to ARM 42.11.213. It is the department's intention to eliminate redundancy and improve the readability of the rules by providing all information about vendor representatives in one rule and all

information about vendor permits in another rule.

42.11.217 CANCELLATION OF REGISTRATION

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-107

REASONABLE NECESSITY: The department proposes repealing ARM 42.11.217 and relocating information regarding vendor representatives to ARM 42.11.211. It is the department's intention to eliminate redundancy and improve the readability of the rules by providing all information about vendor representatives in a single rule.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 10, 2014.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. 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.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 42.11.211 and 42.11.213 will directly but

not significantly impact a small number of small businesses. The department has determined that the amendment and repeal of the remaining rules herein will not significantly and directly impact small businesses. Documentation of the department's determination is available upon request from the person in 5.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State August 25, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III pertaining to claiming the unlocking state lands tax credit	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 29, 2014, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 15, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Agreement" means the contract for participation entered into between the Department of Fish, Wildlife and Parks (FWP) and the landowner(s) for purposes of guaranteeing access to state land under the unlocking state lands program.

(2) "Tax certification number" means the number issued by FWP certifying that the landowner is providing qualified access to state land under the unlocking state lands program provided for in 87-1-294, MCA.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to implement House Bill (HB) 444, L. 2013, which established the unlocking state lands program. The proposed new rule will define terms used in a proposed new subchapter in ARM Title 42, which will house the department's rules regarding the process for claiming the unlocking state lands tax credit.

NEW RULE II CLAIMING THE UNLOCKING STATE LANDS TAX CREDIT

(1) To claim the unlocking state lands tax credit, a taxpayer shall file a Montana tax return (Form 2 for individuals, Form FID-3 for estates and trusts, or

Form CIT for C corporations), whether or not they are otherwise required to file a tax return for the year the credit is being claimed.

(2) A taxpayer who files a tax return on a calendar year basis shall claim the credit for the tax year in which the agreement applied.

(3) A taxpayer who files a tax return on a fiscal year basis shall claim the credit for the tax year in which the agreement was certified by FWP.

(4) The taxpayer shall include copies of all tax certification numbers, agreements, and supporting documents when filing their return. If the return is filed electronically using software that does not support attachments, the taxpayer shall retain the information and provide it to the department upon request.

(5) When reviewing a claim for the credit, the department may request additional information to determine a taxpayer's eligibility for the allocation of the credit being claimed. This information may include, but is not limited to:

(a) documentation establishing ownership and ownership percentage of the parcel(s);

(b) a Montana Schedule K-1 issued by a partnership, S corporation, or fiduciary indicating the partner, shareholder, or beneficiary's share of the credit; or

(c) a return filed by a partnership, S corporation, or fiduciary including information showing the owners of the entity.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule II to implement HB 444, L. 2013, which established the unlocking state lands program. The proposed new rule will provide guidance for taxpayers claiming the associated unlocking state lands tax credit.

NEW RULE III ALLOCATION OF CREDIT FOR ACCESS THROUGH LAND WITH MULTIPLE OWNERS AND LAND OWNED BY PASS-THROUGH ENTITIES

(1) For purposes of calculating the tax credit permitted by the unlocking state lands program, parcels held wholly or in part by an entity disregarded for tax purposes shall be treated as owned by the entity's owner or owners. For example, a parcel held in the name of a single-member limited liability company that is disregarded for tax purposes shall be considered as owned by the sole member, or sole member and spouse, if applicable.

(2) Unless substantiation of a different ownership split is provided by all landowners, the credit for access granted through land having multiple owners, such as two individuals or an individual and an unrelated corporation, shall be divided equally among the landowners.

(3) The credit for access through land owned by an S corporation must be allocated to its shareholders in the same manner the S corporation uses to allocate its items of income or loss to its owners for Montana income tax purposes.

(4) A partnership that is entitled to the credit may allocate the total credit in a manner that is mutually agreeable to its partners. Evidence of such an allocation may include, but is not limited to, Montana Schedule(s) K-1, terms of the partnership agreement that are specific to this credit or a separate agreement between the

partners regarding the allocation of this credit. If evidence of the allocation is not provided to the department upon request, or if the information provided is deficient, the total credit must be allocated to the partners in the same manner the partnership allocated its income and losses to its owners for Montana income tax purposes.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule III to implement HB 444, L. 2013, which established the unlocking state lands program. The proposed new rule will provide guidance for taxpayers claiming the associated unlocking state lands credit. The proposed new rule also outlines how the credit will be allocated in various ownership combinations, including when parcels have multiple owners or owners that are pass-through entities such as partnerships or subchapter S corporations.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 10, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 444, L. 2013, Representative Tom Jacobson, was contacted by regular mail on February 4, 2014, and subsequently notified on August 5, 2014.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State August 25, 2014.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 44.5.121 pertaining to fees charged by the Business Services Division	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 26, 2014, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on September 19, 2014, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

<u>NEW RULE I MANUAL AND ONLINE SEARCH FEES</u>

(1) Principal search:	
(a) State agency	$0.50 per search
(b) State university	no charge
(c) All other customers	2.00 per search
(2) Individual name search:	
(a) State agency	1.00 per search
(b) State university	no charge
(c) All other customers	4.00 per search

AUTH: 2-15-403, 2-15-405, MCA
IMP: 2-15-403, 2-15-405, MCA

REASON: The Secretary of State is required by 2-15-405, MCA, to "set by administrative rule each fee authorized by law." The Secretary of State currently charges the above-referenced fees for business searches done online by customers through the Secretary of State's web site. This rule allows the Secretary of State to charge a fee for search requests received in writing and fulfilled manually by Secretary of State staff as well as searches conducted online by Business Services Division customers. The proposed fees will compensate for staff time, the cost of paper, envelopes, postage, toner, etc., and for the fees the Secretary of State pays

to the state contractor to support the Secretary of State's online business filing system.

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

44.5.121 MISCELLANEOUS FEES (1) through (4) remain the same.

(5) ~~Copy of new business entity list per month~~ Miscellaneous business entity reports 80.00

(6) through (9) remain the same.

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, MCA

REASON: This amendment will better accommodate the different miscellaneous business entity reports the Secretary of State processes through requests received from the business community. The Secretary of State submits complex jobs through an antiquated mainframe application to accommodate these reports with support from our contractor.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 3, 2014.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

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

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

10. The Secretary of State estimates that the cumulative amount for all persons for the fees set forth in New Rule I will be $3,760 and the number of persons affected is 661. The Secretary of State estimates that the cumulative amount for all persons for the fees set forth in ARM 44.5.121, Miscellaneous Fees, will be $5,630 and the number of persons affected is 5 to 20.

11. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses because the Secretary of State has been providing these services to the business community for years.

/s/ JORGE QUINTANA	/s/ LINDA MCCULLOCH
Jorge Quintana	Linda McCulloch
Rule Reviewer	Secretary of State

Dated this 25th day of August, 2014.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 pertaining to the scheduled dates for the 2015 Montana Administrative Register	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 25, 2014, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 18, 2014, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2014 Register Publication Schedule~~

~~Issue~~	~~Filing (due by noon)~~	~~Publication~~
~~1~~	~~January 6~~	~~January 16~~
~~2~~	~~January 21~~	~~January 30~~
~~3~~	~~February 3~~	~~February 13~~
~~4~~	~~February 18~~	~~February 27~~
~~5~~	~~March 3~~	~~March 13~~
~~6~~	~~March 17~~	~~March 27~~
~~7~~	~~March 31~~	~~April 10~~
~~8~~	~~April 14~~	~~April 24~~
~~9~~	~~April 28~~	~~May 8~~
~~10~~	~~May 12~~	~~May 22~~
~~11~~	~~June 2~~	~~June 12~~
~~12~~	~~June 16~~	~~June 26~~

~~13~~	~~June 30~~	~~July 10~~
~~14~~	~~July 14~~	~~July 24~~
~~15~~	~~July 28~~	~~August 7~~
~~16~~	~~August 11~~	~~August 21~~
~~17~~	~~August 25~~	~~September 4~~
~~18~~	~~September 8~~	~~September 18~~
~~19~~	~~September 29~~	~~October 9~~
~~20~~	~~October 14~~	~~October 23~~
~~21~~	~~October 27~~	~~November 6~~
~~22~~	~~November 10~~	~~November 20~~
~~23~~	~~December 1~~	~~December 11~~
~~24~~	~~December 15~~	~~December 24~~

2015 Register Publication Schedule

Issue	Filing (due by noon)	Publication
1	January 5	January 15
2	January 20	January 29
3	February 2	February 12
4	February 17	February 26
5	March 2	March 12
6	March 16	March 26
7	April 6	April 16
8	April 20	April 30
9	May 4	May 14
10	May 18	May 28
11	June 1	June 11
12	June 15	June 25
13	July 6	July 16
14	July 20	July 30
15	August 3	August 13
16	August 17	August 27
17	August 31	September 10
18	September 14	September 24
19	October 5	October 15
20	October 19	October 29
21	November 2	November 12
22	November 16	November 25
23	November 30	December 10
24	December 14	December 24

(2) remains the same.

AUTH: 2-15-401, MCA
IMP: 2-4-312, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2015. The schedule is

being proposed at this time in order that it may be adopted in October to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 3, 2014.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

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

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Jorge Quintana	/s/ Linda McCulloch
JORGE QUINTANA	LINDA MCCULLOCH
Rule Reviewer	Secretary of State

Dated this 25th day of August, 2014.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3501 and 2.43.5101 pertaining to the adoption by reference of the State of Montana Public Employee Defined Contribution Plan Document and the State of Montana Public Employee Deferred Compensation (457) Plan Document	))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 26, 2014, the Public Employees' Retirement Board published MAR Notice No. 2-43-510 pertaining to the proposed amendment of the above-stated rules at page 1302 of the 2014 Montana Administrative Register, Issue Number 12.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ Scott Moore
Scott Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State August 25, 2014.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.9.1301, 12.9.1302, 12.9.1303, 12.9.1304, and 12.9.1305 regarding gray wolf management	))))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 31, 2013, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-401 pertaining to the proposed amendment of the above-stated rules at page 1886 of the 2013 Montana Administrative Register, Issue Number 20. On April 24, 2014, the commission published the notice of amendment at page 843 of the 2014 Montana Administrative Register, Issue Number 8.

2. In the notice of amendment, the amendments to ARM 12.9.1305 were incorrect. The deletion of (11)(a) was not demonstrated appropriately. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined.

12.9.1305 ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF

(1) The commission delegates its authority to the department to authorize lethal control of problem wolves. The department may authorize the following to conduct lethal control of problem wolves:

(a) the department;

(b) USDA Wildlife Services pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;

(c) Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;

(d) ~~control by~~ a livestock owner, immediate family member, employee, or other person authorized by the department with a permit issued by the department under the conditions authorized and specified on the permit;

(e) control to protect human safety; or

(f) control pursuant to 87-1-901, MCA.

(2) through (8) remain as proposed.

(9) The permit must specify:

(a) its duration and expiration date;

(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit or other department authorization and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) that wolves may be killed ~~using means of take authorized by the commission for wolf harvest seasons~~ from the ground and in a manner that does not

entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

(10) remains as proposed.

(11) A landowner or landowner agent, pursuant to 87-1-901, MCA, may take a wolf on the landowner's property without permit or license when the wolf is a potential threat as defined in ARM 12.9.1302 ~~to human safety, livestock, or domestic dog~~ until the quota established by the commission under 87-1-901, MCA, is met.

~~(a) Wolves representing a potential threat to human safety, livestock, or dogs do not include wolves that might routinely use an area as free-ranging wildlife.~~

(b) and (c) remain as proposed but are renumbered (a) and (b).

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA
IMP: 87-1-201, 87-1-301, 87-1-901, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 30, 2014.

/s/ Dan Vermillion	/s/ Rebecca Jakes Dockter
Dan Vermillion, Chairman	Rebecca Jakes Dockter
Fish and Wildlife Commission	Rule Reviewer

Certified to the Secretary of State August 25, 2014

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

In the matter of the adoption of NEW RULE I pertaining to hunters against hunger program	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 26, 2014, the Department of Fish, Wildlife and Parks published MAR Notice No. 12-416 pertaining to the proposed adoption of the above-stated rule at page 1315 of the 2014 Montana Administrative Register, Issue Number 12.

2. The department has adopted the above-stated rule as proposed: New Rule I (12.3.411).

3. No comments or testimony were received.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

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

Certified to the Secretary of State August 25, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.55.109 pertaining to incorporation by reference	)))	NOTICE OF AMENDMENT (CECRA)

TO: All Concerned Persons

1. On March 13, 2014, the Department of Environmental Quality published MAR Notice No. 17-357 regarding a notice of proposed amendment (no public hearing contemplated) of the above-stated rule at page 436, 2014 Montana Administrative Register, Issue Number 5.

2. The department has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.55.109 INCORPORATION BY REFERENCE (1) through (3) remain as proposed.

(4) The references adopted in (1)(c) through (1)(f) are to be used as screening levels. When the department uses screening levels referenced in (1)(d) and (1)(e) rather than site-specific data to make a listing decision under ARM 17.55.108, it shall use the higher applicable screening level provided for in (1)(d) or (1)(e). ~~and t~~The department's use of these screening levels for purposes of ARM 17.55.108(1) does not establish these levels as cleanup standards.

(5) remains as proposed.

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

COMMENT NO. 1: The background concentrations should be published in the amendment rather than incorporating the document by reference.

RESPONSE: The Montana Administrative Procedure Act provides for incorporation by reference of publications and the format used in this rulemaking is standard for agency rulemaking as well as with the way the existing rule was adopted. The background study containing Table 4-4, which identifies the background concentrations, is available on the department's web site and the table would be difficult to publish legibly on an ARM page, because of the number of columns in the table.

COMMENT NO. 2: The proposed amendment should incorporate the entire background study report, as it contains important information regarding sample collection procedures and data evaluation processes.

RESPONSE: The background study containing Table 4-4, which identifies the background concentrations, is available on the department's web site. The department does not agree that it is necessary to include the entire study in the incorporation rule, as the department is not adopting sample collection procedures

and data evaluation processes, but only the background values themselves. This is consistent with the way the other publications already incorporated by reference are adopted.

COMMENT NO. 3: One commenter noted that the proposed amendment was not developed with representation of a stakeholder group. Another commenter requested that the department enlist a stakeholder group to discuss the rule and, if the department moved forward without consultation with the stakeholder group, requested a hearing on the rules prior to adoption.

RESPONSE: Following receipt of these comments, the department convened a stakeholder group meeting and discussed the proposed rule amendment. The department and stakeholders had a productive dialogue and no one voiced any objection to the department proceeding to adopt the proposed amendment. As the requested consultation meeting was held, the department is not holding a hearing on the proposed rule amendment.

COMMENT NO. 4: The study to establish statewide background concentrations was not developed with input from the regulated communities and it may not be appropriate to establish these concentrations due to differing geology, land use, and population density across the state.

RESPONSE: The department, through its retained consultant, conducted the background study with the goal of identifying generic Montana-specific background concentrations of inorganic constituents in surface soil that could be used for initial screening of sites. The department does not agree that the study required the input from the regulated community, as conducting the study is within the department's expertise and is part of the department's administration of CECRA. In the absence of the background study, EPA regional screening levels, which in many cases provide levels far below the Montana-specific background levels contained in Table 4-4, would be used for screening inorganic constituents. Therefore, there is a benefit to the regulated community in the event that sites which may have exceedances of regional screening levels do not exceed the background levels, thus avoiding listing on the CECRA priority list.

COMMENT NO. 5: The preference for locally derived background data should be included in the proposed amendment.

RESPONSE: The requirement to consider site-specific background data when available is already provided for in ARM 17.55.108(5).

COMMENT NO. 6: The data set used to derive the background values should be made available via the department's web site in spreadsheet format.

RESPONSE: The department will place the spreadsheet containing the data on the web site as requested.

COMMENT NO. 7: Background values should not be established based on the fines fraction data set since fines fraction is not a standard soil analytical procedure.

RESPONSE: The standard soil analytical procedure for lead is analysis of the fine (<250 µm or 60-mesh sieved) fraction, because the smaller particles are more likely to be inadvertently ingested and more likely to adhere to the skin (EPA Superfund Lead-Contaminated Residential Sites Handbook, August 2003). The department designed the background study to include a comparison of bulk versus fine fractions to determine whether it is appropriate to analyze the sieved portion of samples for all metals, rather than only sieved samples for lead analysis. A statistical analysis of the study results revealed a prevalence of higher concentrations of metals in the fine fraction than in the bulk fraction. Therefore, it is appropriately protective for the department to base the background values on the fine fraction and to compare those values to sieved sample concentrations.

COMMENT NO. 8: The sample interval used in the background study (zero to six inches) is not consistent with the Tier 1 Surface Soil Risk-based Screening Levels which used a zero to two-foot interval. Therefore, the background values are not applicable to the appropriate surface soil interval.

RESPONSE: Because of the way the undisturbed sample locations were chosen in the background study, the composition of the soil from six to twenty-four inches is not expected to differ from the sampled interval of zero to six inches. If a potential site exhibited different characteristics, the option for site-specific background data collection is provided for in ARM 17.55.108(5).

COMMENT NO. 9: Composite samples were not properly homogenized in the field. The samples were placed in a Ziploc bag and should have been mixed in a stainless steel bowl using stainless steel utensils.

RESPONSE: The department is not aware of information that indicates compositing samples in a stainless steel bowl is any better than the use of a Ziploc bag, nor that there is any requirement to do so.

COMMENT NO. 10: Field duplicates were collected as splits of the regular composite soil sample, which only evaluates the precision of the analytical laboratory and not the entire data collection program.

RESPONSE: Field duplicate samples are designed to monitor overall sampling and analytical precision. Soil field duplicates are typically collected by collecting a grab or composite sample, homogenizing the sample, and splitting the sample into two equal aliquot parts. Since both the parent sample and the duplicate sample are collected in exactly the same manner, this method evaluates both sampling and analytical precision. Given the heterogeneity of soils, this method is preferable to collocated samples. EPA Region IX [Sampling and Analysis Plan (Field Sampling Plan and Quality Assurance Project Plan) With Guidance, March 1997], the EPA Environmental Response Team (Standard Operating Procedure Six Quality Assurance/Quality Control Samples, February 1992), and the state of New Jersey (Field Sampling Procedures Manual, August 2005) all recommend homogenization of field duplicate soil samples.

COMMENT NO. 11: Two surface soil samples per county are not sufficient to allow a statistical evaluation of constituent concentrations at the county level. The

sample program did not evaluate population distribution, land use, or other factors that might logically be used to select a sample distribution.

RESPONSE: The sampling design provides for complete geographic coverage of the state with 112 total samples (excluding quality control samples). This data set is adequate for evaluation of statewide background concentrations. Areas of the state where inorganic concentrations have been more influenced by population, land use, or other factors may be evaluated using site-specific background concentrations.

COMMENT NO. 12: It may not be appropriate to combine the data sets across the state given the different land-forms throughout the state. Additional statistical evaluation is needed to determine if a statewide background concentration is statistically appropriate.

RESPONSE: The background study is based upon an evaluation of background inorganic concentrations across the state. Without the use of this state-specific level for screening purposes, the department would use the regional screening levels, which, in many cases, are more conservative and could result in the listing of sites unnecessarily. The department agrees that the use of site-specific background for screening is appropriate, if such data exists, and ARM 17.55.108(5) provides for this.

COMMENT NO. 13: The statistical value used as the background value was the 95 percent upper tolerance limit (UTL) with 90 percent coverage. A coverage rate of at least 95 percent or higher should be used to minimize the possibility of characterizing clean sites as being contaminated. EPA's ProUCL software guidance implies that 95 percent confidence UTL with 95 percent coverage is typical for calculating a background value. ProUCL provides the upper simultaneous limit (USL) which could be considered for use as it would not be subject to false positives. Sites with soil concentrations that exceed the USL of 95 percent should not be considered contaminated.

RESPONSE: The department chose to evaluate the background study data using a UTL with a 95 percent confidence limit with 90th percentile coverage based upon federal and state guidance and on the need to be appropriately protective of human health while providing a realistic characterization of naturally occurring inorganics in soil. Nearly every background inorganic compound data set was lognormally distributed, which precluded the selection of a statistic that would include a larger portion of the population. The EPA Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities Unified Guidance (EPA 2009) cautions that "UTLs based upon lognormal distributions are typically higher…than other parametric or nonparametric UTLs." It is the department's responsibility to be appropriately conservative and protective of human health in its screening process. Therefore, it is more important that the department avoid false negatives than false positives.

COMMENT NO. 14: The use of the 95 percent UTL with 95 percent coverage would not modify the current arsenic action limit of 40 mg/kg. Also, lowering the action level could reopen sites with concentrations below the current arsenic action

limit, but higher than the proposed background level. If the proposed background values were based on the 95 percent UTL with 95 percent coverage, the department would not need to expend resources to reevaluate sites for potential reopening.

RESPONSE: Please see Response to Comment No. 13 regarding use of the 95 percent UTL with 95 percent coverage. Also, the department does not anticipate reopening or reevaluating sites that have already been closed based solely upon the change in the arsenic screening level.

COMMENT NO. 15: ProUCL recommends that a point-by-point comparison of individual samples be used only for a small number of site observations due to the likelihood of generating false positive errors with larger sample numbers. For example, collection of only seven samples from a clean site would result in a greater than 50 percent probability that at least one sample would exceed the background value. This could result in false positive results, requiring unwarranted additional investigation. The background values will routinely falsely identify clean sites as being contaminated and place unwarranted demands on department and responsible party resources.

RESPONSE: The department intends that point-by-point comparisons to the background levels be the first step in the screening process, with site-specific background analysis and/or other statistical analyses available as appropriate. The EPA ProUCL Version 5.0.00 Technical Guide (EPA 2013) cited by the commenters actually states on page 20 that this is appropriate. Specifically, the guidance provides that, "A site observation exceeding a background UTL may lead to the conclusion that the constituent is present at the site at levels greater than the background concentrations level." Page 21 of the guidance further states that point-by-point comparisons are useful to "1) screen and identify the contaminants/ constituents of potential concern (COPCs), 2) identify the potentially polluted site areas of concern (AOCs), or 3) continue or stop remediation or excavation at an onsite area of concern." These are exactly the types of decisions for which the department proposes to use the UTLs. Statistically, there is 95 percent confidence that only 10 percent of any number of samples collected from a population that truly represents background would exceed the department's background values. EPA's caution regarding point-by-point comparisons and background values relates to the need to evaluate realistic exposures in areas large enough to have more than six samples, not that additional point-by-point comparisons may change the probability of exceedance. The commenters appear to be incorrectly applying the increase in probability of exceeding any one of a set of criteria for multiple parameters every time a new parameter is added to the criteria with the probability of collecting additional samples or an entire new data set.

COMMENT NO. 16: If used, the background values in Table 4-4 should be rounded to the number of significant digits reported in the underlying data set.

RESPONSE: When the department developed the Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases, it rounded the screening level values to the nearest significant digit in the summary tables, which has resulted in confusion for users and a reliance on the non-rounded values presented in the

master tables. The department did not want to create this same type of confusion in the background study and, therefore, did not round the values.

COMMENT NO. 17: Screening levels identified in ARM 17.55.109 are often used as de facto cleanup levels, so the background values need to be statistically sound, applicable across diverse geological settings, and focus on constituents that present a potential threat. This could also affect sites where Phase II environmental site assessments are being conducted, as the background values will be used for determining a recognized environmental condition at a site, which could depress property values and hinder development.

RESPONSE: ARM 17.55.109(4) provides that the referenced documents are to be used as screening levels and that they are not cleanup standards. Screening levels serve as a baseline tool to assess whether there is a need for further evaluation. Some parties may choose to use screening levels as cleanup levels in order to save the time and expense of calculating site-specific cleanup levels, but that practice is not mandated by the department. In addition, collection of site-specific background samples is also available and can be used in a Phase II environmental site assessment to ensure that a site is not improperly characterized as having a recognized environmental condition. This addresses the commenter's concern regarding property values and development.

COMMENT NO. 18: The proposed background values are based on the 90th percentile of the background data set and exceedance rates are expected to be approximately 10 percent. Samples collected from counties in mineralized regions have a greater probability of a false positive. The department should consider using other background values for specific geological types associated with mineralized areas.

RESPONSE: While mineralized regions may have higher concentrations of inorganics, it is not appropriate to allow non-mineralized portions of the state to be contaminated to levels that represent mineralized areas. Rather, the background values are meant to represent the state as a whole, while still allowing the collection of site-specific background data for sites in mineralized areas as provided for in ARM 17.55.108(5).

COMMENT NO. 19: The background study avoided mineralized areas by not collecting samples within 1/2 mile of known abandoned mine sites. Avoiding mineralized areas imparts a low bias to the sample results and inadequately addresses regional variations in inorganic constituent concentrations.

RESPONSE: The department collected samples from every county in the state and the data sets included outliers that are representative of the more mineralized portions of the state. The department included all outliers in its calculation of the background values so that the generic statewide background concentrations would be representative of all areas of the state. In addition, the opportunity to collect site-specific background data is provided for in ARM 17.55.108(5).

COMMENT NO. 20: Table 4-4 includes constituents with a proposed background value less than the corresponding EPA regional screening level. It is not clear why exceeding a background value for these constituents would result in a determination of a potential imminent or substantial threat. The department should clarify that either the background value or regional screening level, whichever is higher, is used and also focus on the receptor group that may be an issue.

RESPONSE: When using the screening levels to screen a site, the department will generally use the higher of the EPA regional screening level or the background level found in Table 4-4. For example, the EPA regional screening level for cobalt is 2.3 milligrams per kilogram (mg/kg) and the background level in Table 4-4 is 10 mg/kg. Typically, the department would use 10 mg/kg for screening. The exception to this would be when there is site-specific background data available that is lower than the Table 4-4 background levels. In that instance, the site-specific data could be used as provided for in ARM 17.55.108(5) in place of the Table 4-4 background levels. The department has added this clarification to the rule. Receptors are already considered in listing decisions; see ARM 17.55.108(5).

COMMENT NO. 21: The background study lists nine other states for which background soil concentrations have been calculated and only one utilizes a 90th percentile as the basis for calculating a background value. Other states utilize a more statistically robust method to better control the false positive error rate. The department could propose that a statistical test be conducted on the data instead of setting an overly conservative background value.

RESPONSE: The department anticipates that other options may be considered if site observations exceed the UTL for a particular compound. For mineralized areas, the option of obtaining site-specific background samples is available. In addition, the department anticipates allowing more rigorous statistical analyses to compare site populations to background data sets to determine if the site concentrations are protective or to determine if there is a statistical difference between site concentrations and background. These statistical analyses may include hypothesis testing where appropriate.

COMMENT NO. 22: ProUCL provides the USL, which could be considered for use as it would not be subject to false positives. Sites with soil concentrations that exceed the USL of 95 percent should not be considered contaminated.

RESPONSE: The ProUCL guidance provides the following caution in several locations: "Caution: To provide a proper balance between false positives and false negatives, the upper limits described above, especially a 95 percent USL (USL95) should be used only when the background data set represents a single environmental population without outliers (observations not belonging to background). Inclusion of multiple populations and/or outliers tends to yield elevated values of USLs (and also of UPLs and UTLs) which can result in a high number (and not necessarily high percentage) of undesirable false negatives, especially for data sets of larger sizes (e.g., n > 30)." (emphasis added). The data sets include outliers but, since there were no problems associated with the data, the department had no reason to discard these outliers that are representative of mineralized areas of the state. Based on the guidance, the department utilized the UTL to avoid false

negatives in the initial screening of sites for listing on the CECRA priority list.

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, August 25, 2014.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 18.6.101, 18.6.102, 18.6.103, 18.6.111, 18.6.121, 18.6.131, 18.6.141, 18.6.151 pertaining to junkyard regulations	)))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On July 10, 2014, the Department of Transportation published MAR Notice No. 18-148 pertaining to the proposed repeal of the above-stated rules at page 1465 of the 2014 Montana Administrative Register, Issue Number 13.

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

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

COMMENT #1:

One comment was received stating agreement that parts of the Motor Vehicle Recycling and Disposal statutes (Title 75, chapter 10, part 5, MCA) are duplicated in the Junkyard regulation statutes (Title 75, chapter 15, part 2, MCA). The comment stated the department should not repeal the entire Junkyard statutes, as the statutes could still be used to clean up activities that are not related to motor vehicles.

RESPONSE #1:

The department acknowledges receipt of the comment in support of its statement of reasonable necessity which noted the junkyard rules proposed for repeal were duplicative of the Motor Vehicle Recycling and Disposal program. The department further notes that the Junkyard statutes found at Title 75, chapter 15, part 2, MCA, may only be repealed by the Montana Legislature, and not the department.

/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 August 25, 2014.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.202, 18.8.408, 18.8.509A, 18.8.1301, 18.8.1401, 18.8.1505 and the repeal of ARM 18.8.411, 18.8.413, and 18.8.430 pertaining to Motor Carrier Services housekeeping	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 10, 2014, the Department of Transportation published MAR Notice No. 18-149 pertaining to the proposed amendment and repeal of the above-stated rules at page 1468 of the 2014 Montana Administrative Register, Issue Number 13.

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 August 25, 2014.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.114.301 definitions, 24.114.503 licensure of applicants from other states, 24.114.2101 renewals, 24.114.2301 unprofessional conduct, and the adoption of NEW RULE I architect continuing education	)))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 13, 2014, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-34 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 443 of the 2014 Montana Administrative Register, Issue No. 5.

2. On April 7, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the April 14, 2014, deadline.

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

ARM 24.114.301 DEFINITIONS

COMMENT 1: One commenter asserted that the proposed definition of incidental architectural services being added at (3) encourages the continued practice of architecture by engineers. The commenter suggested the board state that it is illegal for engineers to determine their competence for themselves.

RESPONSE 1: The board disagrees with the comment and asserts that leaving the term undefined would actually encourage practice of architecture by engineers. The proposed definition resulted from a combined effort of the board and the Board of Professional Engineers and Professional Land Surveyors. The board has defined the term pursuant to its statutory authority.

ARM 24.114.2301 UNPROFESSIONAL CONDUCT

COMMENT 2: One commenter stated that specific infractions of not meeting the continuing education requirements should be handled as unprofessional conduct.

RESPONSE 2: The board agrees that licensees not meeting the continuing education requirements will face potential discipline on a case-by-case basis

pursuant to the proposed unprofessional conduct language.

NEW RULE I ARCHITECT CONTINUING EDUCATION REQUIREMENTS

COMMENT 3: One commenter agreed that some continuing education (CE) is necessary, but asserted that 12 hours of CE is too much and suggested reducing the number of hours required to eight, which is both more affordable and what California and Nevada require.

RESPONSE 3: The board followed the directive a number of other jurisdictions have already in place, or are in the process of implementing regarding CE requirements. The board concluded that 12 hours of CE is necessary to ensure architects practicing in Montana are maintaining current knowledge and thereby protecting Montana's public health, safety, and welfare. The board also notes that there are numerous CE courses available at little or no cost via the internet.

COMMENT 4: One commenter supported implementing required CE, but suggested the proposed rule recognize AIA-certified courses in areas of health, safety, and welfare. The commenter stated that doing so will allow licensees some measurable assurance that courses would fulfill Montana's CE requirement.

RESPONSE 4: The board followed the directive a number of other jurisdictions have already in place, or are in the process of implementing regarding CE requirements. The board asserts that the course standards in the new rule are necessary to ensure architects practicing in Montana are maintaining current knowledge and protecting Montana's public health, safety, and welfare. If AIA-certified courses fall within the types of courses in the rule, the board will recognize the courses. However, the board agrees that the current language in (3)(b) is not descriptive enough and is amending the rule accordingly.

COMMENT 5: One commenter stated that disallowing carryover CE credits is somewhat restrictive and suggested that the board acknowledge credits obtained within 16 to 18 months of the renewal date. The commenter asserted that doing so would greatly assist licensees with professional scheduling of CE courses. Another commenter stated disallowing carryover credits creates an undue burden on licensees and suggested the board allow a nominal amount of credits, such as six credits, to be carried over.

RESPONSE 5: The board followed the directive a number of other jurisdictions have already in place, or are in the process of implementing regarding CE carryover. The board believes that disallowing carryover credits is necessary to ensure architects practicing in Montana are maintaining current knowledge and thereby protecting Montana's public health, safety, and welfare. The board also notes that there are numerous CE courses available at little or no cost via the internet.

COMMENT 6: One commenter stated course certificates should not be required to contain a state-assigned course number, since courses from the American Institute

of Architects, International Code Council, U.S. Green Building Council, Construction Specifications Institute, International Facility Management Association, and others seldom list exact state code numbers for course approval. The commenter asserted that some of the best courses for CE are provided by specific manufacturers, and those courses also do not have state-assigned course approval numbers.

RESPONSE 6: The board followed the directive a number of other jurisdictions have already in place, or are in the process of implementing regarding the CE requirements. However, the board agrees that (5)(e) is unclear and is amending the rule to clarify that state-assigned course approval numbers are required only when a state assigns them. Montana does not assign approval numbers.

COMMENT 7: One commenter generally supported a CE requirement, but was concerned with the language that a failure to comply with CE requirements may result in disciplinary action. This commenter stated that such language did not provide licensees enough direction as to when discipline would result.

RESPONSE 7: The board disagrees that the language is too vague to put licensees on notice of discipline. Rather, licensees have notice they must obtain CE and if they fail to meet the CE requirements, they may face discipline.

COMMENT 8: One commenter was concerned that the board is not pre-approving CE courses, because licensees should have direction on approved courses, and suggested the board define, qualify, and approve CE courses.

RESPONSE 8: The board followed the directive a number of other jurisdictions have already in place, or are in the process of implementing regarding the continuing education requirements. The board determined that course pre-approval is unnecessary, given that the new rule puts licensees on notice of the types of courses they must attend. All Montana licensees have a professional obligation to ensure they are maintaining current knowledge and thereby protecting Montana's public health, safety, and welfare.

COMMENT 9: One commenter stated that a random audit opens the door for licensees to abuse the CE requirements.

RESPONSE 9: The board disagrees with the comment, and notes that the board's audit process follows the statutory direction and limitations of 37-1-131, MCA, which only permits random, post-renewal CE audits, and only up to 50 percent of active renewed licensees.

COMMENT 10: One commenter stated that granting extensions to licensees who have already failed to meet the CE requirements, allows licensees the option not to obtain any CE unless they are audited.

RESPONSE 10: The board agrees that the extension provisions of (8)(d) may provide opportunities that the board did not anticipate or intend regarding CE

requirements and processes. Therefore, the board is not proceeding with the adoption of (8)(d) at this time.

4. The board has amended ARM 24.114.301, 24.114.503, 24.114.2101, and 24.114.2301 exactly as proposed.

5. The board has adopted NEW RULE I (ARM 24.114.2105) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (ARM 24.114.2105) ARCHITECT CONTINUING EDUCATION REQUIREMENTS

(1) through (3)(a) remain as proposed.

(b) at least 75 percent of ~~the~~ any given course's content and instructional time ~~is~~ must be devoted to health, safety, and welfare subjects related to the practice of architecture;

(c) through (5)(d) remain as proposed.

(e) state-assigned course approval number, if applicable; and

(f) through (8)(c) remain as proposed.

~~(d) A 60-day extension will be provided to licensees who fail to meet CE requirements as a result of an audit. Failure to meet the CE requirements by the end of the extension may result in disciplinary action. Any hours obtained during this extension shall not again be used to meet the requirements of a subsequent licensure renewal.~~

(9) and (10) remain as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, 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 August 25, 2014

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.147.1101 crematory operation standards, 24.147.1102 casket/containers, 24.147.1110 integrity of identification process, 24.147.1111 cremation procedures, 24.147.1112 crematory prohibitions, the adoption of New Rule I transportation and custody of human remains, II crematory records, III cremation authorizations, IV military training or experience, and the repeal of ARM 24.147.1103 shipping cremated human remains	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On March 27, 2014, the Board of Funeral Service (board) published MAR Notice No. 24-147-36 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 543 of the 2014 Montana Administrative Register, Issue No. 6.

2. On April 18, 2014, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the April 25, 2014, deadline.

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

ARM 24.147.1101 Crematory Operation Standards

COMMENT 1: Subsection (1)(b) requires the maintenance of a "maintenance and repair schedule." Repairs are unpredictable and must be done when they become necessary and not on a schedule.

RESPONSE 1: While some repairs are unpredictable, others are predictable, and are the reason a manufacturer will recommend replacement or repair of parts in addition to maintenance of the parts.

COMMENT 2: Insert language in (1)(d) to reflect that a facility which has no telephone and uses only cell phones would not be required to post a sign near the telephone to call 911 in a fire or other emergency.

RESPONSE 2: Presently, there is no requirement for a crematory to maintain a landline. The proposed rule may reasonably be construed to apply to facilities that have a landline and for those who do not, to at least require the sign near the retort directing the call.

COMMENT 3: Regarding (1)(h), many crematories are located in the "garage area" of an existing facility where the floor will not have been constructed of impervious materials for cleaning and disinfecting similar to a preparation room. Enforcement of this rule may require such floors to be remodeled. The requirement for the body to be enclosed in a leak-resistant container should suffice in lieu of the proposed standard.

RESPONSE 3: Sealing or covering floor surfaces will allow adequate clean-up if a leak-resistant container fails, rather than to allow such fluids to soak into a wood or concrete surfaces. Additionally, the requirement for "impervious material" on the floors and walls is an existing rule - the board only seeks to add the words "to allow cleaning and disinfection of these surfaces" in order for people to understand what is meant by "impervious."

COMMENT 4: Regarding (2), it is illegal to impose the same regulation on crematories as mortuaries in regard to language requiring inspections, temporary permits, name changes, ownership transfer, or closure of the facility. Such requirements do not serve the public health, safety, or welfare.

RESPONSE 4: The rules are consistent with statutory authority and reasonably necessary to carry out the purposes of Title 37, chapter 19, MCA, and the administrative function of the department.

COMMENT 5: The proposed changes eliminate responsibility on the part of the "crematory operator" in favor of the "crematory facility," but only a person, not a facility, can act. The board's intent in making this change is to end stand-alone crematories.

RESPONSE 5: The terms are interchangeable depending on the context in which they are used, and using one term over another does not impact the existing law which requires a license for both a crematory operator and a crematory facility.

ARM 24.147.1102 Casket/Containers

COMMENT 6: In (2) after the phrase "…remove noncombustible materials…." insert "from the exterior of the cremation container".

RESPONSE 6: The board will not make the change as it is sufficiently clear as proposed.

COMMENT 7: Regarding (3), subjecting a crematory to the FTC "Funeral Rule" if it sells "urns and combustible containers" is incorrect because the Funeral Rule does

not cover free-standing crematories. Allowing the sale of containers conflicts with the statutory requirement that all containers must be closed when presented to a crematory and will amplify the confusion to the general public between a licensed mortuary and a stand-alone crematory.

Selling containers at a crematory may encourage the unlicensed practice of a crematory operator preparing or placing a body in a container it has sold to the consumer. The rules need to clearly prohibit this. There is no authority in law to allow the crematory facility or crematory operators to work with the general public in any way.

RESPONSE 7: A crematory which holds and handles combustible containers containing deceased persons is deemed by the Federal Trade Commission (FTC) to be engaged in "funeral services." If the crematory also sells "funeral goods," the Funeral Rule applies because both "funeral goods" and "funeral services" are provided. The board does not regulate who may sell "funeral goods," unless the seller also provides "funeral services."

Recently promulgated and these proposed rules allow the next of kin to work directly with a stand-alone crematory, but only to purchase a container and present it to the crematory for cremation with the body already placed inside the container. Every other step of the death process must be handled either by the next of kin or a licensed mortician. While the board recognizes the potential for "confusion," the present state of the law defines that transporting and preparing a dead human body for final disposition are within the scope of practice of a mortician and are not within the scope of practice of a crematory operator or crematory technician.

COMMENT 8: Regarding (3), the board does not have authority to prohibit crematories from selling combustible containers, urns, or other retail items incident to cremation. These same items can be purchased from non-regulated retailers. The board cannot adopt regulations which on their face discriminate against crematories to the advantage of competitors in the marketplace. The regulation does not serve the public health, safety, or welfare.

RESPONSE 8: As explained in the response to Comment 7, the board has no intention to restrict the sale of funeral goods by crematories and (3) is not capable of an interpretation that imposes such a restriction. By the FTC definition, if an entity (irrespective of practice or title acts) provides both "funeral services" *and* "funeral goods," FTC regulations entitle consumers to receive particular information about those goods and services. The rule serves public welfare by informing operators, inspectors, board staff, and the public of FTC jurisdiction.

COMMENT 9: Section (3) confuses funeral services with cremation services. They are two different professions and businesses. This is a board attempt to combine them and constitutes a monopoly by funeral services.

RESPONSE 9: The board recognizes that the laws define cremation services differently from funeral services. Licensing laws of all types of occupations and professions grant exclusive authority to engage in a particular activity.

ARM 24.147.1110 Integrity of Identification Process

COMMENT 10: Regarding (1), the cremation authorization form should have been provided as part of the proposed rules for review.

RESPONSE 10: The board apologizes for insufficient notice that the form was located on its web site.

COMMENT 11: The cremation authorization form is unnecessary and unjustly burdens small businesses. The form constitutes "micromanagement" of a crematory business and is illegal, anti-competitive, and anti-consumer. It unfairly singles out crematories as the board does not dictate to morticians every single service they provide. There is no required "form" dictating how morticians practice. The regulation does not serve the public health, safety, or welfare. The same comment applies to New Rules II and III.

RESPONSE 11: The board has determined at this time to adopt the proposed rules without requiring a board-approved cremation authorization form and will accordingly amend ARM 24.147.1110(1), New Rule II(1)(b), and New Rule III(2) references to "board-approved" form.

COMMENT 12: In (1), the language "warranties of truthfulness" regarding identification of the deceased is extreme and places the burden on other professional people.

RESPONSE 12: The rule uses the same language as 37-19-707, MCA, which refers to "warranting the truthfulness" of the identity of the deceased and the signer's authority to order cremation.

COMMENT 13: In (2)(a) it is not necessary for the authorization for removal and transit (ART) form to be produced as a condition to cremation if a cremation authorization exists.

RESPONSE 13: The board disagrees with the comment. The ART form is a state-required form to be signed by the coroner as a precondition to every cremation in the state of Montana. A "cremation authorization" form is the form signed by the authorizing agent, typically the next of kin of the deceased. Such comments are why the proposed rules are necessary.

COMMENT 14: Section (2) makes the labeling and tagging sound like an elaborate process. The current rules are ample.

RESPONSE 14: It is appropriate to elaborate upon a serious process such as handling and identifying cremated remains.

COMMENT 15: Subsection (2)(e) should state "closed" instead of "sealed."

RESPONSE 15: The board concurs with the comment and will make the proposed change here and in ARM 24.147.1111(6)(f).

ARM 24.147.1111 Cremation Procedures

COMMENT 16: This rule is unnecessary because procedures are set forth in statute and the rules are inconsistent with statute.

RESPONSE 16: The comment does not explain the inconsistency. The rule is reasonably necessary to help consumers, licensees, and board staff understand the process by filling in the details on the process set forth in the statute.

COMMENT 17: Regarding (9), the postal service has new requirements for shipping cremated remains.

RESPONSE 17: Without elaboration by the comment, the board can only note that section 451.22 and 451.3b of the United State Postal Service regulations govern the shipping of cremated remains and do not conflict with the proposed rule.

COMMENT 18: In (10), instead of directing that a crematory "may dispose of…," or "must maintain a record of," use passive voice to direct that "cremated remains may be disposed of...," and "a record must be maintained of...."

RESPONSE 18: The board prefers using active voice as it places clear responsibility on a particular actor. Without elaborating the reason for the suggested change, the board must speculate that the commenter would desire to apply the directive to both free-standing crematories and morticians who operate crematories; however, without making the proposed change, it is clear that the obligation accrues to both mortuary and non-mortuary-related (i.e., stand-alone) crematories.

COMMENT 19: The new standards should not apply to a crematory in construction or use prior to 1993.

RESPONSE 19: There is no "grandfather" provision in the current or proposed rules. Each licensee is required to comply with board rules as they are adopted and has a professional obligation to be familiar with them.

ARM 24.147.1111(5) Authorized Persons Permitted in Cremation Chamber Area - Crematory may not conduct viewing or funeral or memorial service.

COMMENT 20: This restriction is unconstitutional.

RESPONSE 20: The regulation is rationally related to the state's interest in regulating crematories and is based on the current statute.

COMMENT 21: Unless a family member has the right of disposition, the member will not be allowed to view the remains at a crematory.

RESPONSE 21: A viewing of a body may only take place in a mortuary or under the supervision of a mortician; however, authorizing agents may witness the cremation. The board is amending (5) to change "crematory procedure" to "cremation."

COMMENT 22: The rule would disallow a stand-alone crematory from having a viewing of the body or holding a funeral or memorial service with a gathering of friends and family as requested by a family or required by religious tradition. Montana should also prohibit gazing at one's deceased grandfather in hospital bed, considering how few hospitals are co-located with funeral parlors. There is nothing about a direct-to-consumer cremation facility that makes a viewing of the deceased problematic. The board should not restrict where a family holds a memorial service or a funeral. Why would a mortician be the only one allowed to make funeral arrangements? What does engage in funeral directing mean?

Consumers should be able to choose a crematory to transport human remains, to make arrangements, and to direct a funeral without the involvement of a mortician. Families and loved ones should be able to accompany the remains from the time of death to the burial site or to the cremation, including transportation and witnessing. Being involved with each step of the death process, including bathing, transporting, placing their remains in the retort, and collecting the ashes from the retort assists the grieving process. A parent of a deceased child should also care for that child in death if the parent so desires.

The board should not have rules that require everything to be turned over to a funeral home to deal with. The rules set crematories up to be only a subsidiary to a mortuary, and that limits a family's ability to have a home funeral, take the body to the crematorium, and have an experience where the family or friends are present to experience their farewell to a loved one. These rules would make that impossible, unless the crematorium is also associated with the mortuary. As such, the rules foreclose price and service competition in the state's funeral industry.

RESPONSE 22: The board understands that the death of a loved one is a traumatic experience, if not the most traumatic event a person will ever face. The board recognizes the common law duty of a family to care for their dead, as further explained in the response to comment 47.

The term "viewing" as used in Title 37, chapter 19, MCA, means/refers to the point in time after the body is removed from the place of death, and current law only allows such a viewing to take place at a licensed mortuary, branch mortuary, or other chapel or location under the supervision of a mortician as a matter of maintaining proper custody of the body. In contrast, current law proscribes the activity of a licensed stand-alone crematory facility to only receiving, holding, cremating, and returning or disposing of cremated human remains.

In Title 37, chapter 19, MCA, the terms "funeral directing," "making of funeral arrangements," "mortician," "mortuary science," and "mortuary" define the *scope of practice* of a mortician. Based on this scope of practice, current law prohibits consumers from choosing a stand-alone crematory (that is, a crematory not attached

to or associated with a licensed mortuary) to transport human remains, make funeral arrangements, direct a funeral, or conduct a viewing.

In contrast, the scope of practice of a crematory operator and facility are to only accept a closed combustible container, determine authorization to cremate, cremate, and return the cremated remains as directed.

While other states may have "direct-to-consumer cremation facility" laws, Montana does not. Many of the commenters expressed a desire for a "direct to consumer" cremation process, where cremation facilities are authorized to do some or all of the things a mortician does (except embalming). Legally however, the board may not expand by administrative rule what is not provided in the statute.

The statutes dictate legal duties that arise upon a person's death and dictate that these duties are performed in conjunction or by one or more of either a physician, a coroner, or a mortician: (1) "declaring" the death of a person, (2) authorizing the removal of the body from the place of death, (3) transporting of the body, (4) preparing for final disposition and providing custody of the body pending final disposition, (5) obtaining confidential medical and personally identifiable health information to properly handle the body, (6) creation of and filing of a death certificate, (7) obtaining a certification of the cause of death, (8) obtaining a coroner's authorization to cremate, and (9) recording the final disposition of the deceased.

The reasons for this process are to protect public health against communicable disease; to detect and rule out criminal conduct for a cause of death, to ensure the accurate and swift operation of the public vital statistics system, to operate against identity theft and social security fraud, prevent the trafficking of body parts, and to ensure the dignified treatment of deceased persons.

See also response to comment 37, regarding New Rule I Transportation and Custody.

COMMENT 23: Simultaneous cremations in (6)(a) seem problematic, especially with the morbidly obese.

RESPONSE 23: The rule is intended to recognize circumstances where simultaneous cremation, if feasible, may be authorized by an authorizing agent.

COMMENT 24: Specifying in (8) that ashes which do not fit within one container must be placed in a second container demeans those regulated by the rule. Doing so is reasonably necessary to care for the ashes of the deceased.

RESPONSE 24: The board's regulatory mission includes informing the public as well as licensees about what is expected for professional conduct.

COMMENT 25: In (10), giving permission to send a bill to a person for disposing of ashes the person does not want merely adds more language to the rule; the authority to bill exists independently of this rule, and it is unimaginable to even want to bill in such a situation.

RESPONSE 25: The authority to bill for disposition when a customer fails to retrieve the remains after having indicated intent to do so is not in statute and therefore is a

legitimate subject of rulemaking to provide direction to licensees, staff, and the public about what is an appropriate response in this circumstance.

COMMENT 26: Disposing of cremated remains after 90 days may be problematic; the crematory could legitimately store the remains while people are making payments for the services.

RESPONSE 26: The 90 days represents a minimum period of time after which the crematory may bury the cremated remains; the rule does not require burial after 90 days have expired.

ARM 24.147.1112 Crematory Prohibitions

COMMENT 27: Modify (1)(a) as follows: "transport human remains, unless properly trained and working for a mortuary, make arrangements, engage in funeral directing, or engage in mortuary science...."

RESPONSE 27: The board will modify the language to state "…without the direction of a mortician who is responsible for the transport."

COMMENT 28: In (1)(a), requiring involvement of a mortician conflicts with New Rule I, which refers to a "licensed mortuary, supervised by…." The conflict occurs "because a mortician can employ a crematory operator."

RESPONSE 28: The board is unable to discern what the conflict is, as both rules prohibit a stand-alone crematory facility, operator, or technician from transporting human remains.

COMMENT 29: The rule is contrary to the MCA in requiring a mortician. People other than morticians may transport, make arrangements, and assist at funeral services.

RESPONSE 29: Without further elaboration in the comment on how the rule contradicts the statute, the board reiterates its response to comment 22.

COMMENT 30: Regarding (1)(a), a crematory operator should be able to transport a body or help to place the body into a container, especially since a mortuary is allowed to have a person, without any special credentials other than being an employee of the facility, to move the body. Morticians possess no special skills necessary to transport dead people from point A to point B.

RESPONSE 30: Morticians are in fact required to possess a minimum level of skills acquired in a two-year degree in mortuary science and a one-year mortician internship that relate to risks associated with removing a body from the place of death and maintaining custody and supervision over the remains until final disposition. In contrast, a crematory operator need only demonstrate a high school diploma or equivalent.

Whether a crematory operator "should" have the authority is a moot point, because the statutes exclude such activities from the scope of practice of a crematory operator and include them in the mortician's scope of practice (as well as authority of the coroner). If the board were to interpret the current statutes to allow crematory operators to transport dead human bodies, there would be no practical limitation on who else may transport dead human bodies, which is not an outcome that serves the public health, safety, or welfare.

COMMENT 31: The board does not have legal authority to regulate transportation of deceased persons. This area is regulated by the Department of Public Health and Human Services (DPHHS), which has the authority to "adopt and enforce rules regarding transportation of dead human bodies," per 50-1-202, MCA. The same analysis applies to New Rule I.

RESPONSE 31: The board does not agree with the comment. DPHHS regulates the transporting of bodies from the communicable disease perspective. The board regulates transporting of bodies through the regulation of morticians whose scope of practice includes transporting bodies.

COMMENT 32: ARM 37.116.103(2)(c) grants "private conveyors" the right to transport dead bodies. This definition of "private conveyors" at ARM 37.116.101(12) creates a legal right for crematories to transport dead human bodies which the board cannot unilaterally abolish by regulation. The board's past legal counsel concluded the same. The same analysis applies to New Rule I.

RESPONSE 32: The administrative rules cited in the comment merely refer to time limits the body may be in transit without being embalmed or refrigerated, and that the standard differs depending on whether the transportation is by common carrier (e.g., railroads, airlines, or public transportation) or private conveyor, and should not be interpreted to conflict with the scope of practice in Title 37, chapter 19, MCA. Unless the individual has died during an ambulance transport, by statute, only a coroner or a mortician or persons acting under their direction and supervision have the legal right to transport a dead human body. The board is not obligated to follow a prior legal opinion.

COMMENT 33: The laws governing morticians and crematory operators are in separate parts of Title 37, chapter 19, MCA; the practice of one does not necessarily impact the other. To guide the work of one industry by the rules of a separate industry is ridiculous.

RESPONSE 33: Without further elaboration in the comment about the specific proposed language, the board cannot discern the point of the comment and cannot respond to its substance. See also the response to comment 4.

COMMENT 34: Regarding (1)(b), it is unknown what kind of permits and releases are necessary prior to the cremation of "fetuses, limbs, and body parts" and that specific direction should be included in the rule.

RESPONSE 34: The requirement for a permit from a "private or public health agency, medical doctor, or college or university" is in the current rule. The only clarification is that rather than a "release," the crematory should require a cremation authorization to meet the requirements of 37-19-704, MCA.

COMMENT 35: Regarding (1)(d), payment programs need not be "pre-need," unless the funeral industry is willing to do the same.

RESPONSE 35: The point of the comment is not clear.

COMMENT 36: In (1)(d), clarify that the mortician referred to "is a mortician working only under a crematory license without working under a licensed mortuary facility inspected to protect the general public from fraud."

RESPONSE 36: The board will not make the clarification because it is clear that a mortician may only work in conjunction with a licensed mortuary facility.

COMMENT 37: In (1)(e), define the term "basic combustible container."

RESPONSE 37: The wording of the rule is sufficiently clear.

COMMENT 38: In (1)(f), add language "prior to cremation, no removal of dental gold…unless authorized to do in the cremation authorization...."

RESPONSE 38: The proposed rule already contains that exception.

COMMENT 39: Regarding (1)(g), crematories should be allowed to remove hazardous implants. Such devices are easily removed because they are located directly under the skin and can be removed with minimal training. There is no reason a crematory cannot remove a pacemaker or other medical device from a body. A crematory operator has more at stake in ensuring the removal of the device as the risk is to the crematory operator and his or her employees and equipment. Other states allow crematory operators to remove implants.

RESPONSE 39: It is not within the scope of practice of a crematory operator or crematory technician to remove implants. There is no authority granted to a crematory operator or technician and they have no minimum qualifications requiring comparable training. Because there is risk for explosion of the batteries in devices during the cremation process, the board rules propose that a mortician conduct due diligence in ruling out the existence of such a device. A mortician's education includes how to locate and remove these devices in order to minimize risk of electric shock and knowing that certain nuclide devices should only be removed by a physician.

COMMENT 40: Crematory operators charge $45 to remove hazardous implants. Such economic benefit should be available to people in this state.

RESPONSE 40: It is illegal for a stand-alone crematory to offer such services. If mortician costs for the same service are indeed higher, it would not be a surprise as the illegally operating crematory would not be subject to the same requirements the board expects of morticians and mortuaries. The board understands that the costs of funeral services can be significant. The board's mission includes providing assistance to consumers to ask the right questions, encourage them to compare prices and services, and to make informed decisions to make meaningful arrangements and to control the costs for themselves and their survivors.

COMMENT 41: The rule limits the ability to create a new business or new industry, unless person is a licensed mortician. This is an illegal, anti-competitive, and anti-consumer attempt to regulate crematoriums like mortuaries when the two are separate and distinct entities by statute.

RESPONSE 41: The Business Standards Division regulates over 35 professions and occupations requiring licensure for individuals and businesses and is therefore subject to the same criticism found in the comment. The law does not outlaw a monopoly if it is created legally and the board's actions are not anti-competitive. See also responses to comments 9 and 22.

COMMENT 42: The Montana Legislature or the general public - and not the funeral board - should decide who may remove implanted medical devices.

RESPONSE 42: The Montana Legislature has already determined by including within the scope of practice of a mortician in Title 37, chapter 19, MCA, to prepare dead human bodies for final disposition and narrowly defined the scope of a crematory operator which cannot be stretched to include removing hazardous implants. It is a misdemeanor crime to "dissect" or perform any other "postmortem examination" on a dead human body, as per 50-21-106, MCA, unless one is a physician, coroner, medical examiner, or mortician preparing a dead human body for final disposition. Section 50-21-105, MCA.

COMMENT 43: Regarding (2), relegating the removal of a pacemaker to a preparation room is not related to the public health, safety, or welfare.

RESPONSE 43: The removal of a pacemaker implicates communicable disease, bloodborne pathogens, use of sharps, their disposal and medical waste disposal, sinks and water supply for cleaning and disinfecting, and hand washing facilities.

COMMENT 44: Regarding (2), clarify where the record of removal of a hazardous implant and disposition of the implant should be kept. A crematory will have no record of the removal or disposition of implants; this is a function of the mortuary. The cremation authorization should suffice.

RESPONSE 44: The board will change the word "Crematories" beginning third sentence to read "Morticians" because only a mortician would handle a hazardous implant. See also response to comment 51.

COMMENT 45: Regarding (3), crematory personnel may discuss their professional obligations and practices without the oversight of a mortician. Crematory businesses conduct their business and sell crematory goods which should not be regulated by morticians.

RESPONSE 45: Crematory personnel may discuss cremation procedures *that are within their scope of practice* without the oversight of a mortician. Crematory businesses are indeed regulated by the board, which is comprised of morticians, a crematory operator, a cemetery representative, and a public member.

NEW RULE I Transportation and Custody of Human Remains

COMMENT 46: Regarding (1), precluding the use of ambulance services by morticians to transport human remains will adversely impact smaller and rural firms when conducting a funeral service in one area and a death occurring in another area. The current practice has been ongoing for many years in Montana and other states. Ambulance personnel have more training than some currently licensed morticians.

The rule would prohibit a coroner from removing a body by ambulance if the funeral home is delayed and on occasion, an ambulance is the most expedient way to remove the deceased from public view. Rather than serving the public health and safety, such a restriction constitutes a monopoly on post-mortem taxicabs. The board should make clear whether an ambulance service becomes an "employee" of that funeral home and define who is ultimately responsible for transportation in that situation.

RESPONSE 46: The board will change language to omit reference to "employee of a mortuary" and instead have it read "or person who is properly trained…and for whose actions the mortician in charge will be responsible..."

COMMENT 47: New Rule I limits those who currently are allowed under law as regular citizens to remove remains from their homes. Transporting human remains does not require a mortician and there is no reason why a person employed by a crematory could not be properly trained and supervised. A lay person with no experience is given complete freedom to do this work for a deceased family member. The rule is designed to inhibit a stand-alone crematory and enhance the position of the 'tied-in' crematory and its mortician owners.

RESPONSE 47: The rule reflects the current law which prohibits a stand-alone crematory from engaging with the public, including the transportation of dead human bodies. The statute does not expressly authorize family members to transport their deceased loved ones; however, the board recognizes the common law duty of such family members to care for their deceased. Beyond this, the board will continue to

enforce the current statute which recognizes that if a family wants to contract away its duty, it must do so with a licensed mortician. The public interest is served by restricting who may transport deceased persons and requiring that they possess minimum qualifications and comply with standards of conduct to do so. See also response to comment 22.

COMMENT 48: The rule seems to imply that only a coroner, mortician, or employee of a mortician may transport, but 50-15-405, MCA, the purported authorization for this statement, is not about who is authorized to remove a body, but about the authorization to move it. The law does not specify who is authorized to move a body.

RESPONSE 48: The rule implements not only 50-15-405, MCA, but various statutes in Title 37, chapter 19, MCA, including the definition of "mortuary" which includes "transportation" as part of the scope of practice of a mortuary and mortician at 37-19-101(28), MCA. Any "transportation" performed by a crematory only refers to the return of the cremated remains as directed.

NEW RULE II Cremation Records

COMMENT 49: In (1)(b), allowing a crematory operator to use a cremation authorization form will further confuse the public that the crematory operator has the same authority as a mortician.

RESPONSE 49: The board trusts that these rules provide sufficient guidance and that crematory operators will conform their conduct to them.

COMMENT 50: Regarding (1)(c), it is unclear what is required in this document.

RESPONSE 50: The rule refers to the statute and is sufficiently clear.

COMMENT 51: Subsection (1)(e) urges the board to make distinction and exceptions to rules like these between free-standing crematories and crematories that are essentially part of the mortuary.

RESPONSE 51: The rule applies to both a free-standing crematory and a crematory attached to a mortuary, the common denominator being a cremation. The records for the cremation must be kept; whether they are kept at the business office of a mortuary with an in-house crematory or in an office in the crematory is of no consequence. The board will change the name of the rule to CREMATION RECORDS to help avoid confusion on this point.

COMMENT 52: Regarding (1)(d), there is no point in keeping a record of when the deceased arrived at the funeral home when a crematory is attached to the funeral home. The commenter objects to requiring the "time" of arrival to be recorded.

RESPONSE 52: The reason for tracking the arrival time is to ensure that maximum time limits on holding a body without refrigeration or embalming are met and applies to all bodies intended to be cremated, whether the crematory is stand-alone or attached to a mortuary.

COMMENT 53: The "reason" uses the term "funeral practitioner." There is confusion about whether "funeral practitioner" includes a crematory operator and there should be a distinction.

RESPONSE 53: The term "funeral practitioner" refers to both a crematory operator and a mortician for the limited purpose of the paragraph in question. The term "funeral practitioner" is not used anywhere else in the rule notice and is not meant to convey that a crematory operator may perform "funeral-related" acts within its scope of practice other than limited to cremating as described elsewhere in this adoption notice.

COMMENT 54: The "reason" refers to the "funeral practitioner" being required to print and maintain copies of the death certificate, which is not necessary to keep on file when other forms meet the prerequisite to cremate. A death certificate can take additional time to receive, delaying cremation and creating additional costs to the consumer for refrigeration or embalming.

RESPONSE 54: The statement of reasonable necessity misstated the requirement for the death certificate to be kept in the cremation-related records. The death certificate is maintained by the mortuary for all deaths and not just those related to cremations. In the case of a free-standing crematory, as it has no authority with regard to the death certificate, one would not be kept on file in that case. The death certificate is maintained by the mortuary.

COMMENT 55: This rule appears to be reasonable and, hopefully, consistent with what is required of morticians.

RESPONSE 55: The rule is applicable to free-standing crematories and morticians who are dually licensed as crematory operators and morticians.

NEW RULE III Cremation Authorizations

COMMENT 56: This rule appears to be appropriate, other than the board's concern in (3) that crematory operators are out to sell prearranged funeral services. Funeral services include those things specific to funerals; cremation services include those things specific to cremations. Pre-need cremations should be part of the cremation industry and not be controlled by the mortician/funeral industry in the same way that pre-need funeral arrangements are not the purview of the crematory industry.

RESPONSE 56: Regardless of the commenter's suggested segregation of two separate "industries," the board still regulates both crematories and funeral services

and deems it reasonably necessary to emphasize that crematory operators may not enter pre-need contracts.

COMMENT 57: If the crematory is contracting with the mortuary to do a cremation and not the general public, this rule would be confusing and cause problems. It would be better to say that a crematory that is selling goods and services be attached to a licensed mortuary and that free-standing crematories are required to operate as such under the current regulation.

RESPONSE 57: See responses to comments 7 and 8.

COMMENT 58: The language of (2) poorly integrates the provisions in 37-19-708, MCA, and there is confusion about the interaction between a pre-need cremation authorization and the cremation authorization form, whether one supersedes, whether even if a pre-need cremation authorization form is executed, a cremation authorization form is still required to be executed.

RESPONSE 58: The rule is sufficiently clear.

COMMENT 59: There is a concern that the rule seems to remove a person's right to authorize their own cremation on a pre-need basis.

RESPONSE 59: The board does not agree.

COMMENT 60: If a pre-need cremation authorization may be executed, a cremation authorization form containing all of the proper disclosure and warranties must also be executed. Does the next of kin still need to sign off?

RESPONSE 60: An authorizing agent must execute a cremation authorization form prior to cremation.

COMMENT 61: Regarding (5), the law does not specify that a mortician is necessary for the certification of the removal of a hazardous implant. At independent crematories, crematory operators receive certification from other persons.

RESPONSE 61: The mortician is required to certify or obtain a certification from the family member, a physician, or a coroner that the removal has been performed.

COMMENT 62: Regarding (5), where a mortician must certify that remains presented to the crematory are those of the decedent identified by the authorizing agent - typically the authorizing agent who can identify the person is the county coroner. Why would a mortician need to be involved in the identification of a deceased person? Typically a person's own next of kin can identify them well enough.

RESPONSE 62: In Montana, a mortician has the obligation to identify the human remains, whether by coroner, next of kin, or other reliable method.

COMMENT 63: Regarding (5)(c), personal property identified removed from the remains of the decedent, a commenter said you don't need a mortician to do that. Family members can do that.

RESPONSE 63: Certainly, family members may have removed personal property of the decedent, unless they had no chance to do so. However, providing the disclosure regarding personal property will protect the funeral provider as well as the family member.

COMMENT 64: Subsections (5)(a) and (b) cut out anyone trying to develop this kind of business and limits competition and violates "general business ideals."

RESPONSE 64: See responses to comments 9 and 22.

COMMENT 65: Numerous comments, both in favor and against the idea, were made addressing a proposed board-approved cremation authorization form.

RESPONSE 65: Due to limited resources available to further develop the form and concerns about the potential liability to the board for requiring use of such a form, the board determined at this time to adopt the proposed rules without requiring a board-approved cremation authorization form and will accordingly amend the ARM 24.147.1110(1), New Rule II(1)(b), and New Rule III(2) references to "board-approved" form.

General Comments

COMMENT 66: A number of senior citizen residents living in central Montana ask the board to avoid making rules that will make it difficult for them to know with certainty whether or not the funeral directives they wish to leave will be followed and at a reasonable price. The commenters stated that Central Montana Crematorium offered services at a reasonable cost and that its closure will result in increased costs to their families which they find unacceptable. The commenters asserted that the board's recent actions do not have the public benefit in mind and asked that the board make it possible once again for the service they expected from CMC, which was exemplary over the past ten years. The commenters expressed serious questions as to the motives behind these rule changes and asked the board to serve the public and not just some part of the funeral industry.

RESPONSE 66: See responses to comments 9, 22, and 47.

COMMENT 67: The proposed rules have no rational relationship to the public's health, welfare, and safety; they are not supported by scientific evidence nor do they comport with standard practice in the industry; they violate due process and equal

protection; they unfairly and illegally discriminate against crematories; and they are anti-competitive and unlawfully restrain trade in violation of state and federal law.

RESPONSE 67: The rules and the legislation on which the rules are based do not violate the Equal Protection Clause or Due Process Clause because there is a rational basis for restricting unlicensed practice of transporting, preparing, and supervising the final disposition of deceased persons for the benefit of communicable disease prevention, fraud prevention, accuracy in cause of death determinations, including the elimination of criminal conduct in the cause of death, and vital statistics records. The rules and legislation on which the rules are based do not unfairly or illegally discriminate against crematories: the requirement to hold a license to practice funeral services applies to everyone, not just owners of crematories. It is not a protected class.

COMMENT 68: The board should provide a definitive answer regarding whether these rules apply to a tribally incorporated mortuary located on an Indian reservation and to an individual licensed mortician associated with that mortuary.

RESPONSE 68: The rules apply to a licensed mortician regardless of whether the mortuary qualifies for an exception under federal or state law.

COMMENT 69: The rules will make it illegal to provide cremation services to consumers unless the business employs a full-service mortician. Board action in promulgating these rules constitutes abuse and exploitation of citizens, limits business, and limits choices for citizens. The proposed rules support archaic, traditional funeral homes that would otherwise need to adapt and modernize to serve contemporary consumer demands. The amendments seem more geared to protect the profits of funeral homes than to best represent the interests of Montana's funeral consumers.

RESPONSE 69: The rules clarify the current statutes, present in numerous other states, that allow a crematory to only provide "wholesale" services to mortuaries and not to the general public. The board, in attempting to serve consumer demands, has promulgated rules that allow immediate family members limited direct contact with crematories. See also responses to comments 22 and 47.

COMMENT 70: Funeral homes will provide, upon request, any variety of assistance the consumer requests.

RESPONSE 70: The board's mission includes to provide information to consumers and to educate them about the options that are available to them.

COMMENT 71: Public safety and welfare require regulations to prevent the occurrence of incidents that have occurred in other states without regulation where crematories failed to cremate remains and cemeteries failed to bury the dead.

RESPONSE 71: The board acknowledges its mission to serve the public safety and welfare to prevent these types of occurrences.

COMMENT 72: Concerns regarding the regulation of crematories should be addressed through the direct regulation of crematories, rather than assuming that funeral homes will oversee crematories regarding the appropriate dispersal of human remains.

RESPONSE 72: Crematories are regulated and are required to either provide services to a mortuary or provide limited services to the public.

NEW RULE IV Military Training or Experience

COMMENT 73: The language setting forth the military experience is too vague. The board should define how many years of education, in addition to military training, will qualify a person for licensure.

RESPONSE 73: The authorizing statute requires the board to allow relevant training, service, or education received in the military. The determination will have to be made on a case by case basis if such an application is presented to the board per 37-1-145, MCA.

COMMENT 74: The comment objects to allowing any less experience than what is currently required.

RESPONSE 74: The statute imposes a mandatory requirement on the board.

COMMENT 75: Because the rule suggests that a DD214 form is required, and certain non-activated reservists and national guardsmen do not receive a DD214, a commenter suggested the board amend the rule to permit other evidence to show an applicant's military discharge.

RESPONSE 75: The board will amend the rule as suggested in the comment.

4. The board has amended ARM 24.147.1101 and 24.147.1102 exactly as proposed.

5. The board has repealed ARM 24.147.1103 exactly as proposed.

6. The board has amended ARM 24.147.1110, 24.147.1111, and 24.147.1112 with the following changes, stricken matter interlined, new matter underlined:

24.147.1110 INTEGRITY OF IDENTIFICATION PROCESS (1) A crematory may not accept or cremate human remains until it has received warranties of truthfulness regarding the identity of the remains to be cremated and regarding the

authority of the signer to order cremation. A cremation authorization form ~~provided by the board~~, properly executed, shall satisfy these warranties.

(2) through (2)(d) remain as proposed.

(e) Staff shall affix an identification label to the ~~sealed~~ closed urn or container in a permanent manner that ensures the integrity of the identification of the remains.

(3) remains as proposed.

24.147.1111 CREMATION PROCEDURES (1) through (4) remain as proposed.

(5) Except for persons having the right of disposition who request to witness the ~~crematory procedure~~ cremation, board inspectors, or persons authorized by the crematory operator-in-charge to be present, unauthorized persons may not be permitted in the cremation chamber area while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber. This section may not be construed to allow a crematory that is not attached to a mortuary to:

(a) through (6)(e) remain as proposed.

(f) place the bag in a sturdy, properly ~~sealed~~ closed temporary container, or in an urn provided by the authorizing agent, with the name of the deceased person and other proper identification affixed to the outside of the containers; and

(g) through (10) remain as proposed.

24.147.1112 CREMATORY PROHIBITIONS (1) remains as proposed.

(a) transport human remains without the direction of a mortician who is responsible for the transport, make arrangements, engage in funeral directing, or engage in mortuary science, as such terms are defined in 37-19-101, MCA;

(b) through (g) remain as proposed.

(2) A hazardous implant may only be removed by a mortician at a mortuary or branch mortuary establishment with a preparation room, unless removal has taken place at a medical facility by appropriate medical personnel. The mortician shall keep a record of the removal and disposition of the implant. ~~Crematories~~ Morticians must recycle hazardous implants if such service is available, and may only discard them in accordance with federal, state, and local laws and regulations.

(3) remains as proposed.

7. The board has adopted NEW RULES I (24.147.408), II (24.147.1105), III (24.147.1107), and IV (24.147.508) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I TRANSPORTATION AND CUSTODY OF HUMAN REMAINS

(1) Upon authorization specified at 50-15-405, MCA, by a physician, physician designee, coroner, or mortician to remove and transport human remains, only a coroner, mortician, or ~~employee of a mortuary~~ person who is properly trained and for whose actions ~~supervised by~~ the mortician-in-charge will be responsible may transport the body to either a mortuary, coroner's morgue, or, in cases in which direct cremation or burial is legally permissible and authorized, directly to a crematory or cemetery.

(2) and (3) remain as proposed.

NEW RULE II ~~CREMATORY~~ CREMATION RECORDS (1) through (1)(a)(ii) remain as proposed.

(b) a cremation authorization form ~~approved by the board~~ and signed by an authorizing agent;

(c) through (3) remain as proposed.

NEW RULE III CREMATION AUTHORIZATIONS (1) remains as proposed.

(2) A "cremation authorization" must be executed ~~on a board-approved form~~ by an authorizing agent and may not conflict with any pre-need cremation authorization executed by the decedent in accordance with 37-19-708, MCA, or disposition directions made in accordance with 37-19-903, MCA.

(3) remains as proposed.

(4) The ~~board-approved~~ cremation authorization form must include:

(a) through (6) remain as proposed.

NEW RULE IV MILITARY TRAINING OR EXPERIENCE (1) through (2)(d) remain as proposed.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as morticians, mortician interns, crematory operators, and crematory technicians. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain as proposed.

BOARD OF FUNERAL SERVICE
JOHN TARR, CHAIRPERSON

/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 August 25, 2014

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

In the matter of the adoption of NEW RULE I military training or experience) NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 10, 2014, the Board of Nursing (board) published MAR Notice No. 24-159-78 regarding the public hearing on the proposed adoption of the above-stated rule, at page 649 of the 2014 Montana Administrative Register, Issue No. 7.

2. On May 1, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. Several comments were received by the May 9, 2014, deadline.

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

COMMENT 1: One commenter generally supported the proposed new rule for military experience.

RESPONSE 1: The board appreciates all comments received in the rulemaking process.

COMMENT 2: One commenter stated that certain military personnel (reservists and national guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. The commenter suggested the board amend New Rule I to allow the board to consider other evidence of military discharge in addition to or in lieu of a DD 214 form.

RESPONSE 2: The board has adopted New Rule I with the suggested amendment, so that the board may consider other evidence of military discharge in addition to or in lieu of a DD 214 form when determining whether certain military training, service, or education is applicable to licensure requirements.

4. The board has adopted NEW RULE I (24.159.404) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) and (2) remain as proposed.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements of a registered nurse (RN), licensed practical nurse (LPN), advanced practice registered nurse (APRN), and medication aide (MA) I and II. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain as proposed.

BOARD OF NURSING
HEATHER O'HARA, RN, 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 August 25, 2014

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.2701, 42.4.2703, 42.4.2704, and 42.4.2708 pertaining to the Qualified Endowment Credit	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 12, 2014, the Department of Revenue published MAR Notice Number 42-2-909 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1191 of the 2014 Montana Administrative Register, Issue Number 11.

2. On July 8, 2014, a public hearing was held to consider the proposed amendment. Robert Story, President of the Montana Taxpayers Association, appeared at the hearing but did not testify. Kurt Alme provided written comments.

3. The department has amended ARM 42.4.2701, 42.4.2703, and 42.4.2704, as proposed.

4. The department has amended ARM 42.4.2708 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.4.2708 DETERMINING PRESENT VALUE FOR THE ENDOWMENT CREDIT (1) remains as proposed.

(2) As derived from the May 2009 IRS Publication 1457 titled "Actuarial Valuations," the life expectancy tables that shall be used when determining the ~~present value for the endowment credit are as follows:~~ life expectancy of the annuitant or joint life expectancy of the annuitants, within which the first partial or full-year payment of a deferred charitable gift annuity is required to begin in order for it to be deemed a planned gift for the purposes of 15-30-2327, MCA, are set forth in Tables 1 and 2.

(a) Example. The table indicates a 98-year-old annuitant has a life expectancy of 2.5 years. So the first partial year (such as a monthly, quarterly, or semi-annual payment), or full year payment mandated by the annuity contract, must be required to be paid no later than two and one-half years from the date the deferred annuity contract is created.

Table 1 and Table 2 remain as proposed.

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

COMMENT NO. 1: Kurt Alme commented that the proposed amendments are helpful. He further commented that the language, as currently set forth, is not quite accurate and provided suggestions for the department to consider for further amending (2) and incorporating an example.

Mr. Alme explained that the present value of the endowment credit is determined from the 2000CM mortality table, referenced in Publication 1457, as are these life expectancy tables. The present value of the endowment credit is not, however, determined from the life expectancy tables. In fact, it should not even be necessary to state that the present value of the endowment credit is determined from the 2000CM mortality table since that present value is the amount of the federal charitable deduction which is required by federal law to be computed from Table 2000CM. Mr. Alme stated that the legislature added 15-30-2327(3)(b), MCA, last decade only for the purpose of establishing a single mortality table everyone must use when determining the maximum "stretch" of a deferred gift annuity.

RESPONSE NO. 1: The department thanks Mr. Alme for his comments and suggestions. ARM 42.4.2708(2) is further amended to better reflect the purpose for the life expectancy tables and an example has been added.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 25, 2014.

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, 2014. This table includes those rules adopted during the period April 1, 2014, through June 30, 2014, 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, 2014, 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 2014 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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