ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICE SECTION

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, 17.24.223, 17.24.224, 17.24.225, and 17.24.226 and the repeal of ARM 17.24.216 and 17.24.217 pertaining to rules and regulations governing the Opencut Mining Act	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL (RECLAMATION)

TO: All Concerned Persons

1. On December 11, 2015, at 9:00 a.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 and repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 23, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.24.201 APPLICABILITY (1) remains the same.

(2) An operator conducting ~~a sand, gravel, bentonite, clay, or scoria mining~~ opencut operations ~~pursuant to~~ must comply with the provisions of a ~~reclamation~~ contract or permit issued under the ~~Montana Opencut or Strip Mined Land Reclamation~~ Act and this subchapter ~~of 1971 is recognized as being in compliance with Montana law. However, should that operator begin a new opencut operation as defined in 82-4-431, MCA, or expand an opencut operation beyond the existing contract area, the operator shall be responsible for first obtaining a permit under the provisions of the Act as amended.~~ Except as provided in (5), a permit is required before an operator commences the following:

(a) an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden;

(b) more than one opencut operation where each operation results in the removal of less than 10,000 cubic yards of materials and overburden, but the several

operations result in the removal of a total of 10,000 cubic yards or more of materials and overburden; or

(c) an opencut operation where overburden and materials are removed from a previously mined site and the amount mined, combined with the amount of previously removed materials and overburden, exceeds 10,000 cubic yards.

(3) Contracts and permits in effect ~~on February 13, 2004~~ before [the effective date of this amendment], need not be amended to comply with rules and rule amendments adopted on ~~February 13, 2004~~ [the effective date of this amendment]. Applications for permits, permit amendments, and permit ~~transfers~~ assignments that ~~were submitted~~ the department determined to be complete prior to ~~February 13, 2004~~ [the effective date of this amendment], remain subject to provisions of this subchapter relating to application requirements as they read on the date the ~~application was submitted~~ department determined the application to be complete.

(4) Except as provided in (5) and ARM 17.24.226, a permit amendment is required before taking an action that expands or changes a permitted opencut operation.

(5) Except as provided in ARM 17.24.226(5), an operator holding a permit issued under the Act may commence a limited opencut operation that meets the criteria in ARM 17.24.226 and 82-4-431, MCA, after the operator has submitted the limited opencut operation form to the department.

AUTH: 82-4-422, MCA
IMP: 82-4-431, MCA

REASON: The proposed amendments to ARM 17.24.201 would implement Sec. 5, Ch. 198, Laws of 2013. The proposed amendments to (2) would restate the statutory threshold for obtaining an operating permit and are appropriate for restatement in the rule to notify applicants and operators that failure to obtain a permit before exceeding the 10,000 cubic-yard permit threshold is a violation of the Act.

The proposed amendments to (3) would notify permitted operators and applicants that the proposed amendments to the subchapter do not apply to permits and applications determined to be complete as of the effective date of these amendments.

New (4) would implement Sec. 5, Ch. 198, Laws of 2013 and would exclude limited opencut operations from the requirement to obtain a permit or an amended permit. In addition, new (4) would clarify that any action that expands or changes a permitted opencut operation requires an amended permit except when the action qualifies as a limited opencut operation.

New (5) would implement Sec. 5, Ch. 198, Laws of 2013 and would require an operator to submit the limited opencut information form to the department before commencing a limited opencut operation. Submittal of the information form to the department before commencing operations is necessary to afford the department the opportunity to notify the applicant soon after operations commence in the event that the operation does not meet the requirements for a limited opencut operation. New (5) would also notify operators that a limited opencut operation must meet the

criteria set forth in ARM 17.24.226 and 82-4-431, MCA.

17.24.202 DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Access road" means an existing or proposed non-public road ~~used in connection with~~ that connects an opencut ~~operations~~ operation to a public road or highway. The term includes the roadbed, cut and fill slopes, ditches, and other structures and disturbances related to the construction, use, and reclamation of the access road ~~establishment, use, and reclamation~~.

(2) "Bonded area" means a portion of the permit area that is subject to a reclamation bond or other security approved by the department under this subchapter.

(3) "Clean fill" means soil, overburden, fines, dirt, sand, gravel, rocks, and rebar-free concrete that have not been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons, inorganic metals, or contaminants that meet the definition of hazardous waste under ARM Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls). "Rebar-free concrete" means pieces of concrete that may contain rebar, but from which no rebar protrudes beyond the concrete.

~~(2)~~ (4) "Department" means the Department of Environmental Quality provided for in ~~Title 2, chapter 15, part 35~~ 2-15-3501, MCA~~;~~.

~~(3) "Facility-level area" means access roads and areas where parking, equipment and material storage, soil and overburden stockpiling, fuel storage, mine material processing and stockpiling, other product production and storage, and water system and control structures are situated.~~

~~(4) "Main permit area" means facility-level areas and mine-level areas, except access roads.~~

~~(5) "Mine-level area" means areas where excavating, grading, and excess overburden and fines disposal occur.~~

~~(6)~~ (5) "~~Mine material~~ Materials" ~~means sand, gravel, scoria, bentonite, clay, soil, and peat~~ has the meaning given in 82-4-403, MCA.

(6) "Non-bonded area" means the portion of a permit area that is not covered by a reclamation bond or other security approved by the department under this subchapter.

(7) "Opencut operation" ~~means the areas and activities related to opencut mine site preparation, access road use, mine material mining and processing, and reclamation~~ has the meaning given in 82-4-403, MCA.

(8) "Overburden" ~~means the material below the soil and above the mine material~~ has the meaning given in 82-4-403, MCA.

(9) "Pattern of violations" means three or more violations of the Act or this subchapter that harm or have the potential to harm human health or the environment. A violation does not contribute to a pattern of violations:

(a) until such time as the opportunity for administrative review, judicial review, or appeal have passed for the violation; or

(b) after the violator demonstrates compliance with all the terms of an administrative or judicial order in an action taken by the department under authority of the Act and this subchapter because of the violation.

(10) "Permit area" means the areas subject to a permit granted under this

subchapter.

(11) "Removal" means excavation of soil, overburden, and material from its natural condition.

(12) "Slope" means the measure of an incline by means of a ratio of horizontal to vertical distance indicated by a pair of numbers separated by a colon, for example, 3:1, which means one foot of rise over three horizontal feet.

~~(9)~~ (13) "Soil" ~~means the dark or root-bearing surface material, which is typically the O, A, E, and B horizons in soil profile descriptions~~ has the meaning given in 82-4-403, MCA.

(14) "Tilling" means breaking up the substrate or soil before seeding to a depth of at least one foot to improve conditions for plant growth.

AUTH: 82-4-422, MCA
IMP: 82-4-403, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.202 are necessary to update definitions and bring them into compliance with changes to the Opencut Mining Act made by Sec. 2, Ch. 198, Laws of 2013.

The proposed amendments would revise the definition of "access road" in (1) because Sec. 2, Ch. 198, Laws of 2013 excludes "private roads" from the definition of "affected lands" that require reclamation. The amended definition is necessary to identify the elements of an access road that would be subject to reclamation at the request of the landowner. The other amendments are necessary to improve syntax and readability.

New (2), (6), and (10) are necessary to clarify the distinction within a "permit area" between a "bonded area" where opencut operations are allowed, because the area is covered by a reclamation bond, and a "non-bonded area" where opencut operations are prohibited, because the area is not covered by a reclamation bond. The proposed new terms codify the department's practice of allowing an operator to bond only a portion of the permit area thereby limiting the burden of bond costs.

The proposed deletion of (3), (4), and (5) would eliminate the definitions of "facility level area," "main permit area," and "mine level area" that are proposed to be deleted throughout the subchapter because they are regulatory concepts that operators have found confusing. Elimination of these terms would improve regulatory clarity.

The proposed amendment of existing (6), (8), and (9) and proposed new (14) would substitute the restatement of those definitions that are currently in the rule in favor of reference to the definitions set forth in the Act. The proposed amendments improve clarity and avoid confusion that results from restatement of terms that are defined in statute. The proposed amendment of existing (6) substitutes "materials" as set forth in the statute for "mine materials" in order to eliminate a distinction in terminology that is unnecessary.

New (9) would implement considerations that the department would use to determine whether it could refuse to approve an application under 82-4-431(5), MCA, for an operator who has engaged in a "pattern of violations." It would establish three violations, the minimum number to establish a pattern, as the threshold for disqualification. New (9)(a) would maximize due process protections

for alleged violators by excluding a violation that is the subject of pending administrative or judicial review from consideration from counting as a pattern violation. New (9)(b) is necessary to exclude from consideration, as a pattern of violations, a violation described in an administrative or judicial order for which the operator has demonstrated compliance. The board has determined that having three unabated violations that harm public health or the environment indicates a lack of diligence sufficient to withhold permit issuance.

New (11) would add a definition for "removal" to clarify when opencut activities, which are not subject to the permit exclusion for limited opencut operations, reach the 10,000-cubic-yard permit threshold. The new definition implements Sec. 5, Ch. 198, Laws of 2013, which amends 82-4-431(1)(c), MCA, to require a permit for an operator who "removes materials and overburden at a previously mined site where the removal, combined with the amount of previously mined materials and overburden, exceeds 10,000 cubic yards." (emphasis added) That provision, construed in conjunction with the definition of "opencut operation" to include "mining directly from natural deposits of materials" in 82-4-403(7)(c), MCA, demonstrates the intent of the Legislature that disturbance, rather than removal from the site of soil, overburden, or materials, triggers the obligation to obtain a permit. The proposed definition would mean that volumes of soil and overburden that have been removed from their natural condition and stockpiled at the site will not be deducted from the volume of the excavation for the purposes of determining whether the 10,000-cubic-yard threshold in 82-4-431(1), MCA, has been exceeded. The new definition would recognize the remedial intent of the Opencut Mining Act to provide for reclamation of sites where opencut operations have occurred.

New (13) would codify terminology used on opencut forms for determining the steepness of a slope. The definition is necessary to avoid confusion when a slope is described by a simple ratio.

New (15) would clarify "tilling," a term used in ARM 17.24.219, and is necessary to establish a minimum depth for preparation of land prior to seeding. The one-foot tillage depth is generally considered to be the minimum necessary to achieve successful revegetation.

17.24.203 BOND OR OTHER SECURITY (1) An application for a permit by a non-government operator must be accompanied by a bond or other security acceptable to the department under 82-4-433, MCA, ~~of at least $200 for each acre of affected land as defined in 82-4-403, MCA~~ and this subchapter. ~~After the department has evaluated the site it may require an increase in the amount of bond or other security in accordance with 82-4-433, MCA.~~

(2) The department may adjust the amount of the bond or other security levels:

(a) based on information available to the department; and

(b) yearly when necessary to secure the department's estimate of costs to reclaim the affected land. Should the department determine that additional bond or other security is required, the operator shall submit ~~it~~ a bond or security in the increased amount within 30 days of notification by the department.

(3) The operator shall immediately notify the department if the bond or other security is canceled or becomes ineffective. If the bond or other security is canceled

or ~~otherwise~~ becomes ineffective, the operator shall reinstate ~~it~~ or replace ~~it~~ the canceled or ineffective bond or security with another bond or ~~other~~ security acceptable to the department under 82-4-433, MCA, and this subchapter, within 30 days of notification by the department ~~of the cancellation~~ that the canceled or ineffective bond or other security must be replaced. ~~Upon failure of~~ In the event that the operator fails to reinstate or replace such bond or other security within ~~that time~~ the time provided in this rule, the department may suspend ~~the~~ any permit~~(s)~~ secured by ~~such~~ the canceled or ineffective bond or other security ~~until its reinstatement or replacement~~ in accordance with 82-4-442, MCA. The operator shall immediately cease opencut operations, except reclamation activities, on lands covered by a suspended permit.

(4) An operator may apply for release of the bond in phases as follows:

(a) upon completion of phase I reclamation, which includes completion of all the requirements in ARM 17.24.219(1), except the requirements of ARM 17.24.219(1)(h)(ii)(K), (L), and (M). Any phase I reclamation bond or security release must leave sufficient bond or security to secure the estimated cost of completion of phase II reclamation;

(b) upon completion of phase II reclamation, which includes completion of all the requirements of ARM 17.24.219(1).

~~(4)~~ (5) ~~Requests~~ An application for ~~full~~ phase I or ~~partial~~ phase II bond release ~~of bond~~ or release of other security must be submitted on forms provided by the department, and must include:

(a) a site map that shows:

(i) the existing permit area and release request area;

(ii) the landowner material stockpile area and remaining soil stockpile, if applicable;

(iii) roads; and

(iv) other pertinent mapping items as required by ARM 17.24.221(5);

(b) at least four photographs taken from the north, south, west, and east corners of the release request area; and

(c) for applications for release of bond amounts for phase II reclamation, at least three photographs taken at three different locations in the permit area showing typical vegetation within an area approximately five feet wide and including an object to define scale.

(6) The department may release a portion of the bond or security when the operator demonstrates completion of a reclamation phase, as defined in (4), for a discrete portion of the permit area if:

(a) the remaining reclamation can be accomplished without disturbance of completed reclamation; and

(b) the remaining amount of bond or security is sufficient to cover estimated cost to complete reclamation of the affected land.

(7) Release of a portion of the bond or security after completion of phase I reclamation does not relieve the operator from responsibility for any reclamation or any increased costs of reclamation necessary to comply with the Act, this subchapter, and the permit until phase II bond release.

(8) State and federal agencies and counties, cities, and towns are not required to post a bond or security. These government operators may request

release from responsibility for reclamation in the same manner as nongovernmental operators request bond or security release in accordance with this rule, including release of a portion of the permitted area, except that government operators may not request release of responsibility for phase I reclamation.

AUTH: 82-4-422, MCA
IMP: 82-4-432, 82-4-433, MCA

REASON: The proposed amendments to ARM 17.24.203 would implement changes to the Act by Sec. 12, Ch. 385, Laws of 2007 for determination of the amount of a reclamation bond or other security. The proposed amendments to (1) would clarify that the requirement to post a reclamation bond or security only applies to nongovernment operators and deletes the provision for the $200 per acre minimum bond amount that was specifically repealed by Sec. 12, Ch. 385, Laws of 2007.

The proposed amendments to (2)(a) would provide notice to applicants, in the rule, of the authority of the department under 82-4-432(2)(a), MCA, to withhold issuance of a permit pending increase in the bond amount, if the department determines, based on available information, that the amount of the bond submitted with the permit application is inadequate. The amendments would ensure that the amount of the bond is adequate before opencut operations may begin, thereby reducing the risk that the state would need to rely on public funds to reclaim the site. The proposed amendments to (2)(b) are necessary to notify operators that exercise by the department of its authority to require an operator to provide additional bond would be based on the department's determination of estimated reclamation costs. Otherwise the amendments to (2)(b) are necessary to improve the syntax and readability of the rule.

The proposed amendments to (3) would improve the syntax and readability of the rule. In addition, the amendments would require the operator, as well as the insurer or other guarantor, to immediately notify the department in the event that a reclamation bond is canceled or becomes ineffective. This would ensure that the department has the opportunity to immediately suspend the operation or take other action to make sure that there is coverage of a bond or other security sufficient for reclamation of all disturbances. Amended (3) would also reference the department's suspension authority under 82-4-442, MCA, to notify operators that suspension of a permit under the rule must follow the procedures set forth in the statute.

New (4) would codify the department's practice of allowing an applicant to apply for phased bond release. New (4) also accommodates proposed amendments to ARM 17.24.219, which would provide more flexibility for an operator applying for bond release. New (4) would follow ARM 17.24.219 by establishing two phases of bond release, phase I and phase II. New (4) would make an operator eligible for phase I bond release upon completion of all reclamation activities that would presumably be completed in the first season after opencut activities cease, i.e., all activities except demonstration of successful revegetation. New (4) would make demonstration of revegetative success during the second growing season the benchmark for phase II or full bond release. Providing for phased bond release is necessary to allow an operator to release a portion of the bond after backfilling,

grading, and revegetation have been completed and avoid the costs of maintaining the full bond amount pending demonstration of revegetative success.

Revised (5), previously numbered (4), would codify the department's practice regarding the information required for an application for bond release. Revised (5) would allow an operator to request partial bond release when all reclamation is complete, except demonstration of revegetative success. The submittal requirements set forth in (5)(a) and (b) are the minimum necessary to demonstrate reclamation in accordance with ARM 17.24.219. Revised (5)(b) and (c) would facilitate timely processing of bond release applications by requiring the operator to provide pictorial evidence of successful reclamation in advance of the site inspection, so that the department may address any problems in advance of the inspection.

New (6) would codify the considerations that the department uses to evaluate an application for partial bond release, meaning release of a reclamation bond for only a portion of the permit area. The considerations are necessary and practical in that they would ensure that full reclamation is possible without disturbing areas where the bond has been released and that the amount of the bond remaining after partial release is sufficient to cover the costs of reclamation of the unreclaimed portion of the site.

New (7) provides that partial release of a reclamation bond does not prohibit the department from increasing the amount of the remaining bond in the event that the department concludes that the amount of the remaining bond is insufficient to cover estimated reclamation costs. The provision will ensure that the amount of the remaining bond will be sufficient to cover the costs of reclamation, thereby reducing the risk that the department would resort to public funds to complete reclamation.

New (8) would allow government operators, who are exempt from the requirement to obtain a reclamation bond, to apply for a release of responsibility for reclamation in the same manner that a nongovernmental operator would apply for partial bond release. New (8) would deny government operators the opportunity to apply for phased bond release based on vegetative success in recognition of the limited financial incentive for a government operator to do so. Phased bond release is intended to relieve operators from the holding costs for a reclamation bond or other security. Therefore, phased bond release is not applicable to government operators because they are not required to post reclamation security.

17.24.206 LANDOWNER ~~CONSENT FOR RECLAMATION~~ CONSULTATION (1) ~~An operator shall secure the consent of the owner of the land to be affected by opencut operations to allow the operator, the department, or agents or contractors of the department to enter and reclaim the affected land as provided in the plan of operation.~~ An application for a permit or for an amendment to add acreage, for an asphalt or concrete plant, to change postmining land use, or to extend the reclamation date must demonstrate that the applicant consulted with the ~~The~~ landowner ~~consent must be submitted on a~~ about the proposed opencut operations by supplying a form provided by the department. ~~No application for a permit, or an amendment to add acreage or change the postmining land use, may be approved unless accompanied by a landowner consent form.~~

(2) The landowner consultation form must require the landowner to:

(a) acknowledge receipt of a copy of the application for a permit or amendment submitted to the department;

(b) affirm ownership of the property that is described in the application;

(c) affirm that the operator consulted with the landowner about the opencut operations described in the application;

(d) indicate whether access roads, haul roads, or other roads used in opencut operations are on affected land and are subject to the reclamation requirements of this subchapter;

(e) acknowledge the exclusive right of the operator, its agent, or assignee to conduct opencut operations on the property that is identified in the application; and

(f) acknowledge and consent to entry and enforcement of the Act and this subchapter by the department on all landowner property affected by opencut operations.

(3) The landowner consultation form also must require the operator and the landowner to consent to entry at reasonable times by the department and its employees, agents, or contractors to inspect the property and complete reclamation of all affected lands in accordance with the permit and the plan of operation in the event that the operator fails to do so.

AUTH: 82-4-422, MCA
IMP: 82-4-422, 82-4-423, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.206 would implement the changes to the Act enacted under Sec. 11, Ch. 385, Laws of 2007. The proposed amendment to (1) would specify when landowner consultation is required. The proposed amendment would recognize that every change to a permit is not worthy of revised landowner consultation. However, the proposed amendment would require an operator to consult with the landowner for permit amendments that would result in an increase in permitted acreage, a change to postmining land use, an extension of the deadline for reclamation, or to add an asphalt or a concrete plant, which are all changes considered to be material to the interest of the landowner.

New (2)(a) would specify the information that the department currently requires on the landowner consultation form. It has been the experience of the department that some landowners do not understand the implications of permitted opencut operations on their land. Accordingly, new (2)(a) would require the landowner to acknowledge receipt of a copy of the opencut permit application submitted to the department.

New (2)(b) and (c) would require the landowner to acknowledge: 1) ownership of the subject lands; and 2) that the applicant has consulted with the landowner. This is being proposed in order to ensure that the landowners consultation requirement has been met.

New (2)(d) would also notify the landowner of elections he or she must make with regard to reclamation of roads. The information required is necessary, as it is the minimum needed to inform the landowner of the implications of landowner consent.

New (2)(e) is proposed to notify the landowner of the operator's exclusive

right to conduct opencut operations under the permit to avoid conflicts between the operator and the landowner about the use and control of the permitted area.

New (2)(f) also would require the landowner and the operator to consent to entry of department staff to inspect property where an opencut operation is located and to inspect or complete reclamation of the property as permitted by 82-4-442, 82-4-445, and 82-4-446, MCA. This would facilitate the department's performance of its regulatory functions without interference.

17.24.207 ADDITIONAL REQUIREMENTS FOR BENTONITE MINES (1) In addition to the requirements imposed by ARM 17.24.203, 17.24.206, and ~~17.24.216~~ 17.24.218 through 17.24.222, the department may require the following information as part of the plan of operation for a bentonite mining operation:

(a) an analysis of the soil and each major stratum in the overburden~~,~~ ~~including~~ that includes determinations of:

(i) saturation percentage~~,~~;

(ii) pH~~,~~;

(iii) electrical conductivity~~,~~;

(iv) sodium adsorption ratio~~,~~;

(v) texture~~,~~; and

(vi) additional characteristics the department may require.

(2) A soil analysis required under (1)(a) must describe:

~~(i) In submitting this information, the operator shall also list:~~

~~(A)~~ (a) the identifying number and depth of each sample~~s~~ taken;

~~(B)~~ (b) the methods by which ~~they were~~ the samples were taken;

~~(C) the location and depths from which they were taken;~~

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

~~(E)~~ (d) the analytical methods ~~of analysis~~ used; and

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

~~(ii)~~ (3) ~~The~~ A soil analysis required by (1)(a) must be accompanied by a map that describes ~~delineating~~:

~~(A)~~ (a) the soil types identified;

~~(B)~~ (b) the location and depth of each sample taken ~~site locations~~;

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

~~(D)~~ (d) the dominant vegetative species present on each soil type~~; and~~.

~~(b)~~ (4) The department may also require that the plan of operation contain a description of the location and method of disposal of bentonite cleanings, stray bentonite seams, and overburden that are unsuitable for plant growth. Such materials must be buried under at least three feet of material suitable for sustaining the postmining vegetation, but if suitable burial material is not available, then the material that is unsuitable for plant growth must be laid and graded to a condition that is as good or better than the pre-mine condition, minimizes adverse impacts to plant growth, and blends into the surrounding area.

AUTH: 82-4-422, MCA
IMP: 82-4-432, 82-4-434, MCA

REASONS: The amendments to ARM 17.24.207 are proposed to improve the syntax and readability of the rule. No substantive amendments are proposed, except that the language to be added to (1)(d) would provide flexibility for operations where the pre-mine conditions do not permit burial of materials unsuitable for plant growth beneath three feet of suitable material.

17.24.212 ~~APPROVAL OR DISAPPROVAL~~ REVIEW OF AN APPLICATION ~~FOR A PERMIT~~ (1) Upon receipt of an ~~a permit~~ application to conduct opencut operations and within the time limits provided in 82-4-432~~(4)~~, MCA, the department shall ~~inspect the proposed site and~~ evaluate the application to determine if the requirements of the Act and this subchapter ~~will be~~ are satisfied. ~~If the department is unable to evaluate a permit application because weather or other field conditions prevent an adequate site inspection, then the application must be disapproved.~~

(2) Except as provided in 75-1-208(4)(b), MCA, within five working days of receipt of an application to conduct opencut operations, the department shall determine and notify the applicant whether the application is complete. A complete application must be submitted on forms provided by the department and must contain the materials and information required by 82-4-432(1) and (2), MCA, and the plan of operation required by ARM 17.24.218 through 17.24.223.

(3) If the department determines that an application is complete, the applicant shall comply with the public notice requirements required by 82-4-432, MCA, and the department shall review the application for acceptability.

~~(2)~~ (4) ~~The department shall approve a~~ A permit application is acceptable if ~~it determines that:~~ the materials and information provided to the department demonstrate that the proposed opencut operation complies with requirements of 82-4-432(1) and (2), MCA, and contains a plan of operation that meets the requirements of this subchapter.

~~(a) the application contains the following:~~

~~(i) $50 application fee, if required;~~

~~(ii) a completed copy of the permit application form provided by the department;~~

~~(iii) plan of operation submitted on a form provided by the department;~~

~~(iv) bond or other security, if required;~~

~~(v) a completed copy of the landowner consent form; and~~

~~(vi) a completed copy of the zoning compliance form; and~~

~~(b) the application materials satisfy the requirements of the Act and this subchapter.~~

~~(3)~~ (5) Before ~~approving~~ determining that an ~~operator's permit~~ application for a permit is acceptable, the department shall submit a copy of the plan of operation, including site and area maps ~~map(s)~~, to the state historic preservation office for evaluation of possible cultural resources in the proposed permit area. ~~If the site is likely to contain significant cultural resources~~ Based on information provided by the state historic preservation office and as required by law, the department may require that the operator sponsor a cultural resources survey by ~~a competent~~ an archaeological professional ~~authority prior to approving the application~~ and provide a plan to protect archeological and historical values on affected lands. Unless

prohibited by law, the department shall make available a response received from the state historic preservation office.

~~(4)~~ (6) A permit must provide that the operator shall comply with the requirements of the Act and this subchapter. Before determining that an application for a permit or amendment is acceptable, the department may condition a permit as necessary to accomplish the requirements of the Act and this subchapter including, but not limited to, requiring surface water and ground water quality and quantity monitoring before, during, and after opencut operations inside and outside the permit area.

~~(5)~~ (7) A permit ~~does not become operative until issued by the department, and an applicant may not begin opencut operations until a permit is issued~~ becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the permit is approved and issued by the department.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.212 would implement the amendments enacted by Sec. 11, Ch. 385, Laws of 2007 and Sec. 7, Ch. 477, Laws of 2009. The proposed amendments to (1) are necessary to improve syntax and readability of the rule. The last sentence of (1) would be deleted in favor of proposed new (5).

New (2) and (3) would restate the requirements of 82-4-432, MCA, in order to consolidate all necessary information for applicants in one place in the rule. The proposed last sentence of (2) is necessary to notify applicants which rules are relevant to an application for a permit.

New (4) would restate current (2) and would substitute terms that follow the applicable statute, 82-4-432, MCA, for clarity. New (4) would also delete the provisions of (2)(a) and (b) because they have been invalidated by changes enacted by Sec. 11, Ch. 385, Laws of 2007, and otherwise merely paraphrase the statute.

The proposed amendments to (5), currently (3), would improve syntax and readability of the rule and articulate the department's understanding of the legal requirements arising from the Montana antiquities laws provided in 22-3-421, MCA, et seq. and 82-4-434(3)(h), MCA. The last sentence of (5) would respond to concerns of applicants that they are unable to review communications from the State Historic Preservation Office to the department.

The proposed amendment to (6), currently (4), would allow the department to condition a permit as necessary to accomplish the requirements of the Act or rules. This amendment would provide a process to ensure compliance that is less drastic, time-consuming, and costly than permit denial and reapplication. Revised (6) would add language that is proposed to be deleted from current ARM 17.24.218(1)(e) and (i). The language would be relocated to improve the logic and flow of the rule.

The proposed amendments to (7), currently (5), are proposed to improve the syntax and clarity of the rule. The proposed amendments would establish a clear time when opencut operations may commence after approval of a permit and prevent operations from commencing before the permit has been issued.

17.24.213 AMENDMENT OF PERMITS (1) An operator may apply for an amendment to its permit by submitting an ~~amendment~~ application ~~to~~ on a form provided by the department. Upon receipt of an amendment application and within the time limits provided in 82-4-432~~(4)~~, MCA, the department shall~~, if it determines that site inspection is necessary to adequately evaluate the application, inspect the proposed site and~~ evaluate the amendment application to determine if the requirements of the Act and this subchapter will be satisfied. ~~If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application.~~

(2) ~~The department shall approve an amendment application if it determines that~~ An application to amend a permit is acceptable if it meets the requirements of ARM 17.24.212 and includes the following:

(a) ~~the application contains a completed copy of the amendment application form provided by the department,~~ a new or additional bond ~~if necessary,~~ or other security sufficient to cover additional estimated costs of reclamation required by ARM 17.24.203 and 17.24.220;

(b) a new landowner ~~consent~~ consultation form if required under ARM 17.24.206~~(1),~~;

(c) a new zoning compliance form if required under ARM 17.24.223~~,~~; and

(d) a revised plan of operation ~~revisions, if necessary; and~~

~~(b) the application and plan of operation revisions satisfy the requirements of the Act and this subchapter~~.

(3) For an amendment application solely to extend the reclamation date for a period of no more than five years that is submitted no later than five years after the first approval date of the permit, the applicant shall apply to extend the reclamation date on a form provided by the department and provide an updated landowner consultation form.

~~(3)~~ (4) An amendment ~~does not become operative until approved~~ becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the amendment is approved and issued by the department. Once approved, an amendment becomes part of the original permit.

~~(4) An amendment application does not require the payment of an additional fee.~~

AUTH: 82-4-422, MCA
IMP: 82-4-432, 82-4-433, 82-4-434, 82-4-436, MCA

REASON: The proposed amendments to ARM 17.24.213 would implement the changes to the Act enacted by Sec. 11, Ch. 385, Laws of 2007 and Sec. 7, Ch. 477, Laws of 2009. The proposed strikeouts in (1) delete provisions for mandatory inspections in accordance with the amendments enacted by Sec. 7, Ch. 477, Laws of 2009.

The proposed amendments to (2) would recognize that the procedures for amendment of a permit generally follow the procedures for application for an original

permit set forth in ARM 17.24.212. See 82-4-432(12), MCA. Accordingly, descriptions of procedures are stricken in favor of reference to the applicable rule. Current (2)(b) would be deleted for regulatory clarity because it generally repeats language set forth in (1). The proposed amendments to (2) would improve syntax and readability of the rule and conform the rule to language proposed elsewhere in the subchapter.

New (3) would provide an expedited procedure in the event that an operator only desires to extend the reclamation date within five years of having obtained the original permit. The expedited procedure is justified because the information provided in the original application is unlikely to have materially changed within the five-year period.

The proposed amendments to (4), currently (3), are necessary to inform the applicant that a permit amendment does not become effective until the department notifies the applicant in writing that the amendment application is approved and the amendment is issued. The proposed amendments are necessary to establish a clear time when opencut operations may commence pursuant to amendments to a permit and prevent the operator from commencing operations under the amended permit until it is issued. The new language in (4) is proposed so that the rule more closely follows proposed ARM 17.24.212(7). The language proposed in ARM 17.24.212(7) would be restated in (4) to notify operators that expanded operations under an amended permit may only commence after the department provides written notice of approval.

17.24.214 ANNUAL ~~PROGRESS~~ PRODUCTION REPORT (1) An operator ~~who possesses one or more permits~~ shall submit one annual ~~progress~~ production report ~~for~~ that addresses all opencut operations during the previous calendar year to the department on or before March 1 of each year.

(2) The annual ~~progress~~ production report must be submitted on a form provided by the department. ~~In addition to the requirements in 82-4-403, MCA, the~~ The report must list all ~~of the operator's permitted sites and provide the information required by the department for each of those~~ sites where the operator engaged in permitted, unpermitted, or limited opencut operations and describe the amount of materials removed for each site.

(3) The annual production report must be accompanied by payment of the annual fee, in accordance with 82-4-437, MCA, for the sites listed according to (2).

(4) The department may require an operator to provide documentation of materials removed for the purpose of verifying the amounts reported under this rule.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.214 would implement changes to annual reporting requirements enacted by Sec. 9, Ch. 477, Laws of 2009 and Sec. 8, Ch. 198, Laws of 2013. The proposed revision of the title of the rule provides regulatory clarity because "production" more accurately describes the subject matter of the report. The proposed amendments to (1) would implement Sec. 8, Ch. 198, Laws of 2013, to expand the applicability of the annual report

requirement to unpermitted as well as permitted operators.

The proposed amendments to (2) would also implement Sec. 8, Ch. 198, Laws of 2013, to expand the applicability of the annual report requirement to unpermitted as well as permitted operators. The proposed deletion of the reference to 82-4-403, MCA, is necessary because the reference was made obsolete by enactment of 82-4-437, MCA, in 2007. In addition, the proposed amendments to (2) would clarify that the annual report must include production from limited opencut operations.

New (3) would implement Sec. 9, Ch. 477, Laws of 2009, which enacted the $0.025 per cubic yard production fee and to inform operators that the fee, if applicable, must be submitted along with the annual report.

New (4) would provide a means of verifying the accuracy of annual production reports submitted to the department.

17.24.218 PLAN OF OPERATION ~~--~~(SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS~~--~~) AND PERFORMANCE STANDARDS (1) The plan of operation must include the following ~~site preparation, mining, and processing plan commitments and information~~:

(a) ~~an access road and main permit area boundary~~ a markers section~~,~~ ~~including~~ that includes a statement that the operator ~~has~~ clearly marked on the ground all required boundaries and ~~the~~ permitted access ~~road segments~~ roads to be improved or constructed ~~and the main permit area boundary segments that require marking,~~ and will maintain the markings as required by this rule. Boundary and ~~R~~road markers ~~segments to be improved or constructed~~ must be ~~marked at every corner and along each segment~~ placed so that ~~the~~ no less than two consecutive markers are ~~easily~~ readily visible ~~with the naked eye from~~ in any direction from any point on a line ~~one to the next and no more than approximately 300 feet apart~~. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:

(i) markers must be in place prior to submitting an application for a permit or an amendment;

(ii) markers should be durable stout steel, wood, or similar quality posts and painted or flagged to be readily visible, except that a prominent, permanent feature such as a pole, tree, or large rock, flagged or painted, may serve as a marker;

(iii) road markers may be removed as the road is constructed, but each boundary marker must be maintained in place and readily visible until the adjacent permit area is reclaimed and released;

(iv) the following areas and features must be marked according to this rule:

(A) proposed permit or proposed amended permit boundaries;

(B) non-bonded areas;

(C) proposed permitted access roads to be improved or constructed;

(D) phase 1 release areas previously approved by the department; and

(E) prior to submission of an application for bond release, areas that are the subject of an application for phase I or phase II bond release;

(v) ~~Those portions of the boundary defined by definite topographic changes, natural barriers, or man-made structures, or located in~~ the requirements of (1)(a) do not apply to active hayland~~,~~ ~~or~~ cropland, ~~need not be marked~~ or existing roads to be permited~~. Other boundary segments must be marked at every corner and along each segment so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Acceptable road and boundary markers include brightly colored, brightly painted, or brightly marked fenceposts, rocks, trees, and other durable objects. A boundary marker must remain functional until the beginning of final reclamation of the area next to that marker~~;

(b) an access road ~~establishment~~ construction~~,~~ and use~~, and reclamation~~ section that is consistent~~, including~~ with the landowner's acknowledgements contained in the landowner consultation form required by ARM 17.24.206~~:~~;

~~(i) a statement that the operator will appropriately establish, use, and reclaim access roads, and downsize to the premine condition or totally reclaim these roads by retrieving and properly handling surfacing materials; backfilling and grading road locations in a manner that leaves stable surfaces blended into the surrounding topography and drainageways; and ripping, resoiling, reconditioning, and seeding or planting the locations with the approved vegetative species, unless the landowner requests in writing that specific roads or portions thereof remain open and the department approves the request; and~~

~~(ii) a description of the access roads or portions thereof to be improved or constructed, including their locations, lengths, widths, drainageway crossings, and surfacing; and of the roads or portions thereof proposed to remain open, per landowner request, at the conclusion of opencut operations, including their locations, intended uses, and final widths. Some or all of this information may be presented on the site or area map. Improvements include, but are not limited to, blading, widening, and surfacing. A road or portion thereof may remain open for a reasonable postmining use and must be left in a condition suitable for that use;~~

(c) a soil and overburden characterization section that includes the average soil and overburden thicknesses in the permit area determined on the basis of no less than three test holes spaced representatively to describe proposed permit areas of less than nine acres and one test hole per each three-acre area for proposed permit areas of nine acres or more, with a maximum of 20 representatively spaced test holes for proposed permit areas that exceed 60 acres, or as otherwise approved by the department in the permit;

(i) for the purposes of this subsection:

(A) test holes must be of sufficient depth to measure the thicknesses of soil and overburden;

(B) representative test holes must be located in both bonded and non-bonded areas;

(C) exposures of the soil and overburden profile, such as a roadcut, may be used in lieu of a test hole; and

(D) clearly labeled photos showing the top three feet of the soil profile with a visible scale must be taken and provided to the department for each test hole;

(d) a soil and overburden handling section that includes a statement that the operator shall:

(i) upon commencing opencut operations, strip and stockpile overlying soil to the depth specified in the permit before excavating overburden and materials;

(ii) before mining, remove and stockpile overburden separately from soil and designate soil and overburden stockpiles with signage that is legible, readily visible, and placed so that equipment operators and inspectors may readily identify the type of stockpile for the life of the stockpile;

(iii) never stockpile overburden or soil on slopes greater than 3:1 or in drainages or in a manner that will cause pollution to state waters;

(iv) remove all soil and overburden from a minimum ten-foot-wide strip along the crest of a highwall;

(v) haul soil and overburden directly to areas prepared for backfill and grading or resoiling or to separate stockpiles;

(vi) never stockpile overburden on areas where soil has not been stripped to the depth required by the permit; and

(vii) use best management practices to prevent erosion, commingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles including, but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil and overburden stockpiles that remain in place for more than two years and maintain the accessibility of all overburden and soil stockpiles in the permit area prior to reclamation in accordance with the plan of operation;

~~(c)~~ (e) a construction, mining, processing, and hauling section~~, including~~ that includes:

(i) a description of the materials to be sold or used by the operation;

(ii) a construction project plan that describes the locations and construction schedules for all areas to be disturbed and location of all facilities including offices, parking, vehicle staging areas, roads designated by the landowner as affected land, and processing plants;

(iii) a description of the methods and equipment to be used to mine, haul, and process ~~mine~~ material~~, and to haul it and the products made from it. The department may require~~;

(iv) a description of the anticipated general mining progression, including ~~where~~ the location of the first stripping and excavation ~~will occur~~, the direction of mining ~~will~~ progress, ~~and other relevant information. The anticipated location~~ and timing for the ~~installation~~ mobilization and setup of processing facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities ~~may also be required~~; and

(v) other information necessary to fully describe the nature and progress of opencut operations;

~~(d)~~ (f) a section describing the ~~an~~ hours of operation ~~section, including a description of the proposed hours of operation~~ of the proposed opencut operation. The department may reasonably limit hours to reduce adverse impacts on residential areas. ~~A~~ The department may require an operator to keep and maintain a complete and accurate ~~log that lists general on-site activities and the dates and times they occurred must be maintained for an opencut operation subject to restricted hours. Log information must be presented to the department upon request~~ record of the hours operated. The operator shall submit the record to the department within two

work days after receipt of a request from the department;

(g) a water resources section that includes:

(i) the depths, water levels, and uses of water wells in and within 1,000 feet of the permit area;

(ii) identification of the sources of the information reported, such as landowners, field observations, and water well logs;

(iii) copies of all available well logs;

(iv) the estimated seasonal high and seasonal low water table levels in the permit area and the information sources used, such as landowners, field observations, and water well logs; and

(v) in the event that the proposed opencut operation involves or may result in the diversion, capture, or use of water, acknowledgement that the operator consulted with the regional office of the Department of Natural Resources and Conservation, Water Resources Division, concerning the requirements to obtain water rights and possible adverse impacts to existing water rights;

~~(e)~~ (h) a water quality protection and management section~~, including~~ that includes:

(i) ~~a statement that the operator will take appropriate measures to protect on- and off-site surface water and ground water from deterioration of water quality and quantity that could be caused by opencut operations; take appropriate measures to prevent, minimize, or mitigate adverse impacts to on- and off-site surface water and ground water systems and structures that could be caused by opencut operations~~ a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations;

(ii) an explanation of measures to prevent pollution of state waters or impairment of a water right including, but not limited to:

(A) an explanation of water management and erosion control plans for stormwater, ground water, and surface disturbances that discharge off-site or intercept any waterway with a defined channel; and

(B) an explanation of proposed measures to protect the water rights of other parties or to replace an adversely affected water source that has a beneficial use;

(iii) a statement that the operator will keep non-mobile equipment above the ~~ordinary~~ seasonal high water level of surface water and ground water~~; appropriately establish, use, and reclaim opencut operation-related hydrologic systems and structures~~;

(i) a spill prevention and management section that includes a statement that the operator will:

(i) install or construct fuel storage containment structures in accordance with the current codes adopted by the state fire marshal for each single-wall, non-mobile, fuel storage tank placed and used in and within ~~500 feet of access roads and 1,000~~ 300 feet of the ~~main~~ permit area; and

(ii) routinely inspect and maintain these tanks to prevent leaks and spills~~;~~, retrieve and discard spilled fuel and contaminated materials in a lawful manner~~;~~, and report to the department a fuel spill that reaches state waters, as defined in 75-5-103, MCA, or ~~that~~ is greater than 25 gallons. ~~The department may require on- and off-site surface water and ground water quality and quantity monitoring before, during, and after opencut operations. When opencut operations will cause the~~

~~diversion, capture, or use of water, the operator shall consult with the regional office of the department of natural resources and conservation, water resources division, concerning water rights and submit a summary of that consultation with the plan of operation; and~~

~~(ii) a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations; special measures to be used to protect on- and off-site surface water and ground water from deterioration of water quality and quantity; special measures to be used to prevent, minimize, or mitigate on- and off-site impacts on surface water and ground water systems and structures; water management and erosion control plans for surface disturbances that will intercept a drainageway, significant runoff, or ground water; measures to be used to protect the water rights of other parties or to replace an adversely affected water source that had a beneficial use; and fuel storage containment structures to be installed or constructed;~~

~~(f) a mine material handling section, including:~~

~~(i) a statement that the operator will keep mine material stockpiles out of drainage bottoms and off of slopes greater than 3:1, and a statement that, at the conclusion of opencut operations, the operator will, except as provided in (ii), remove from the permit area or bury all excavated or processed mine material, unless the landowner requests on the landowner consent form that specific types, grades, and quantities of mine material remain stockpiled; consolidate mine materials to remain stockpiled into piles of similar type and grade; and leave the quantity of soil that was stripped from the unreclaimed area under and around a mine material stockpile in a shaped and seeded pile within 100 feet of that stockpile. The operator remains liable for the unreclaimed area under and around a mine material stockpile until the mine material is removed and the site reclaimed, or ownership of the stockpile or possession of the permit is transferred to the landowner or another party; and~~

~~(ii) a description of the types, grades, and quantities of mine material proposed to remain stockpiled, per landowner request, at the conclusion of opencut operations, and justifications for the quantities based on current and expected demand for the materials. The department shall reject a landowner's request that certain mine materials remain stockpiled if adequate justification is not provided;~~

~~(g) a mined-area backfill section, including:~~

~~(i) a statement that the operator will use only clean fill from any source, on-site-generated asphaltic pavement as mined-area backfill; dispose of other wastes in compliance with applicable state laws and rules; bury on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation; and, at the conclusion of opencut operations, remove stockpiled asphaltic pavement, concrete with protruding metal, and clean fill from the permit area. Clean fill consists of dirt, sand, fines, gravel, oversize rock, and concrete with no protruding metal. On-site generated asphaltic pavement must be disposed of at least 25 feet above the ordinary high water table. The operator may propose that excess on-site-generated overburden and fines be disposed of at a site outside of the mined area but within the permit area. Fines consist of natural or crushed rock that is 1/4 inch or smaller; and~~

~~(ii) a description of the material types, estimated quantities, and fill designs for mined-area backfill, and of the plan for stockpiling and recycling imported asphaltic pavement and concrete;~~

(j) a statement by the operator that:

(i) opencut operations may not occur within a prohibited area described in the permit for purposes that include, but are not limited to, reclamation of a highwall or protection of an easement, a right of way, a drainage, or a waterway area;

(ii) no opencut operations will occur within an easement unless written permission to do so is obtained from the holder of the dominant estate; and

(iii) before commencing opencut operations, the operator, on a form provided by the department, notified the weed board in the county or counties in which the proposed operation is located. A copy of the form that the applicant submitted to the weed board must be attached to the application;

~~(h)~~ (k) an additional impacts section~~, including~~ that includes:

(i) a description of the methods and materials to be used to minimize impacts, as necessary, on the residential areas and structures identified under ARM ~~17.24.217(1)(e)~~ 17.24.221(4)(h);

(ii) repair or replacement of man-made structures affected by opencut operations within the permit area; and

(iii) ~~address~~ identification of other opencut operation impacts not addressed in other sections of the plan of operation; and

~~(i)~~ (l) an additional commitments section~~, including~~ that includes a statement that the operator will:

(i) inform key personnel and subcontractors involved in opencut operations of the requirements of the plan of operation;

(ii) take proper precautions to prevent wildfires;

(iii) provide appropriate protection for cultural resources that could be affected by opencut operations; and

(iv) promptly notify the state historic preservation office should such resources be found~~; and submit an annual progress report to the department~~.

(2) Approval of an application does not relieve the operator from the requirements of any applicable federal, state, county, or local statute, regulation, rule, or ordinance, including requirements to obtain any other permit, license, approval, or permission necessary for the actions described in or required by the application and the permit.

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

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.218 implement changes enacted by Sec. 13, Ch. 385, Laws of 2007. The proposed amendments would also restate language proposed for deletion in ARM 17.24.217 to include all requirements relevant to mining operations in one rule. Similarly, language in ARM 17.24.218 that would be more appropriately included in ARM 17.24.219, which provides for the reclamation portion of the plan of operations, has been deleted and added to the latter rule in order to improve regulatory clarity and the logic and flow of

the rules.

The proposed deletion of language in (1) is necessary for regulatory clarity because it partially restates the requirements for a mining plan that are serially set forth in the rule. Otherwise, the proposed amendments to (1)(a) would improve syntax and readability of the rule.

More specifically, the proposed amendments to (1)(a) would implement the deregulation of access and other roads enacted by Sec. 2, Ch. 198, Laws of 2013, by deleting the requirement that an applicant or operator mark the location of proposed access roads outside the permit boundary. The new language proposed at (1)(a) and (1)(a)(i) would require placement of markers so that boundaries may be readily located during site inspections and during operations. The new language proposed at (1)(a)(ii) would ensure that the materials used for boundary markers are durable and readily visible in the field. The new language proposed at (1)(a)(iii) relieves operators from the obligation to maintain road markers after the road is constructed. The new language proposed at (1)(a)(iv) restates each requirement for marking boundaries in separate statements to improve the syntax of the rule. New (1)(a)(iv) also proposes marker requirements for phased bond release in order to minimize the time required to perform site inspections for bond release. The proposed amendments at new (1)(a)(v) would delete language that has been revised and restated elsewhere in the rule as explained above.

The proposed amendments to (1)(b) would implement the deregulation of access and other roads enacted by Sec. 2, Ch. 198, Laws of 2013, by deleting the requirement that a plan of operation explain construction, use, and reclamation of access roads except as necessary to achieve the expectations of the landowner about the reclamation of roads constructed on affected land.

New (1)(c) would combine and restate requirements for characterization of soil and overburden currently set forth in ARM 17.24.217(1)(d) and 17.24.219(1)(b) in one place in the rule. The proposed amendments to (1)(c) are necessary to improve the logic and flow of the rule by combining all requirements relevant to site characterization and mining operations into the provisions for the plan of operation. The proposed provision for test holes generally restates the current provisions of ARM 17.24.217(1)(d) and would notify applicants of the department's practice regarding the number of test holes that are necessary to represent the depths of soil and overburden. New (1)(c)(i)(D) would require an applicant to provide labeled photos showing the top three feet of the soil profile which is necessary to reduce the time required for preapproval site visits by allowing the department to identify in advance specific test holes that should be inspected.

New (1)(d) would restate requirements for explaining how soil and overburden will be handled during mining that are currently set forth in (1)(f)(i) and the requirements for the reclamation plan in ARM 17.24.219(1)(b). The proposed amendment is necessary to improve the logic and flow of the rule relating to soil and overburden handling because it gathers all related provisions at one place in the rule. Also, soil and overburden handling has a stronger nexus to operations as opposed to reclamation and logically should be addressed as part of the plan of operation. The restated requirements for soil and overburden handling would generally follow the current requirements of (1)(f)(i) and ARM 17.24.219(1)(b), but are restated such that each requirement is a separate subsection to improve

readability. New (1)(d)(ii) would require operators to post signs identifying soil and overburden stockpiles and is necessary as a best management practice to avoid commingling of soil and overburden during mining. The requirement is necessary to ensure that soil stockpiles are not contaminated with other materials because the availability of soil on site is critical to keeping the costs of reclamation within the principal amount of the reclamation bond.

The proposed amendments to (1)(e), currently numbered as (1)(c), would restate requirements for explaining the proposed mining and material handling operations. The proposed amendments are necessary to improve the syntax of the rule. Otherwise, new (1)(e)(ii) would implement the requirement for a construction project plan that is set forth in 82-4-403(7)(g)(ii), MCA.

The proposed amendments to (1)(f), currently numbered as (1)(d), would restate the provision for regulation of the hours of operation in the event that an operation is proposed in the vicinity of a residential area. The proposed amendments are necessary to improve the syntax of the rule. The proposed last sentence of (1)(f) is necessary so that the department may inspect an operating record outside of a site inspection.

New (1)(g) would combine and restate the requirements currently set forth in ARM 17.24.217(1) and 17.24.218(1)(e)(i) that relate to identification of water resources. New (1)(g) is necessary to improve regulatory clarity by consolidating regulations addressing water resources under a single rule and by distinguishing the requirement that the plan of operation address water resources in and within 1000 feet of the proposed permit area from the requirement to address water quality protection and management proposed in (1)(h). New (1)(g)(v) would move language currently located in (1)(e)(i) to consolidate all provisions concerning water resources to a single location in the rule.

The proposed amendments to (1)(h), currently numbered as (1)(e), would restate the provision for water quality protection and management. The proposed amendments to (1)(h) would include restatement of the requirements currently located at (1)(e)(ii) for the purpose of gathering all provisions specifically relevant to water quality under a single subsection. Also, the requirements of the rule would be restated in terms that follow the Montana water quality laws to avoid confusion and enhance regulatory certainty.

The proposed amendments to (1)(i), currently numbered as (1)(e)(i), would restate requirements for the plan of operation regarding spill prevention and control. The proposed amendment would restate these requirements in a separate subsection to avoid confusion and improve the logic and flow of the rule.

New (1)(j) would gather and restate at one location in the rule prohibitions against mining necessary to ensure reclamation of highwalls and to avoid impairment of other property rights, such as easements and rights of way, and to protect drainages and waterways. New (1)(j) restates these requirements to improve syntax and readability. New (1)(j)(iii) is necessary to simplify and clarify the obligation of an applicant or an operator to notify the county weed board, if any, of the proposed operation.

The proposed amendments to (1)(k), currently numbered (1)(h), are necessary to improve syntax and readability of the rule and correct references to rules as they would be amended by the proposed amendments to this subchapter.

New (2) is necessary to inform applicants and operators that approval of an application under the Act and this subchapter does not relieve the applicant or operator from the requirements of other applicable laws.

17.24.219 PLAN OF OPERATION,--RECLAMATION PLAN,--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site reclamation plan commitments and information:

(a) a postmining land uses section~~, including~~ that includes a description of the type, location, and size of each postmining land use area in the ~~main~~ permit area. Postmining land use types include, but are not limited to, internal roads, material stockpile areas, water source pond, wetland, fish pond, riparian area, grassland, rangeland, shrubland, woodland, ~~special use~~ pasture, hayland, cropland, wildlife habitat, ~~livestock protection site,~~ recreation site, and residential, commercial, and industrial building sites;

~~(b) a soil and overburden handling section, including:~~

~~(i) a statement that the operator will strip soil before other opencut operation disturbances occur; strip, stockpile, and replace soil separately from overburden; strip a minimum of six inches of soil, if available, from accessible facility-level areas; strip all soil from accessible mine-level areas; strip and retain enough overburden, if available, from mine-level areas so that up to an 18-inch thickness of overburden and soil can be replaced on dryland mine-level reclamation, and up to a 36-inch thickness of overburden and soil can be replaced on cropland and irrigated mine-level reclamation; maintain at least a 10-foot buffer stripped of soil and needed overburden along the edges of highwalls; haul soil and overburden directly to areas prepared for resoiling, or stockpile them and protect them from erosion, contamination, compaction, and unnecessary disturbance; at the first seasonal opportunity, shape and seed to an approved perennial species mix the soil and overburden stockpiles that will remain in place for more than two years; and keep all soil on site and accessible until the approved postmining land uses are assured to the department's satisfaction. Only initial setup activities and soil stockpiling may occur on unstripped areas. The department may require that more than a six-inch thickness of soil be stripped from facility-level areas in order to protect soil quantity or quality for certain postmining land uses; and~~

~~(ii) a description of the average thicknesses of overburden and soil to be replaced on mine-level areas. Resoiled surfaces must be seeded to a cover crop, or seeded or planted to the approved vegetative species, at the first seasonal opportunity after resoiling;~~

~~(c)~~ (b) a surface cleanup ~~and grading~~ section~~, including:~~

~~(i)~~ that includes a statement that the operator will ~~retrieve and properly use, stockpile, or dispose of all refuse, surfacing, and spilled materials found on and along access roads and in the main permit area, and leave reclaimed surfaces in~~:

(i) at the conclusion of opencut operations, except as provided in (1)(b)(ii), use or haul away from the permit area all excavated or processed material for backfill as provided in (1)(c);

(ii) upon the request by the landowner, on the landowner consultation form, segregate specific types, grades, and quantities of material into stockpiles maintained in one location, along with a separate stockpile of the quantity of soil required to reclaim the area where the material is stockpiled, shaped, and seeded

and placed within 100 feet of a material stockpile;

(iii) a stockpile of materials for the landowner as provided by (1)(b)(ii) must be free of excess fines or other waste materials that would render the material unsuitable for commercial use;

(iv) provide a description of the types, grades, and quantities of material proposed to remain stockpiled as provided by (1)(b)(ii) and (iii), and justify the quantities stockpiled for landowner use based on current and expected demand for the materials;

(v) at the conclusion of opencut operations, haul away and properly dispose of all refuse, oiled surfacing, contaminated materials, concrete that is not clean-fill, and unused clean fill from affected lands;

(vi) haul away all asphaltic pavement from the permit area, except on-site-generated asphaltic pavement may be used as mined-area backfill in accordance with (1)(b)(vii) and with the consent of the landowner;

(vii) place on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation;

(viii) place on-site generated asphaltic pavement in an unsaturated condition at least 25 feet above the seasonal high water table; and

(ix) for the purposes of (1)(b)(ii) and (iii), the operator remains responsible for reclamation of the areas occupied and affected by material and soil stockpiles until the department has approved phase II reclamation for the areas where the stockpiles are located or assignment of the permit to the landowner or another party;

(c) a backfill and grading section that includes a statement that the operator will:

(i) use only overburden and materials from the permit area, or otherwise only clean fill from any source, to reclaim affected land to a stable condition ~~and~~ with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces appropriate to the designated postmine land use;

(ii) reclaim premine drainage systems to blend into the surrounding topography and drainages;

(iii) ~~leave them graded to~~ drain off-site or concentrate water in low areas identified in the permit;

(iv) backfill and grade to ~~leave them~~ at least three feet above the ~~ordinary~~ seasonal high water table level for dryland reclamation and at approved depths below the ~~ordinary~~ seasonal low water table level for pond reclamation; ~~and blend them into the surrounding topography and drainageways.~~

(v) record the average thickness of overburden replaced and never cover soil with overburden;

(vi) replace all soil, and overburden if sufficient soil is unavailable, to a minimum depth of 24 inches or to another depth approved in writing by the department and record the average thicknesses of soil replaced;

(vii) ~~The applicant may propose the establishment of~~ for the purposes of (1)(c)(i) and (ii), the department may consider steeper slopes for certain postmining land uses ~~and the construction of seasonal ponds. The department may require water-table-level~~ based on a design or a slope stability analysis prepared by a

professional engineer licensed in accordance with Title 37, chapter 67, part 3, MCA, or a geologist with five years of post-graduate academic or professional work experience in the field of soil or rock mechanics;

(viii) if required by the department, conduct postmining monitoring of ground water levels to ensure that appropriate reclaimed surface elevations are established; ~~and~~

~~(ii)~~ (d) a description of the locations and designs for any special reclamation features such as ~~drainageways,~~ ponds, waterways with defined channels, and building sites. Reclaimed ~~drainageways~~ waterways with defined channels must be located in their approximate premine locations and have channel and floodplain dimensions and gradients that approximate premine conditions, unless otherwise approved by the department. Reclaimed ~~drainageways~~ waterways with defined channels must connect to undisturbed ~~drainageways~~ waterways in a ~~stable~~ manner that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas;

(e) an access road reclamation section describing:

(i) reclamation of access, haulage, or other roads included on affected land with the landowner's consent; and

(ii) for private roads to remain open at the request of the landowner, reclamation of the road to a width appropriate to the landowner's anticipated use or as may otherwise be required by applicable land use regulations;

(f) a section that explains how the operator will reclaim water diversion, retention, discharge, and outflow structures constructed for opencut operations;

~~(d)~~ (g) an overburden and soil ~~reconditioning~~ conditioning section~~,~~ ~~including~~ that includes a statement that the operator will:

(i) ~~alleviate overburden and soil compaction by deep tilling~~ till replaced overburden, graded surfaces, and other compacted surfaces:

(A) to a depth of at least 12 inches~~, before resoiling, and by deep tilling~~ or to another depth required by the department prior to replacing soil, except that:

(I) tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, or bedrock; and

(II) tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil;

(B) on the contour and when the overburden and soil are dry enough to shatter; and

(C) in a manner that protects tilled areas from recompaction;

(ii) record the thicknesses of soil replaced on the permit areas as required by the permit;

(iii) till through ~~the~~ replaced soil and into the surface of the underlying ~~material after resoiling. Deep tillage must be done on the contour and when the overburden and soil are dry enough to shatter. Deep tilled areas must be protected from recompaction. Deep tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, and bedrock. Tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil~~ backfill prior to seeding or planting unless otherwise required by the department; and

(iv) the soil surface must be free of rocks that are not characteristic of the soil prior to disturbance;

~~(e)~~ (h) a revegetation section~~, including~~ that:

(i) describes the types and rates of fertilizer and other soil amendment applications, methods of seedbed preparation, and methods, species, and rates of seeding or planting; and

(ii) includes a statement that the operator will:

~~(i)~~ (A) ~~a statement that the operator will~~ establish vegetation to protect the soils from erosion and that is capable of sustaining the designated postmining land uses;

(B) seed all affected land for vegetation species that are consistent with the premining species composition, cover, production, density, and diversity, or otherwise as appropriate for the designated postmining land use;

(C) ensure that areas seeded or planted to perennial species ~~will be appropriately~~ are adequately protected and managed from the time of seeding or planting through two consecutive growing seasons or until the vegetation is established, whichever is longer;

(D) use seed that is as weed free as is reasonably possible; ~~and comply with the noxious weed control plan approved by the respective weed district for the opencut operation. Revegetation success on~~

(E) ensure that seedbed preparation and drill seeding is done on the contour;

(F) apply drill seeding at the rate of no less than ten pounds per acre or at another rate approved by the department;

(G) apply broadcast seeding at a rate that is at least 100 percent higher than drill seeding rates and drag or press the surface to cover the seed unless otherwise required by the department;

(H) provide seeding rates as pounds of pure live seed per acre;

(I) seed during the late fall or early spring seeding seasons;

(J) apply cover crop seeding and mulch as needed to help stabilize an area or establish vegetation;

(K) achieve revegetation of a non-cropland area ~~is achieved when~~ by establishing vegetation capable of sustaining the designated postmining land use ~~has established.~~;

(L) ~~Revegation success on~~ achieve revegetation of a cropland area ~~is achieved~~ when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions~~.~~; and

(M) ~~A copy of the approved noxious weed control plan must be submitted with the plan of operation; and~~ agree that reclamation for cropland areas will be considered complete upon inspection by the department or notification by the landowner to the department in writing that the crop yield on the reclaimed land is acceptable.

~~(ii) a description of the types and rates of fertilizer and other soil amendment applications; methods of seedbed preparation; and methods, species, and rates of seeding or planting. When the postmining land use is hayland or cropland, the soil surface must be left free of rocks that could impede agricultural equipment. Seedbed preparation and drill seeding must be done on the contour. Broadcast~~

~~seeding must be done at rates at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed. Seeding rates must be given as pounds of pure live seed per acre. Seeding must occur during the late fall or early spring seeding seasons. Cover crop seeding and mulch application may be needed to help stabilize an area or establish vegetation;~~

~~(f)~~ (i) a reclamation ~~timeframes~~ schedule section~~, including~~ that includes:

(i) a statement that the operator will complete ~~all~~ phase I and phase II reclamation ~~work~~ on an area no longer needed for opencut operations, or on areas that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may propose an alternate reclamation ~~deadline~~ schedule for that area; and

(ii) a reasonable estimate of the month and year by which ~~final~~ phase II reclamation will be completed considering the estimated ~~mine~~ demand for material ~~demand~~, expected rate of production, ~~and~~ accessible ~~mine~~ material reserves, and the time required to complete revegetation as required by (1)(g) and (h). Final reclamation must be completed by the date given.

(2) remains the same.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.219 would implement amendments to the Opencut Mining Act enacted by Sec. 13, Ch. 385, Laws of 2007. In addition, language in ARM 17.24.218, the provision for an operating plan, which more appropriately applies to reclamation plans, would be moved to ARM 17.24.219 in order to improve regulatory clarity and the logic and flow of the rules. For the same reason, language in ARM 17.24.219 that would have a stronger nexus to a plan of operation is proposed to be deleted and restated in ARM 17.24.218.

The proposed amendments to (1)(a) are necessary to improve the syntax and readability of the rule. The terms "internal roads" and "material stockpile areas," which are proposed to be added to the second sentence of (1)(a), are necessary to incorporate postmining land-use concepts that are addressed elsewhere in the rule and would be relevant to a narrative statement explaining proposed postmining land uses. The proposed amendments would also substitute "rangeland" in favor of "livestock protection site" because the common meaning of the former term clarifies the rule for applicants.

ARM 17.24.219(1)(b) would be stricken and moved to ARM 17.24.218(1)(d) to improve the logic and flow of the rule.

The proposed amendments to (1)(b), currently (1)(c), would separate "surface cleanup" from "backfilling and grading," which is a distinct subject matter that has been restated at (1)(c). The new language at (1)(b)(ii), (iii), and (iv) would be restated from ARM 17.24.218(1)(f)(ii) and provides for the operator to leave stockpiled materials for the landowner's use. The restated provision for landowner stockpiles adds language to ensure that the material left for the landowner is useable and free of fines and provides for stockpiling of a sufficient amount of soil to

provide for reclamation of the stockpiled area after the stockpile is removed. The new language would ensure that the practice of leaving material for use of the landowner is not used as a means of avoiding reclamation requirements. New (1)(b)(v), (vi), and (vii) would restate the provision currently found at ARM 17.24.218(1)(g)(i) that provides for backfill using on-site generated asphalt and coarse clean fill. The new language at (1)(b)(ix) is a restatement of ARM 17.24.218(1)(f)(i), which provides for reclamation of areas where stockpiles are maintained.

Proposed amendments to (1)(c) would incorporate and restate the backfill and grading requirements currently found at ARM 17.24.218(1)(g) and 17.24.219(1)(c) in one location in the rule. New language at (1)(c)(i) would ensure that maximum allowable slopes for reclamation backfill are commensurate with the postmine land use. Proposed amendments to (1)(c)(iv) would substitute "seasonal high water table" and "seasonal low water table" for the term "ordinary water table" which is imprecise. New (1)(c)(v) would require an operator to record the average thickness of overburden replaced and is necessary to allow the department to ensure that backfill and grading reasonably follow the reclamation plan.

In the event that soil cannot be replaced to the 24-inch depth that is generally considered to be the amount necessary to achieve revegetative success, new (1)(c)(vi) would require an operator to obtain written approval from the department for replacement of soil at another depth. The general provision for replacement of soil to a depth of 24 inches for all affected lands is a necessary improvement to the current rule, which specifies different depths of soil for "facility level areas" and "mine-level areas" -- those terms being obsolete regulatory concepts that would be deleted from the rule.

Proposed amendments to (1)(c)(vii) would provide for postmine reclamation to slopes steeper that the requirements set forth in (1)(c)(i) as may be appropriate for site conditions. To ensure stability and safety, a proposal for reclamation to a steeper slope would have to be supported by a slope stability analysis prepared by a professional engineer or qualified geologist.

The proposed amendments to (1)(c)(viii) are necessary to improve the syntax and readability of the rule because the term "water table level monitoring" is not a term that is commonly used in the groundwater hydrology field.

The proposed amendments to (1)(d) are necessary to improve the syntax and readability of the rule by substituting the term "waterways with defined channels" for "drainageways," which provides more precision. The new language at the end of (1)(d) would improve regulatory certainty by explaining that "in a stable manner" means "that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas."

The proposed amendments to (1)(e) would restate the requirements set forth in ARM 17.24.218(1)(b)(i) and revise the requirement to implement the changes enacted by Sec. 2, Ch. 198, Laws of 2013, which release operators from the requirement to reclaim access roads on affected land if the landowner consents to the road remaining unreclaimed.

The proposed new language at (1)(f) would require an operator to explain how water diversion or storage structures constructed for opencut operations will be reclaimed. The proposed new language ensures that reclamation of or incorporation

of such structures into the postmine land use is explained in the permit application and approved by the department.

The proposed amendments to (1)(g), currently (1)(d), would improve the syntax and readability of the rule. The proposed amendment to (1)(g)(i) would substitute the commonly understood term "till" for the rather nebulous term "alleviate soil and overburden." The language proposed at the end of (1)(g) would allow for approval of tillage to a depth other than the 12-inch optimum tillage depth to accommodate specific site conditions.

New language proposed at (1)(g)(ii) would require the operator to record the thickness of soil replaced and is necessary to ensure that the postmine land use is achieved.

The proposed amendments at (1)(g)(iv), currently part of ARM 17.24.219(1)(d), would improve syntax and readability of the rule. The proposed amendments would strike the term "deep tillage," which is undefined, for "tilling," which would be defined in the proposed amendments to ARM 17.24.202(15).

The proposed amendments at (1)(h)(i), currently part of ARM 17.24.219(1)(e)(ii), would improve syntax and readability of the rule. New (1)(h)(ii)(A) through (D) restate some of the provisions of current ARM 17.24.219(1)(e)(i) and would improve syntax and readability of the rule. The proposed new language at (1)(h)(ii)(E) through (I) would also incorporate language currently located at ARM 17.24.219(1)(e)(ii) to improve syntax and readability of the rule. The requirement to provide seed cover and mulch that is proposed in new (1)(h)(ii)(J) is a best management practice designed to achieve stabilization of a resoiled and revegetated area. Proposed new (1)(h)(ii)(K) and (L) are part of current (1)(e)(i), and the language has been amended to improve syntax and clarity for the process of verifying whether reseeding operations comply with the requirements for phase II bond release. Proposed new (1)(h)(ii)(M) would facilitate the department's determination of revegetative success by allowing the department to rely on a written statement from the landowner that crop yields on reclaimed land are acceptable.

The proposed amendments to (1)(i), currently numbered ARM 17.24.219(1)(f), would improve the syntax and readability of the rule. The proposed reference to "phase I and phase II" reclamation in (1)(i)(i) would improve clarity because the reclamation schedule section of the reclamation plan would use the same terminology as the proposed amendments to ARM 17.24.203(4).

17.24.220 PLAN OF OPERATION--RECLAMATION BOND CALCULATION

(1) A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department. The bond amount must be based on a reasonable estimate of ~~what it would~~ the cost for the department to procure the services of a third-party contractor to reclaim, in accordance with this subchapter and the plan of operation, the anticipated maximum disturbance during the life of the bonded opencut operation, including equipment mobilization, contractor profit, and ~~administrative~~ overhead costs. The department shall review the proposed bond calculation and make a final determination.

(2) The estimate of the reclamation costs must address the following considerations:

(a) the requirements for reclamation provided in ARM 17.24.219 and 82-4-

434, MCA;

(b) replacement of all soil (and overburden if sufficient soil is unavailable) to a minimum depth of 24 inches or to another depth approved in writing by the department;

(c) the plan of operation and the permit application; and

(d) postmining site conditions and any other site-specific considerations.

(3) An application for a permit under this subchapter is deficient if the proposed amount of the reclamation bond is insufficient to cover the estimated costs of reclamation required by this rule.

~~(2)~~ (4) Federal agencies, the state of Montana, counties, cities, and towns are ~~exempt from bond requirements~~ not required to post a bond or other security.

AUTH: 82-4-422, MCA
IMP: 82-4-405, 82-4-431, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.220 would implement changes to the Act enacted by Sec. 12, Ch. 385, Laws of 2007, authorizing the department to determine the amount of the reclamation bond based on the cost of reclamation in all cases. The proposed amendments to (1) would require the applicant to submit the estimate of the reclamation bond amount on a form supplied by the department. Addition of "procure the services of a third-party contractor" would establish, as the basis for the estimate, the costs that the department would incur to procure a third-party contractor to reclaim the site in accordance with the permit, including mobilization, general overhead, and profit. Addition of the word "bonded" to (1) would avoid confusion arising from the distinction between "bonded" and "non-bonded" permit areas that are articulated throughout the proposed amendments to the subchapter. The proposed amendments to (1) would improve the clarity of the rule by substituting "contractor profit and overhead" costs for the more nebulous term "administrative" cost.

New (2) is necessary to notify the applicant of specific provisions of the subchapter that are relevant to calculation of reclamation costs for the purpose of bonding.

New (3) is necessary to notify the applicant of the department's authority to deny an application for a permit if the amount of the reclamation bond or other security is insufficient to cover the estimated costs of reclamation pursuant to 82-4-433(1), MCA.

New (4) would restate the provision, currently in (2), exempting government operators from the requirement to obtain a bond or other security for reclamation. The section has been amended to improve syntax and readability.

17.24.221 PLAN OF OPERATION--MAPS (1) ~~A~~ An application must include a site map, area map, reclamation map, location map, and other maps necessary to describe the proposed opencut operation. Except as provided in (6), maps submitted to the department in accordance with this subchapter must be legible, ~~at a scale of 400 feet to one inch or larger and~~ on ~~a topographic map or~~ an air-photo base, ~~must be submitted as part of the plan of operation~~ and in a scale sufficient to clearly describe the subject matter. An application supported by a map submitted in

an electronic format that is incompatible with the department's systems, that cannot be reviewed, or that is otherwise illegible is not acceptable. A map submitted in other than electronic format must fill an 8 1/2- by 11- or 11- by 17-inch sheet leaving margins of approximately 1/2 inch. ~~A smaller scale area map drawn on a topographic map or air photo base may also be submitted as part of the plan.~~

(2) The following ~~existing and proposed main permit area features~~ items must be shown and labeled on ~~the site~~ each map submitted to the department:

~~(a) main permit area boundary~~ operator name;

~~(b) staging, processing facility, and mining areas~~ site name;

~~(c) soil, overburden, and mine material stockpile areas~~ legal description of the proposed permit area;

~~(d) mined-area backfill and excess overburden and fines disposal sites~~ bar scale;

~~(e) soil and overburden test hole locations~~ date of drafting; and

~~(f) water system and control structure locations~~ north arrow~~; and~~

~~(g) sight and sound barrier locations~~.

(3) ~~The locations of existing and proposed access roads must be shown and labeled on the site or an area map~~ Site maps must show and identify the following existing and proposed features as applicable~~.~~:

(a) permitted access roads, including the location, width, waterway crossings, and surfacing;

(b) permit boundaries;

(c) bonded area boundary;

(d) non-bonded area boundary;

(e) excess overburden and fines disposal sites;

(f) sedimentation ponds and other water quality control structures;

(g) staging areas;

(h) heavy equipment parking areas;

(i) fuel storage areas;

(j) sight and sound barriers and berms;

(k) soil stockpile areas;

(l) overburden and excess overburden stockpile areas;

(m) material stockpile areas;

(n) processing facilities, including approximate locations of:

(i) crusher;

(ii) asphalt plant;

(iii) wash plants; and

(iv) concrete plant;

(o) detention ponds;

(p) concrete and asphalt recycling stockpile area;

(q) soil and overburden test hole and observation point locations;

(r) existing and proposed monitoring well locations;

(s) water system and structures, including:

(i) supply wells;

(ii) water recycling and settling ponds;

(iii) surface water extraction points;

(iv) discharge points for water used in opencut operations; and

(v) all surface waters including, but not limited to, ponds, lakes, wetlands, and defined and/or eroded channels of waterways including, but not limited to, rivers, creeks, intermittent streams, drainages, ditches, and other waterways;

(t) above and below ground utilities and easements;

(u) roads crossing areas where opencut activities are prohibited by ARM 17.24.218(1)(j) at a 90-degree angle or as close to a 90-degree angle as site conditions allow;

(v) erosion controls;

(w) historic disturbances within or adjacent to permit area boundary;

(x) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table; and

(y) any other pertinent features that are necessary to ensure compliance with the Act and rules.

~~(4) The following existing features in and within 500 feet of access roads and 1,000 feet of the main permit area must be shown and labeled on the site or an area map:~~

~~(a) premine land uses including, but not limited to:~~

~~(i) water source pond;~~

~~(ii) wetland;~~

~~(iii) fish pond;~~

~~(iv) riparian area;~~

~~(v) grassland;~~

~~(vi) shrubland;~~

~~(vii) woodland;~~

~~(viii) special use pasture;~~

~~(ix) hayland;~~

~~(x) cropland;~~

~~(xi) wildlife habitat;~~

~~(xii) livestock protection site;~~

~~(xiii) recreation site; and~~

~~(xiv) residential, commercial, and industrial sites;~~

~~(b) reclaimed and unreclaimed surface disturbances;~~

~~(c) surface water features, as described in ARM 17.24.217(1)(a);~~

~~(d) vegetative types including, but not limited to:~~

~~(i) wetland;~~

~~(ii) riparian;~~

~~(iii) grassland;~~

~~(iv) shrubland;~~

~~(v) woodland;~~

~~(vi) special use pasture;~~

~~(vii) hayland; and~~

~~(viii) cropland;~~

~~(e) fish and wildlife habitats of special concern, including, but not limited to:~~

~~(i) lakes;~~

~~(ii) ponds;~~

~~(iii) streams;~~

~~(iv) wetlands;~~

~~(v) riparian areas;~~
~~(vi) unique cover areas;~~
~~(vii) travel lanes;~~
~~(viii) migration routes;~~
~~(ix) raptor cliff and nest areas; and~~
~~(x) reproductive, nursery, and wintering areas;~~
~~(f) residential areas and structures that could be impacted by opencut operations, as described in ARM 17.24.217(1)(e); and~~
~~(g) non-access roads, fences, utilities, and buffer zones.~~
(4) Area maps must show and identify the following features within 1,000 feet outside of the permit boundary:
(a) roads leading to the site;
(b) access roads from the public road turnoff to the permit area (if roads go beyond the area map, show the full extent on the location map) including the location, width, waterway crossings, and surfacing;
(c) water wells;
(d) natural and man-made drainage features including, but not limited to, ephemeral, intermittent, and perennial streams, wetlands, ponds, springs, ditches, and impoundments in and within 500 feet of access roads and show the defined and/or eroded channel of any such feature and any setback areas, along with a description of the use of any man-made feature;
(e) other opencut operations;
(f) above and below ground utilities;
(g) significant geographical features;
(h) residential areas and structures that could be impacted by opencut operations, such as inhabitable dwellings and commercial and industrial facilities; and
(i) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
(5) ~~The locations of existing and proposed water wells in and within 1,000 feet of the main permit area must be shown and labeled on the site or an area map.~~ Reclamation maps must show and identify all the following existing and proposed features in accordance with the plan of operation:
(a) all postmining land uses;
(b) mined area backfill sites;
(c) landowner material stockpile areas to remain;
(d) all roads or portions of roads proposed to remain open, at the request of the landowner, at the conclusion of opencut operations, including road locations, intended use, final width, and surfacing;
(e) long and short axis cross-sections of any pond or depression in which water is expected to collect;
(f) arrows depicting the anticipated direction of water flow across the reclaimed site; and
(g) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
(6) The ~~operator name, site name, legal description, scale, date of drafting, and north arrow must be shown on all plan of operation maps~~ location map may be

on an aerial or topo base and must show the site's location in relation to the nearest town, city, or major intersection and be sufficient to allow the public to locate the proposed site.

(7) Complete and accurate maps must be submitted. The department may require that part or all of the area in and within 500 feet of permitted access roads and 1,000 feet of the ~~main~~ permit area be surveyed to provide sufficient map detail and accuracy.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.221 would generally update the requirements for submittal of maps and reconcile the rule with the other proposed amendments to the subchapter. The proposed amendments would clarify what is required to be displayed on a map. Otherwise, the proposed amendments improve the syntax and readability of the rule.

The proposed amendments to (1) specify the types of maps addressed in the rule. In addition to the site and area maps called for in the current rule, the proposed amendments to (1) require submittal of two new maps, a reclamation map and a location map, as explained below. Proposed amendments to (1) also provide formatting standards for maps submitted in electronic and non-electronic formats. Imposition of the standards is necessary to ensure that submittals are legible and in a format that is compatible with the department's hard copy and electronic records retention systems. Finally, definitions are being proposed for each type of map for clarity.

The proposed amendments to (2) would restate the general requirements for all maps that are currently set forth in (6). The proposed amendments would improve clarity by avoiding unnecessary repetition. The required information would ensure that the maps are usable and retrievable in the department's record management systems.

Proposed new (3) generally restates the requirements currently found in existing (4) and identifies them as requirements for "site maps" that primarily describe the area proposed for permitting under the Act. The required items are consistent with, and would pictorially explain, regulatory terms and concepts set forth in the proposed amendments to the subchapter and other relevant environmental laws. Proposed new (3)(h) and (i) would require depiction of features generally included as "staging areas" under the current rule.

Proposed new (3)(j) would require depiction of "sight and sound barriers and berms" to assist the department in determining the sufficiency of measures to mitigate impacts to residential areas and dwellings.

Proposed new (4) generally restates the requirements currently found in (4) and (5) and identifies them as requirements for "area maps" that depict areas outside the proposed permit area. The items identified as requirements for area maps are necessary to depict conditions outside the permit area that may be adversely impacted by the proposed operation. The required items are consistent with and would pictorially explain regulatory terms and concepts set forth in the proposed amendments to the subchapter and other relevant environmental laws.

New (5) would require applicants to prepare a reclamation map that is necessary to facilitate application review. The list of items required for the reclamation maps are regulatory terms and concepts set forth in the proposed amendments to this subchapter. The requirement to provide cross-sections is typical of as-built maps commonly used in the construction and mining industries.

The proposed amendments to (6) would revise the provision to direct applicants to provide a location map that shows the location of the proposed operation in relation to the principal means of access. The map is necessary to enable program staff to find their way to a proposed mine site for site inspections. The deleted language in (6) would be restated in (2).

The proposed amendments to (7) would conform the language of the rule to the other amendments proposed to this subchapter.

17.24.222 PLAN OF OPERATION--ADDITIONAL INFORMATION AND CERTIFICATION (1) The department may require that an operator provide additional ~~plan of operation~~ information~~, including~~ for the plan of operation that includes, but is not limited to:

(a) through (2) remain the same.

(3) The plan of operation must ~~conclude with~~ include a statement signed and dated by the operator certifying that ~~the statements, descriptions, and information provided apply to the proposed permit area, applicable adjacent areas, and proposed opencut operations, and that the requirements of the plan of operation will be followed unless officially amended through the department.~~:

(a) the operator has read and understands the application, the information contained in the application, and all documents submitted in support of the application;

(b) under penalty of 45-7-203, MCA, all the statements, descriptions, information, and documents provided to the department for the application are true and accurate to the best of the operator's knowledge and belief based upon the exercise of due diligence; and

(c) the operator will follow and adhere to the plan of operation and all other requirements of the operator described in the application and the permit and as the permit may be amended by the department in accordance with the Act and this subchapter.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA

REASON: The proposed amendments to ARM 17.24.222(1) would improve the syntax and readability of the rule. The proposed amendments to (3) would explain, with greater specificity, the certifications that the department requires of applicants. The certifications would ensure that the applicant, rather than a consultant, has read, understands, and will comply with the statements in the application.

17.24.223 ZONING COMPLIANCE FOR SAND OR GRAVEL MINING (1) ~~In~~

~~order to ensure that a proposed sand or gravel operation will be in compliance with local zoning regulations, permit~~ Permit applications for sand or gravel opencut operations, including ~~and~~ amendment applications ~~for sand or gravel operations~~ that add acreage or change the postmining land use or add an asphalt or concrete plant, must include a statement from the appropriate local governing body certifying, on a form provided by the department, that the proposed mine site and plan of operation comply with local zoning regulations. ~~No application for a permit or such amendment to mine sand or gravel may be approved by the department unless accompanied by such a statement submitted on a form provided by the department.~~

AUTH: 82-4-422, MCA
IMP: 82-4-431, 82-4-432, MCA

REASON: The proposed amendments to ARM 17.24.223 would revise the rule to more closely follow the language of the Act and to improve syntax and clarity. The proposed amendments would require certification of compliance with zoning requirements when an operator adds an asphalt plant to ensure that the scope of zoning compliance matches the acknowledgements required of a consulting landowner in ARM 17.24.206. The provision for certifying compliance of the proposed project with local zoning regulations is proposed to be deleted because the provision duplicates the requirements for a complete application set forth in ARM 17.24.212 and 82-4-432(2)(b), MCA.

17.24.224 ASSIGNMENT OF PERMITS (1) A person may assume a permit from an operator by submitting an assignment application to the department. Upon receipt of an assignment application, the department shall inspect the permitted site, if necessary, and evaluate the application and existing permit to determine if the requirements of the Act and this subchapter ~~will be~~ are satisfied.

(2) The department shall approve an ~~assignment~~ application ~~if it determines that~~ for assignment of a permit that meets the following requirements:

(a) the application ~~contains~~ includes a completed ~~copies~~ copy of the application for assignment ~~and assignment forms~~ on a form provided by the department, and, if required by the department, ~~necessary revisions to~~ an application to amend the permit~~.~~;

(b) ~~The~~ the application ~~for assignment form shall include a statement~~ includes an acknowledgment that:

(i) the assignee has reviewed and understands the terms of the permit that is effective at the time of the assignment;

(ii) the assignee agrees to assume all the obligations set forth in the permit, including the plan of operation, the Act, and this subchapter; and

(iii) the ~~applicant~~ assignee assumes responsibility ~~for outstanding permit and site issues~~ to reclaim the site in accordance with the terms of the permit, the Act, and this subchapter and for any violations or issues of noncompliance in existence at the time of the assignment;

~~(b)~~ (c) the assignment application ~~materials~~, any necessary permit amendment application, and any necessary revisions to the permit satisfy the requirements of the Act and this subchapter; and

~~(c)~~ (d) the application includes a reclamation ~~adequate~~ bond ~~has been submitted. To be adequate, the bond must meet the requirements of ARM 17.24.220 and must include the cost to the department of reclaiming all previously disturbed lands within the permit area~~ or other security that meets the requirements of 82-4-433, MCA, this subchapter, and the plan of operation.

(3) An assignment ~~does not become effective until approved by the department~~ becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the assignment is approved and issued by the department. ~~The assignee must ensure that it has a complete copy of the approved permit and assignment materials. The~~ Upon notification of the department's approval of the assignment, the assignee ~~is~~ becomes responsible for ~~complying with all terms of the permit, including all provisions of the plan of operation~~ all the obligations described in (2)(b).

~~(4) An assignment application does not require the payment of an additional fee.~~

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.224 would more closely follow the language of the Act and improve syntax and clarity. The proposed amendment to (2)(a) would improve the rule for syntax and clarity. It would also state that the department may require the applicant to submit "an application to amend the permit" instead of the current language using the phrase "revisions to the permit." This phrase is not used elsewhere in the rule. Amendment of the permit may be necessary if the department determines that deviations from the requirements of the permit or the Act by the assigning operator must be corrected before the permit may be assigned or transferred. The proposed amendments to (2)(b) are necessary to ensure that the applying assignee has reviewed and understands the application and agrees to assume all the obligations set forth in the permit, including correction of any violations of the Act. The proposed amendments to (2)(b) also are necessary to state with more precision the duties and obligations that would be undertaken by the assignee. The proposed amendments to (2)(c), currently (2)(b), would incorporate the permit amendment language stated in (2)(a) for clarity. The proposed amendments to (2)(d), currently (2)(c), are necessary to improve syntax and readability. The proposed amendments to (2)(d) are necessary to clarify the requirements for bonding when a permit is assigned by providing references to the applicable statute and to the subchapter instead of the incomplete list of the requirements for reclamation security currently stated in (2)(c).

The proposed amendments to (3) are necessary to inform the applicant that a permit assignment does not become effective until the department notifies the applicant in writing that the assignment application is approved and issued by the department. The proposed amendments are necessary to establish a clear time when opencut operations may commence pursuant to an assigned permit. Current (4) would be deleted because Sec. 11, Ch. 385, Laws of 2007 repealed the authority of the department to charge a fee for submittal of permit applications.

17.24.225 PERMIT COMPLIANCE (1) An operator shall comply with the provisions of its permit, this subchapter, and the Act. ~~The department may issue an order requiring abatement of a violation within a reasonable time. The applicant may request an extension of the deadline, giving the reason the extension is necessary, and the department may grant the extension upon finding that good cause for the extension has been shown. The permittee shall comply with the abatement order within the time set in the order or extension.~~

(2) A permittee may allow another person to mine and process mine materials at the permitted operator's site~~,~~ only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. If ~~the person violates~~ a violation of the provisions of the Act, this subchapter, or the permit~~,~~ occurs, the permittee is responsible for the violation~~,~~ and the department may require abatement pursuant to (1) or initiate an enforcement action under the Act.

~~(3) A person who conducts opencut operations at a nonpermitted site and who was obligated to obtain a permit is in violation of 82-4-431, MCA, and the department may issue an order requiring cessation of the operation and may also order abatement of the violation, including reclamation of the site, within a reasonable time. The person may request an extension of the deadline, giving reasons why the extension is necessary, and the department may grant extensions upon a finding that good cause for the extension has been shown. The person shall comply with the abatement order within the time required by the order or extension.~~

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, MCA

REASON: The proposed amendments to ARM 17.24.225 would more closely follow the language of the Act and improve syntax and clarity. The deleted language merely repeats language contained in the Act and does not need to be repeated in the rule.

17.24.226 ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) through (4) remain the same.

(5) An operator may not commence a limited opencut operation within 300 feet of a permitted operation until the operator submits a written statement to the department that:

(a) no part of the proposed limited opencut operation is on land affected by the permitted operation;

(b) both operations can be reclaimed according to their respective requirements under the Act and this subchapter; and

(c) the principal amount of the new reclamation bond or other security, if required, is sufficient to cover the estimated costs of reclamation of the limited opencut operations under the Act and this subchapter.

AUTH: 82-4-422, MCA
IMP: 82-4-431, MCA

REASON: New ARM 17.24.226(5) is necessary to ensure that an operator considers the implications and constraints of locating a limited opencut operation within 300 feet of a permitted operation and communicates them to the department. The explanations required by the rule would ensure that reclamation may be achieved according to the different standards that apply to each type of operation. The 300-foot threshold in (5)(b) would follow the distance requirements for processing facilities set forth in 82-4-403(7)(c) and (d), MCA.

4. The rules proposed to be repealed are as follows:

17.24.216 GENERAL APPLICATION CONTENT AND PROCEDURES (AUTH: 82-4-422, MCA; IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, MCA), located at page 17-1930, Administrative Rules of Montana. The board proposes repeal of this rule for conciseness and regulatory clarity, because it generally restates requirements proposed for ARM 17.24.212 and 17.24.213.

17.24.217 PLAN OF OPERATION--PREMINE INFORMATION (AUTH: 82-4-422, MCA; IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA), located at page 17-1931, Administrative Rules of Montana. The board proposes deletion of ARM 17.24.217 for conciseness and regulatory clarity because it generally restates requirements proposed for ARM 17.24.218.

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., December 18, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Joan Miles*
JOHN F. NORTH JOAN MILES
Rule Reviewer Chairman

Certified to the Secretary of State, November 2, 2015.

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.219.101 board organization, 24.219.301 definitions, 24.219.401, 24.219.405, and 24.219.409 fee schedules, 24.219.421 supervisor qualifications, 24.219.501, 24.219.504, and 24.219.512 LCSW licensure, 24.219.601, 24.219.604, and 24.219.612 LCPC licensure, 24.219.701, 24.219.704, 24.219.707, and 24.219.712 LMFT licensure, 24.219.807 code of ethics, and 24.219.2404 screening panel, the adoption of NEW RULES I public participation, II LCPC education requirements, III LMFT education requirements, IV, V, and VI social worker licensure candidates, VII, VIII, and IX professional counselor licensure candidates, and X, XI, and XII marriage and family therapist licensure candidates, and the repeal of ARM 24.219.515, 24.219.615, and 24.219.715 renewals, 24.219.801 and 24.219.804 codes of ethics, and 24.219.2401 complaint procedure	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On December 4, 2015, at 3:00 p.m., a public hearing will be held in the basement conference room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Behavioral Health (board) no later than 5:00 p.m., on November 27, 2015, to advise us of the nature of the accommodation that you need. Please contact Cyndi Reichenbach, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlibsdswpc@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2015 legislature enacted Chapter 130, Laws of 2015 (Senate Bill 22), an act revising laws concerning social work, professional counseling, and marriage and family therapy and renaming the Board of Social Work Examiners and Professional Counselors to the Board of Behavioral Health. This bill further provided for the registration and regulation of social worker, professional counselor, and marriage and family therapist licensure candidates. The bill was signed by the Governor on March 27, 2015, and became effective on October 1, 2015.

The board is adopting NEW RULES IV through XII and amending certain existing rules to coincide with the new legislative changes and further implement the bill. Changes include replacing out-of-date terminology for current language and processes, repealing unnecessary or redundant rules, and amending rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for the reader. The board is further renumbering the reorganized rules to comply with ARM formatting requirements. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.219.101 BOARD ORGANIZATION (1) The Board of ~~Social Work Examiners and Professional Counselors~~ Behavioral Health ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-22-201,~~ MCA
IMP: 2-4-201, MCA

REASON: Authority citations are being amended to accurately provide the sources of the board's rulemaking authority.

24.219.301 DEFINITIONS (1) through (4) remain the same.
(5) "LAC" means licensed addiction counselor.
(6) "LCPC" means licensed clinical professional counselor.
(7) "LCSW" means licensed clinical social worker.
(8) "LMFT" means licensed marriage and family therapist.
(5) through (8) remain the same but are renumbered (9) through (12).
(13) "Training and supervision plan" means a plan, in a form approved by the board, that describes the type, structure, and amount of supervised work experience that a licensure candidate must have in order to satisfy the experience requirements for the type of license the licensure candidate is seeking.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-102, 37-22-201, 37-22-313, ~~37-23-101,~~ 37-23-102, 37-23-213, 37-35-102, 37-35-202, 37-37-102, 37-37-205, MCA

REASON: The board determined it is reasonably necessary to amend this rule to establish abbreviations for the multiple license types now regulated by the board. For consistency, these standard abbreviations will be used throughout the rules and certain amended catchphrases in lieu of the full licensee titles.

Implementation citations are being amended to accurately reflect all statutes implemented through this rule.

24.219.401 FEE SCHEDULE FOR SOCIAL WORKERS

(1) through (3) remain the same.

(4) Social worker licensure candidate application fee 200

(5) Social worker licensure candidate annual registration fee 100

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

AUTH: 37-1-134, 37-22-201, MCA
IMP: 37-1-134, 37-1-141, 37-22-302, MCA

REASON: It is reasonably necessary to amend this rule and ARM 24.219.405 and 24.219.409 to establish application and annual registration fees for LCSW, LCPC, and LMFT licensure candidates and further implement Senate Bill 22. The board is setting these fees to comply with 37-1-134, MCA, and ensure that board fees provide the amount of money usually needed for the operation of the board in providing similar regulatory services. The board estimates that approximately 221 licensure candidates will be affected by the proposed fee changes, which will increase revenue by $66,300.

24.219.405 FEE SCHEDULE FOR PROFESSIONAL COUNSELORS

(1) through (3) remain the same.

(4) Professional counselor licensure candidate application fee 200

(5) Professional counselor licensure candidate annual registration fee 100

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

AUTH: 37-1-134, 37-22-201, MCA
IMP: 37-1-134, 37-1-141, 37-23-206, MCA

24.219.409 FEE SCHEDULE FOR MARRIAGE AND FAMILY THERAPISTS

(1) through (3) remain the same.

(4) Marriage and family therapist licensure candidate application fee 200

(5) Marriage and family therapist licensure candidate annual registration fee 100

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

AUTH: 37-1-134, 37-37-201, MCA
IMP: 37-1-134, 37-1-141, 37-37-201, MCA

24.219.421 SUPERVISOR QUALIFICATIONS (1) remains the same.

(2) The supervisor must be a ~~licensed clinical social worker~~ LCSW, ~~licensed clinical professional counselor~~ LCPC, ~~licensed marriage and family therapist~~ LMFT, licensed psychologist, or licensed and board-certified psychiatrist.

(3) and (4) remain the same.

(5) Board-approved training in supervision shall consist of a minimum of one semester ~~hour~~ credit of post-licensure board-approved graduate education or 20 clock hours of board-approved training in clinical supervision.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-101, 37-22-301, 37-23-101, 37-23-202, 37-37-101, 37-37-201, MCA

REASON: The board is amending (5) to use the correct term of a semester credit, which is equal to 15 hours. Further, in reviewing petitions to the board, it was discovered that some supervisor applicants were attempting to draw supervision experience from graduate programs. The board has always intended for this supervisor training to be obtained after licensure as a LCSW, LCPC, LMFT, psychologist, or psychiatrist, and is amending this rule to clarify this intent.

Implementation citations are being amended to accurately reflect all statutes implemented through this rule.

24.219.501 LCSW APPLICATION PROCEDURES (1) Any person seeking licensure as a clinical social worker must apply on the board's official forms which may be obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) The 3000 hours of experience required by 37-22-301(2), MCA, shall have been completed in their entirety at the time of submission of the application.

(2) through (9) remain the same but are renumbered (3) through (10).

(11) All applicants must submit the fingerprint and background check required by the board.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA
IMP: 37-1-131, 37-1-306, 37-22-301, MCA

REASON: The board is moving (2) from ARM 24.219.504 to this rule as the board determined it is a better, more logical fit in with general application procedures.

With the passage of SB 22, all board licensees and licensure candidates are subject to the board's fingerprint and background check requirements. The board determined it is reasonably necessary to add (11) to clarify this requirement for LCSW applicants.

24.219.504 ~~LICENSURE~~ LCSW EXPERIENCE REQUIREMENTS (1) For the purpose of meeting the 3000-hour requirement of 37-22-301(2)(b), MCA, an applicant or licensure candidate shall provide verification of the following:

(a) remains the same.

(b) supervision, on a form approved by the board, which shall include at least 100 documented hours of individual or group supervision by a qualified supervisor. At least 50 percent of the 100 hours shall be individual and face-to-face by a licensed social worker, and at least ten hours of which includes direct observation of the service delivery. Each supervisory session shall be documented with a record of supervision. The applicant or licensure candidate must maintain the record of supervision, which may be requested by the board and must include:

(i) remains the same.

(ii) names of applicant or licensure candidate, supervisor (including type of license and number), and signatures of both;

(iii) remains the same.

(iv) evidence of the applicant's or licensure candidate's minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients and colleagues;

(v) content demonstrating the applicant's or licensure candidate's developing competence in the areas identified in (1)(b)(iv); and

(vi) and (c) remain the same.

(d) supervisor's experience and expertise with the applicant's or licensure candidate's client population (i.e., child, adolescent, adult, chemically dependent) and methods of practice (i.e., individual, group, family, crisis or brief interventions).

(e) supervisor's relationship with the applicant or licensure candidate, which shall not constitute a conflict of interest, such as (but not limited to) being in a cohabitation or financially dependent relationship with the applicant or licensure candidate, or being the applicant's or licensure candidate's parent, child, spouse, or sibling.

(f) remains the same.

(i) the applicant's or licensure candidate's and supervisor's names, signatures, and dates;

(ii) terms of the agreement including ~~financial compensation,~~ the duties of the applicant or candidate and supervisor, the obligations of the applicant or candidate and supervisor under this rule, frequency and method of supervision, duration and termination ~~provision~~ provisions; and

(iii) a statement of ~~confidentiality~~ compliance with applicable patient privacy laws and the supervisor's qualifications.

~~(2) The 3000 hours shall have been completed in their entirety at the time of submission of the application.~~

(2) All reports and/or assessment interpretations and results sent to other public or private agencies that affect the current social status of a client must be reviewed by and contain the approval and signature of the supervisor. These reports shall identify the supervisee's "in-training" nonlicensed status or identify that the supervisee is a social worker licensure candidate.

(3) All therapeutic interventions and the assessment results and interpretations used in the planning and/or implementation of those therapeutic

interventions shall be reviewed and preapproved by the supervisor on a continual and ongoing basis.

(4) All professional communications, both private and public, including advertisements, shall clearly indicate the supervisee's "in-training" and nonlicensed status or indicate that the supervisee is a social worker licensure candidate.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-301, MCA

REASON: The board is adding (2) through (4) to this rule to establish standards regarding reports, assessments, results, and communications involving LCSW supervisees in training or licensure candidates. These standards are currently in place for LCPC supervisees, and the board concluded that expanding them to all board supervisees and licensure candidates will further protect the public by ensuring that assessment results and communications are very clear on the status of candidates or supervisees.

24.219.512 LICENSURE OF OUT-OF-STATE LCSW APPLICANTS (1) A license to practice as a social worker in Montana may be issued to the holder of an out-of-state social worker license at the discretion of the board, provided the applicant completes and files with the board an application for licensure and the required application fee. The ~~candidate~~ applicant must meet the following requirements:

(a) The ~~candidate~~ applicant holds a valid and unrestricted license to practice as a social worker in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s).

(b) The ~~candidate~~ applicant holds a Masters Degree in Social Work (MSW) or an equivalent Council on Social Work Education (CSWE)-approved degree, and shall supply a copy of the certified transcript sent directly from a college, university, or institution accredited by the CSWE.

(c) The ~~candidate~~ applicant shall supply proof of successful completion of the Association of Social Work Boards' (ASWB) clinical examination or another board-approved licensing examination. The ASWB generalist examination is not an approved examination for purposes of obtaining licensure as a clinical social worker. ~~Candidate~~ Applicant scores on the examination must be forwarded directly to the board.

(d) The ~~candidate~~ applicant shall submit proof of completion of 3000 hours of supervised social work experience as defined in 37-22-301, MCA. The ~~candidate~~ applicant may verify the experience hours by affidavit, and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable to the ~~candidate~~ applicant.

(e) The ~~candidate~~ applicant shall submit proof of continuous practice as a social worker in another jurisdiction for the two years immediately preceding the date of application in Montana.

(f) The ~~candidate~~ applicant shall submit three reference letters as provided in 37-22-301, MCA.

(g) The ~~candidate~~ applicant shall answer questions about the applicant's character and fitness to practice on a form prescribed by the board, and the ~~candidate~~ applicant shall provide all information required by the board in response to these questions.

(2) All ~~candidates~~ applicants must submit the fingerprint and background check required by the board.

(3) The board may verify qualifications for licensure by reference to information supplied in ~~a candidate's~~ an applicant's official record with the national registry of the ASWB. The ~~candidate~~ applicant must request that this information be provided to the board in the manner required by the ASWB and the board. The ~~candidate~~ applicant shall be solely responsible for paying any fee associated with this service.

(4) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice clinical social work, provided the applicant has submitted a completed application as described in this subchapter and that the initial screening by board staff shows that the current license is in good standing and not on probation or subject to ongoing disciplinary action. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within one year of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire and may not be renewed.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA
IMP: 37-1-131, 37-1-304, 37-1-305, 37-22-301, MCA

REASON: The board is adding (4) to this rule to align with new procedures for licensure candidate registration and clarify that temporary practice permits will now be limited to endorsement applicants. The board determined it is reasonably necessary to have licensure processes for endorsement applications on as timely a basis as those for licensure candidates, and ensure minimal delay in granting the licenses.

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

24.219.601 LCPC APPLICATION PROCEDURE (1) remains the same.

(2) Completed applications must ~~be accompanied by~~ include:

(a) through (6) remain the same.

(7) If the applicant achieved a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE) administered by the National Board of Counselor Certification (NBCC) as part of the applicant's graduate program, the passing examination score will be accepted for licensure. Examination results are valid within four years of the date the applicant took the examination that resulted in the passing score.

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

(10) All applicants must submit the fingerprint and background check required by the board.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA
IMP: 37-1-131, 37-1-306, 37-23-202, MCA

REASON: The board is adding (7) to allow submission of passing scores for approved licensure examinations taken during a graduate program. Because some LCPC applicants may sit for an exam prior to gaining the required supervised experience, the board is amending this rule to clarify that such exams will be accepted.

With the passage of SB 22, all board licensees and licensure candidates are subject to the board's fingerprint and background check requirements. The board determined it is reasonably necessary to add (10) to clarify this requirement for LCPC applicants.

24.219.604 ~~LICENSURE~~ LCPC EXPERIENCE REQUIREMENTS ~~(1) For the purpose of 37-23-202, MCA, a planned graduate program of study is one which requires 60 semester hours (90 quarter hours), primarily counseling in nature, six semester hours (nine quarter hours) of which were earned in an advanced counseling practicum which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling. An institution accredited to offer such a degree program is a college or university accredited by various associations of colleges and secondary schools. The planned graduate program shall be recognized by the department chairman or an equivalent position. The applicant's planned graduate program shall meet the following minimum board requirements:~~

~~(a) an identifiable starting date evidenced by a letter of admission to the program, or other similar document;~~

~~(b) completion of Council for Accreditation of Counseling and Related Educational Programs (CACREP) core courses as evidenced by submission of a summary sheet on education on a form prescribed by the board;~~

~~(c) acceptance of a maximum of 12 post-baccalaureate graduate semester (18 quarter) credits or up to 20 semester (30 quarter) credits of a completed graduate counseling degree transferred from other institutions or programs; and~~

~~(d) acceptance of credits granted six years or less from the applicant's date of graduation from the planned graduate program.~~

~~(2) "Advanced counseling practicum" shall include:~~

~~(a) Supervision by licensed program faculty to include:~~

~~(i) a minimum of 30 hours individual face-to-face consultation and review with supervisor;~~

~~(ii) a minimum of 45 hours small group supervisory consultation with supervisor and peers in practicum program;~~

~~(b) A minimum of 200 clock hours of service to clients which includes:~~

~~(i) a minimum of 80 hours offering face-to-face direct service to individual, family and group clients;~~

~~(ii) an additional 45 hours which may include any of the above plus audio and videotape review, two-way mirror observations, research, writing case notes, collateral contacts and any other nonspecified activities deemed appropriate by the practicum supervisor to enhance the student's expertise in providing services to the client population.~~

~~(3) "3000 hours" is defined as clock hours of experience working in a counseling setting. The hours shall have been completed in their entirety at the time of submission of the application.~~

(1) For the purpose of meeting the 3000-hour requirement of 37-23-202(1)(b), MCA, an applicant must provide verification of 3000 hours of counseling practice supervised by a qualified supervisor. "3000 hours" is defined as clock hours of experience working in a counseling setting. The hours shall have been completed in their entirety at the time of submission of the application.

(3)(a) through (b) remain the same but are renumbered (1)(a) through (b).

(c) All reports and/or assessment interpretations and results sent to other public or private agencies that affect~~s~~ the current social status of a client must be reviewed by and contain the approval and signature of the ~~trainee's~~ supervisor. These reports shall identify the supervisee's "in-training" nonlicensed status or identify that the supervisee is a professional counselor licensure candidate.

(d) All therapeutic interventions and the assessment results and interpretations used in the planning and/or implementation of those therapeutic interventions shall be reviewed and preapproved by the ~~trainee's~~ supervisor on a continual and ongoing basis.

(e) All professional communications, both private and public, including advertisements, shall clearly indicate the supervisee's "in-training" and nonlicensed status or indicate that the supervisee is a professional counselor licensure candidate.

(f) The applicant or licensure candidate must receive a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience. No more than 80 hours of work experience may transpire without receiving the required hours of supervision and/or consultation. Less frequent supervision may take place only with prior approval of the licensure board. Any hours earned without appropriate supervision will not be counted towards licensure.

~~(g)~~ (2) ~~The supervision~~ Supervision guidelines are as follows:

~~(i)~~ (a) A supervisor must be a ~~licensed mental health professional in the state of residence~~ qualified supervisor.~~;~~

~~(ii)~~ (b) ~~the~~ A supervision agreement shall be in writing and in a format approved by the board. The agreement shall include, but not be limited to:

~~(A)~~ (i) the applicant's or licensure candidate's and supervisor's names, signatures, and dates;

~~(B)~~ (ii) terms of the agreement including ~~financial compensation,~~ the duties of the applicant or candidate and supervisor, the obligations of the applicant or candidate and supervisor under this rule, frequency and method of supervision, duration and termination ~~provision~~ provisions; and

~~(C)~~ (iii) a statement of ~~confidentiality~~ compliance with applicable patient privacy laws and the supervisor's qualifications.

~~(iii)~~ (c) A supervisor's relationship with the applicant or licensure candidate shall not constitute a conflict of interest, such as, but not limited to, being in a cohabitation or financially dependent relationship with the applicant or licensure candidate, or being the applicant's or licensure candidate's parent, child, spouse, or sibling~~;~~ .

~~(iv)~~ (d) ~~a~~ A record of supervision must be maintained by the applicant or licensure candidate and may be requested by the board in its review of the application. The record of supervision must include:

(A) remains the same but is renumbered (i).

~~(B)~~ (ii) names of applicant or licensure candidate, supervisor (including type of license and number), and signatures of both;

(C) remains the same but is renumbered (iii).

~~(D)~~ (iv) evidence of the applicant's or licensure candidate's minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients and colleagues;

~~(E)~~ (v) content demonstrating the applicant's or licensure candidate's developing competence in the areas identified in ~~(3)(g)(iv)(D)~~ (iv); and

(F) remains the same but is renumbered (vi).

~~(v)~~ (e) A supervisor must attest to the above under penalty of law. Falsification or misrepresentation of any of the above may be considered misrepresentation and a violation of professional ethics, which may result in discipline of the supervisor's license.

~~(4) If an applicant fails the examination, the applicant may retake the examination upon payment of the exam fee.~~

~~(5) Notwithstanding the above 60 semester hour requirement, an applicant otherwise qualified for licensure, may apply for licensure if they possess a minimum 45 semester hour graduate degree that is primarily related to counseling and is from an institution accredited to offer a graduate program in counseling, if they complete such additional graduate hours approved by this board as necessary to fulfill the requirements of (1)(a) within five years from the date of review by this board.~~

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-202, MCA

REASON: The board is now streamlining its LCPC licensure rules by placing general application procedures, experience requirements, and education requirements in separate rules. The board concluded that amending ARM 24.219.601 and 24.219.604, and adopting NEW RULE II to reorganize LCPC licensure requirements will reduce applicant confusion and questions to staff.

24.219.612 LICENSURE OF OUT-OF-STATE ~~LICENSED~~ LCPC APPLICANTS (1) A license to practice as a licensed professional counselor in Montana may be issued to the holder of an out-of-state licensed professional counselor or equivalent license at the discretion of the board, provided the applicant

completes and files with the board an application for licensure and the required application fee. The ~~candidate~~ applicant must meet the following requirements:

(a) The ~~candidate~~ applicant holds a valid and unrestricted license to practice as a licensed professional counselor or equivalent in another state or jurisdiction, which was issued under standards substantially equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s).

(b) The ~~candidate~~ applicant holds a graduate degree, which meets the requirements of 37-23-202, MCA, and shall supply a copy of the certified transcript sent directly from an accredited college, university, or institution, and shall complete the degree summary sheet provided by the board.

(c) The ~~candidate~~ applicant shall supply proof of successful completion of the National Counselor Examination (NCE) or another board-approved licensing examination. ~~Candidate~~ Applicant scores on the examination must be forwarded directly to the board.

(d) The ~~candidate~~ applicant shall submit proof of completion of 3000 hours of supervised counseling practice as defined in 37-23-202, MCA. The ~~candidate~~ applicant may verify the experience hours by affidavit, and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable to the ~~candidate~~ applicant.

(e) The ~~candidate~~ applicant shall submit proof of continuous practice as a licensed professional counselor or equivalent in another jurisdiction for the two years immediately preceding the date of application in Montana.

(f) The ~~candidate~~ applicant shall answer questions about the applicant's character and fitness to practice on a form prescribed by the board, and the ~~candidate~~ applicant shall provide all information required by the board in response to these questions.

(2) All ~~candidates~~ applicants must submit the fingerprint and background checks required by the board.

(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice professional counseling, provided the applicant has submitted a completed application as described in this subchapter and that the initial screening by board staff shows that the current license is in good standing and not on probation or subject to ongoing disciplinary action. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within one year of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire and may not be renewed.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA
IMP: 37-1-131, 37-1-304, 37-1-305, 37-23-202, MCA

REASON: The board is adding (3) to this rule to align with new procedures for licensure candidate registration and clarify that temporary practice permits will now be limited to endorsement applicants. The board determined it is reasonably necessary to have licensure processes for endorsement applications on as timely a

basis as those for licensure candidates, and ensure minimal delay in granting the licenses.

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

24.219.701 LMFT APPLICATION PROCEDURES (1) Any person seeking licensure as a marriage and family therapist must apply on the board's official forms, which may be obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) remains the same.

(3) An applicant must achieve a passing score on the National Marriage and Family Therapy Licensing Examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB).

(3) through (6) remain the same but are renumbered (4) through (7).

(8) If the applicant achieved a passing score on the National Marriage and Family Therapy Licensing Examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) as part of the applicant's graduate program, the passing examination score will be accepted for licensure. Examination results are valid within four years of the date the applicant took the examination that resulted in the passing score.

(7) remains the same but is renumbered (9).

(10) All applicants must submit the fingerprint and background check required by the board.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-201, MCA

REASON: To create clearer, more streamlined licensure rules, the board is moving the exam requirement from the LMFT experience rule, ARM 24.219.704(3), to (3) of this more general rule on application procedures.

The board is adding (8) to allow submission of passing scores for approved licensure examinations taken during a graduate program. Because some LMFT applicants may sit for an exam prior to gaining the required supervised experience, the board is amending this rule to clarify that such exams will be accepted.

With the passage of SB 22, all board licensees and licensure candidates are subject to the board's fingerprint and background check requirements. The board determined it is reasonably necessary to add (10) to clarify this requirement now applies to LMFT applicants, as well.

24.219.704 ~~LICENSURE~~ LMFT EXPERIENCE REQUIREMENTS

~~(1) Applicants must provide documentation of obtaining a doctoral or master's degree in:~~

~~(a) marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);~~

~~(b) marriage and family counseling from a program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP); or~~

~~(c) a closely related field, for example, marriage and family counseling with an educational program consisting of a minimum of 48 semester hours (or 72 quarter hours) that includes at least 36 hours of courses comprised of human development, family development/family dynamics, marriage and family systems/systems theory, marriage and family therapy, ethics in marriage and family therapy, and research in marriage and family therapy; and~~

~~(d) in addition, at least nine hours of credit must be earned in actual direct client contact, including at least six semester hours of practicums and three or more semester hours of internship or externship to include a minimum total of 500 direct-client contact hours of which at least 50 percent is with couples or families, and 100 hours of supervision of which at least 75 are in individual supervision with, at most, one other supervisee.~~

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

~~(3) An applicant must achieve a passing score on the National Marriage and Family Therapy Licensing Examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB).~~

(2) Supervision guidelines are as follows:

(a) A supervisor must be a qualified supervisor.

(b) A supervision agreement shall be in writing and in a format approved by the board. The agreement shall include, but not be limited to:

(i) the applicant's or licensure candidate's and supervisor's names, signatures, and dates;

(ii) terms of the agreement including the duties of the applicant or candidate and supervisor, the obligations of the applicant or candidate and supervisor under this rule, frequency and method of supervision, duration and termination provisions; and

(iii) a statement of compliance with applicable patient privacy laws and the supervisor's qualifications.

(c) The supervisor's relationship with the applicant or licensure candidate shall not constitute a conflict of interest, such as, but not limited to, being in a cohabitation or financially dependent relationship with the applicant or licensure candidate, or being the applicant's or licensure candidate's parent, child, spouse, or sibling.

(d) A record of supervision must be maintained by the applicant or licensure candidate and may be requested by the board in its review of the application. The record of supervision must include:

(i) date and length of supervision in increments not less than 15 minutes;

(ii) names of applicant or licensure candidate, supervisor (including type of license and number), and signatures of both;

(iii) content summary (excluding confidential information);

(iv) evidence of the applicant's or licensure candidate's minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of

imminent danger, and implementing a professional and ethical relationship with clients and colleagues;

(v) content demonstrating the applicant's or licensure candidate's developing competence; and

(vi) attestation of the record of supervision by the supervisor. Falsification or misrepresentation of the record of supervision shall be considered unprofessional conduct and may result in discipline of the supervisor's license.

(e) The supervisor must attest to the above under penalty of law. Falsification or misrepresentation of any of the above may be considered misrepresentation and a violation of professional ethics, which may result in discipline of the supervisor's license.

(3) All reports and/or assessment interpretations and results sent to other public or private agencies that affect the current status of a client must be reviewed by and contain the approval and signature of the supervisor. These reports shall identify the supervisee's nonlicensed status or identify that the supervisee is a marriage and family therapist licensure candidate.

(4) All therapeutic interventions and the assessment results and interpretations used in the planning and/or implementation of those therapeutic interventions shall be reviewed and preapproved by the supervisor on a continual and ongoing basis.

(5) All professional communications, both private and public, including advertisements, shall clearly indicate the supervisee's nonlicensed status or indicate that the supervisee is a marriage and family therapist licensure candidate.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-201, MCA

REASON: The board is now streamlining its LMFT licensure rules by placing general application procedures, experience requirements, and education requirements in separate rules. The board concluded that amending ARM 24.219.701 and 24.219.704, and adopting NEW RULE III to reorganize LMFT licensure requirements will reduce applicant confusion and questions to staff.

The board determined it is reasonably necessary to add (2) and set forth the supervision guidelines for LMFTs. Although these guidelines have been in place for LMFT licensees since October of 2011, they had not yet been delineated in rule.

The board is adding (3) through (5) to this rule to establish standards regarding reports, assessments, results, and communications involving LMFT supervisees in training or licensure candidates. These standards are currently in place for LCPC supervisees, and the board concluded that expanding them to all board supervisees and licensure candidates will further protect the public by ensuring that assessment results and communications are very clear on the status of candidates or supervisees.

24.219.707 TEMPORARY PRACTICE PERMIT (1) through (4) remain the same.

~~(5) An individual holding a temporary practice permit shall use the title "Licensed Marriage and Family Therapy Candidate."~~

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA
IMP: 37-1-131, 37-1-305, ~~37-37-101,~~ MCA

REASON: The board is deleting (5) to align with SB 22 and the new registration provisions for marriage and family therapist licensure candidates. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.219.712 LICENSURE OF OUT-OF-STATE LMFT APPLICANTS (1) A license to practice as a licensed marriage and family therapist in the state of Montana may be issued to the holder of an out-of-state marriage and family therapist license, provided the applicant completes, and files with the board, an application for licensure and the required application fee. The candidate must ~~meet the following requirements:~~

~~(a) the candidate has~~ have held a valid and unrestricted license as a licensed marriage and family therapist in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s)~~; or~~ .

~~(b) for applications received before July 1, 2011, the candidate is a clinical member of the American Association of Marriage and Family Therapists (AAMFT) in good standing.~~

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-1-304, 37-37-201, MCA

REASON: The board is eliminating the grandfathering provision in (1)(b) as the referenced application receipt date has passed.

24.219.807 CODE OF ETHICS ~~- LICENSED MARRIAGE AND FAMILY THERAPISTS~~ (1) Pursuant to 37-22-201 and 37-23-103, MCA, the board adopts the following professional and ethical standards for ~~licensed professional counselors, licensed social workers, and licensed marriage and family therapists~~ LCSWs, LCPCs, LMFTs, and registered candidates of those professions to ensure the ethical, qualified, and professional practice of social work, professional counseling, and marriage and family therapy for the protection of the general public. These standards supplement current applicable statutes and rules of the board. A violation of the following is considered unprofessional conduct as set forth elsewhere in rule, and may subject the licensee to such penalties and sanctions provided in 37-1-136, MCA.

(2) ~~A licensed marriage and family therapist~~ LCSWs, LCPCs, LMFTs, and registered candidates of those professions shall abide by the following code of professional ethics.

~~(a) Licensees shall not:~~

~~(i) commit fraud or misrepresent services performed;~~

~~(ii) divide a fee or accept or give anything of value for receiving or making a referral;~~

~~(iii) violate a position of trust by knowingly committing any act detrimental to a client;~~

~~(iv) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;~~

~~(v) engage in or solicit sexual relations with a client or commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;~~

~~(vi) condone or engage in sexual harassment. Sexual harassment is defined as: "deliberate or refuted comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient";~~

~~(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age, or national origin;~~

~~(viii) provide professional services while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services; or~~

~~(ix) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading.~~

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

(b) Licensees shall not:

(i) commit fraud or misrepresent services performed;

(ii) divide a fee or accept or give anything of value for receiving or making a referral;

(iii) violate a position of trust by knowingly committing any act detrimental to a client;

(iv) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;

(v) engage in or solicit sexual relations with a client or commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(vi) condone or engage in sexual harassment. Sexual harassment is defined as: "deliberate or refuted comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient";

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age, or national origin;

(viii) provide professional services while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services; or

(ix) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-22-101, 37-22-201, 37-23-101, 37-37-101, MCA

REASON: The board is repealing ARM 24.219.801 and 24.219.804, and incorporating their relevant provisions into this rule to create one code of ethics rule, applicable to all board licensees. Following these changes, LCSWs, LCPCs, LMFTs, and registered candidates of those professions will have a convenient, single location housing their professional and ethical standards.

Implementation citations are being amended to accurately reflect all statutes implemented through this rule.

24.219.2404 SCREENING PANEL (1) The board screening panel shall consist of a minimum of ~~three~~ four board members, as chosen by the chairman. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion.

AUTH: 37-22-201, ~~37-23-103,~~ MCA
IMP: 37-1-307, MCA

REASON: The board is increasing the number of screening panel members to coincide with the addition of two board members effective October 1, 2015, due to the passage of House Bill 358.

Authority citations are being amended to delete reference to a repealed statute.

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

NEW RULE I PUBLIC PARTICIPATION (1) The Board of Behavioral Health adopts and incorporates by this reference, the public participation rules of the Department of Commerce as listed in ARM Title 8, chapter 2, except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is allowed to observe, but not participate in the licensing decisions and other contested cases as allowed by law.

AUTH: 2-3-103, MCA
IMP: 2-3-103, MCA

REASON: The board is adopting this rule to comply with 2-3-103, MCA, and adopt public participation guidelines. The board notes that its procedures for public participation are not changing from current practices.

NEW RULE II LCPC EDUCATION REQUIREMENTS (1) For the purpose of 37-23-202, MCA, a planned graduate program of study is one which requires 60 semester hours (90 quarter hours), primarily counseling in nature, six semester hours (nine quarter hours) of which were earned in an advanced counseling practicum which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling. An institution accredited to offer such a degree program is a college or university accredited by various associations of colleges and secondary schools. The planned graduate program shall be recognized by the

department chairman or an equivalent position. The applicant's planned graduate program shall meet the following minimum board requirements:

(a) an identifiable starting date evidenced by a letter of admission to the program, or other similar document;

(b) completion of Council for Accreditation of Counseling and Related Educational Programs (CACREP) core courses as evidenced by submission of a summary sheet on education on a form prescribed by the board;

(c) acceptance of a maximum of 12 post-baccalaureate graduate semester (18 quarter) credits or up to 20 semester (30 quarter) credits of a completed graduate counseling degree transferred from other institutions or programs; and

(d) acceptance of credits granted six years or less from the applicant's date of graduation from the planned graduate program.

(2) "Advanced counseling practicum" shall include:

(a) supervision by licensed program faculty to include:

(i) a minimum of 30 hours individual face-to-face consultation and review with supervisor;

(ii) a minimum of 45 hours small group supervisory consultation with supervisor and peers in practicum program;

(b) a minimum of 200 clock hours of service to clients which includes:

(i) a minimum of 80 hours offering face-to-face direct service to individual, family, and group clients;

(ii) an additional 45 hours which may include any of the above plus audio and videotape review, two-way mirror observations, research, writing case notes, collateral contacts, and any other nonspecified activities deemed appropriate by the practicum supervisor to enhance the student's expertise in providing services to the client population.

(3) Notwithstanding the above 60 semester hour requirement, an applicant otherwise qualified for licensure, may apply for licensure if they possess a minimum 45 semester hour graduate degree that is primarily related to counseling and is from an institution accredited to offer a graduate program in counseling, if they complete such additional graduate hours approved by this board as necessary to fulfill the requirements of (1)(a) within five years from the date of review by this board.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-202, MCA

REASON: See REASON for ARM 24.219.604.

NEW RULE III LMFT EDUCATION REQUIREMENTS (1) Applicants must provide documentation of obtaining a doctoral or master's degree in:

(a) marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(b) marriage and family counseling from a program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP); or

(c) a closely related field, for example, marriage and family counseling with an educational program consisting of a minimum of 48 semester hours (or 72 quarter hours) that includes at least 36 hours of courses comprised of human development, family development/family dynamics, marriage and family systems/systems theory, marriage and family therapy, ethics in marriage and family therapy, and research in marriage and family therapy; and

(d) in addition, at least nine hours of credit must be earned in actual direct client contact, including at least six semester hours of practicums and three or more semester hours of internship or externship to include a minimum total of 500 direct-client contact hours of which at least 50 percent is with couples or families, and 100 hours of supervision of which at least 75 are in individual supervision with, at most, one other supervisee.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-201, MCA

REASON: See REASON for ARM 24.219.704.

NEW RULE IV SOCIAL WORKER LICENSURE CANDIDATE APPLICATION PROCEDURES (1) A person seeking licensure as a social worker licensure candidate must apply on the board's official forms which may be obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) A completed social worker licensure candidate application must include:

(a) application fee;

(b) official transcripts provided directly from the institution documenting the applicant's completion of a doctorate or master's degree in social work from a program accredited by the council on social work education (CSWE) or a program approved by the board as required by 37-22-301(2)(a), MCA; and

(c) the licensure candidate's proposed training and supervision plan.

(3) A training and supervision plan is subject to board approval, must be in a form approved by the board, and must include:

(a) identification of the candidate and qualified supervisors;

(b) the supervisors' license types, license numbers, and amount of post-licensure experience or training in clinical supervision;

(c) verification that any and all licenses held by the supervisors in all jurisdictions are unrestricted with no pending discipline;

(d) a proposed record of supervision in a form approved by the board that will address and document the licensure candidate's experience for the purpose of meeting the requirements of 37-22-301(2)(b), MCA, and satisfy the requirements of ARM 24.219.504(1); and

(e) a signed supervision agreement between the candidate and supervisors addressing the duties of the candidate and supervisors, the obligations of the candidate and supervisor under ARM 24.219.504, confidentiality, frequency and method of supervision, and duration and termination of the supervision agreement.

(4) All licensure candidate applicants must submit the fingerprint and background check required by the board.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-313, MCA

NEW RULE V SOCIAL WORKER LICENSURE CANDIDATE REQUIREMENTS (1) Prior to commencing supervised work experience, a social worker licensure candidate must provide an update to the board within 10 business days of:

(a) any substantial change in the candidate's training or supervision plan; or

(b) a new supervisor.

(2) An updated training and supervision plan or change in supervisor does not require additional board approval unless there is reason to believe the update does not conform to the board's training and supervision requirements.

(3) The licensure candidate and supervisors are responsible for ensuring that the licensure candidate and supervisors comply with the requirements of ARM 24.219.504 and the statutes, rules, and standards pertaining to the practice of social work at all times.

(4) The licensure candidate must maintain the record of supervision, which must be maintained according to the requirements of ARM 24.219.504 and may be requested by the board at any time.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-313, MCA

NEW RULE VI SOCIAL WORKER LICENSURE CANDIDATE ANNUAL REGISTRATION REQUIREMENTS (1) Individuals shall register annually as a social worker licensure candidate on or before December 31. An individual may register as a social worker licensure candidate for up to five years from the date the candidate's original candidate license was issued.

(2) Candidates licensed after October 1 in any calendar year will not be required to register again until December 31 of the following calendar year.

(3) After the fifth registration, a social worker licensure candidate must request permission for an additional registration, which the board may grant on a case-by-case basis.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-22-313, MCA

NEW RULE VII PROFESSIONAL COUNSELOR LICENSURE CANDIDATE APPLICATION PROCEDURES (1) A person seeking licensure as a professional counselor licensure candidate must apply on the board's official forms which may be obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) A completed professional counselor licensure candidate application must include:

(a) the application fee;

(b) official transcripts provided directly from the institution documenting the applicant's completion of a planned graduate program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or a program approved by the board as required by 37-23-202, MCA;

(c) documentation of all supervised counseling experience completed prior to completion of the academic degree. Experience must be completed and documented pursuant to the requirements of ARM 24.219.604; and

(d) the licensure candidate's proposed training and supervision plan.

(3) A training and supervision plan is subject to board approval, must be in a form approved by the board, and must include:

(a) identification of the candidate and qualified supervisors;

(b) the supervisors' license types, license numbers, and amount of post-licensure experience or training in clinical supervision;

(c) verification that any and all licenses held by the supervisors in all jurisdictions are unrestricted with no pending discipline;

(d) a proposed record of supervision in a form approved by the board that will address and document the licensure candidate's experience for the purpose of meeting the requirements of 37-23-202(1)(b), MCA, and satisfy the requirements of ARM 24.219.604; and

(e) a signed supervision agreement between the candidate and supervisors addressing the duties of the candidate and supervisors, the obligations of the candidate and supervisor under ARM 24.219.604, confidentiality, frequency and method of supervision, and duration and termination of the supervision agreement.

(4) All applicants must submit the fingerprint and background check required by the board.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-213, MCA

NEW RULE VIII PROFESSIONAL COUNSELOR LICENSURE CANDIDATE REQUIREMENTS (1) A professional counselor licensure candidate must provide an update to the board within 10 business days:

(a) if there is a substantial change in the candidate's training and supervision plan; and

(b) prior to commencing supervised work experience under a new supervisor.

(2) An updated training and supervision plan or change in supervisor does not require additional board approval unless there is reason to believe the update does not conform to the board's training and supervision requirements.

(3) The licensure candidate and supervisors are responsible for ensuring that the licensure candidate and supervisors comply with the requirements of ARM 24.219.604 and the statutes, rules, and standards pertaining to the practice of professional counseling at all times.

(4) The licensure candidate must maintain the record of supervision, which must be maintained according to the requirements of ARM 24.219.604 and may be requested by the board at any time.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-23-213, MCA

NEW RULE IX PROFESSIONAL COUNSELOR LICENSURE CANDIDATE ANNUAL REGISTRATION REQUIREMENTS (1) Individuals shall register annually as a professional counselor licensure candidate on or before December 31. An individual may register as a professional counselor licensure candidate for up to five years from the date the candidate's original candidate license was issued.

(2) Candidates licensed after October 1 in any calendar year will not be required to register again until December 31 of the following calendar year.

(3) After the fifth registration, a professional counselor licensure candidate must request permission for an additional registration, which the board may grant on a case-by-case basis.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-23-213, MCA

NEW RULE X MARRIAGE AND FAMILY THERAPIST LICENSURE CANDIDATE APPLICATION PROCEDURES (1) A person seeking licensure as a marriage and family therapist licensure candidate must apply on the board's official forms which may be obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) A completed marriage and family therapist licensure candidate application must include:

(a) the application fee;

(b) official transcripts provided directly from the institution documenting the applicant's completion of a master's degree or doctoral degree in:

(i) marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(ii) marriage and family counseling from a program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP); or

(iii) a closely related field, for example, marriage and family counseling with an educational program consisting of a minimum of 48 semester hours (or 72 quarter hours) that includes at least 36 hours of courses comprised of human development, family development/family dynamics, marriage and family systems/systems theory, marriage and family therapy, ethics in marriage and family therapy, and research in marriage and family therapy;

(c) documentation of all supervised marriage and family therapy experience completed prior to completion of the academic degree. Experience must be completed and documented pursuant to the requirements of ARM 24.219.704; and

(d) the licensure candidate's proposed training and supervision plan.

(3) A training and supervision plan is subject to board approval, must be in a form approved by the board, and must include:

(a) identification of the candidate and qualified supervisors;

(b) the supervisors' license types, license numbers, and amount of post-licensure experience or training in clinical supervision;

(c) verification that any and all licenses held by the supervisors in all jurisdictions are unrestricted with no pending discipline;

(d) a proposed record of supervision in a form approved by the board that will address and document the licensure candidate's experience for the purpose of meeting the requirements of 37-37-201(1)(c), MCA, and satisfy the requirements of ARM 24.219.704; and

(e) a signed supervision agreement between the candidate and supervisors addressing the duties of the candidate and supervisors, the obligations of the candidate and supervisor under ARM 24.219.704, confidentiality, frequency and method of supervision, and duration and termination of the supervision agreement.

(4) All applicants must submit the fingerprint and background check required by the board.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-205, MCA

NEW RULE XI MARRIAGE AND FAMILY THERAPIST LICENSURE CANDIDATE REQUIREMENTS (1) A professional counselor licensure candidate must provide an update to the board within 10 business days:

(a) if there is a substantial change in the candidate's training and supervision plan; and

(b) prior to commencing supervised work experience under a new supervisor.

(2) An updated training and supervision plan or change in supervisor does not require additional board approval unless there is reason to believe the update does not conform to the board's training and supervision requirements.

(3) The licensure candidate and supervisors are responsible for ensuring that the licensure candidate and supervisors comply with the requirements of ARM 24.219.704 and the statutes, rules, and standards pertaining to the practice of marriage and family therapy at all times.

(4) The licensure candidate must maintain the record of supervision, which must be maintained according to the requirements of ARM 24.219.704 and may be requested by the board at any time.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-205, MCA

NEW RULE XII MARRIAGE AND FAMILY THERAPIST LICENSURE CANDIDATE ANNUAL REGISTRATION REQUIREMENTS (1) Individuals shall register annually as a marriage and family therapist licensure candidate on or before December 31. An individual may register as a marriage and family therapist licensure candidate for up to five years from the date the candidate's original candidate license was issued.

(2) Candidates licensed after October 1 in any calendar year will not be required to register again until December 31 of the following calendar year.

(3) After the fifth registration, a marriage and family therapist licensure candidate must request permission for an additional registration, which the board may grant on a case-by-case basis.

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-37-205, MCA

6. The rules proposed to be repealed are as follows:

24.219.515 RENEWALS at ARM page 24-25544

AUTH: 37-1-141, 37-22-201, MCA
IMP: 37-1-141, MCA

REASON: The board is repealing this rule, ARM 24.219.615, and 24.219.715, as they are unnecessary. The department administers a standardized renewal process for all professional and occupational licensure boards, and these rules merely reference the department rules on renewals.

24.219.615 RENEWALS at ARM page 24-25575

AUTH: 37-1-134, 37-1-141, MCA
IMP: 37-1-141, MCA

24.219.715 RENEWALS at ARM page 24-25584

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-131, 37-1-141, MCA

24.219.801 CODE OF ETHICS - LICENSED CLINICAL SOCIAL WORKERS at ARM page 24-25591

AUTH: 37-22-201, 37-23-103, MCA
IMP: 37-22-101, 37-22-201, 37-23-101, 37-23-103, MCA

REASON: See REASON for ARM 24.219.807.

24.219.804 CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS at ARM page 24-25597

AUTH: 37-22-201, 37-23-103, MCA
IMP: 37-22-101, 37-22-201, 37-23-101, 37-23-103, MCA

REASON: See REASON for ARM 24.219.807.

24.219.2401 COMPLAINT PROCEDURE at ARM page 24-25707

AUTH: 37-1-131, 37-22-201, MCA
IMP: 37-1-308, 37-1-309, MCA

REASON: The board is repealing this unnecessary rule, because the complaint procedure is adequately addressed in statute and should not be unnecessarily repeated in rule per the Montana Administrative Procedure Act.

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 Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswpc@mt.gov, and must be received no later than 5:00 p.m., December 11, 2015.

8. An electronic copy of this notice of public hearing is available at www.swpc.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 Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdswpc@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, apply and have been fulfilled. The primary bill sponsor was contacted on April 28, 2015, by regular USPS mail.

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.219.101, 24.219.301, 24.219.401, 24.219.405, 24.219.409, 24.219.421, 24.219.501, 24.219.504, 24.219.512, 24.219.601, 24.219.604, 24.219.612, 24.219.701, 24.219.704, 24.219.707,

24.219.712, 24.219.807, and 24.219.2404, 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 RULES I through XII 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 24.219.515, 24.219.615, 24.219.715, 24.219.801, 24.219.804, and 24.219.2401 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; facsimile (406) 841-2305; or dlibsdswpc@mt.gov (board's e-mail).

12. Cyndi Reichenbach, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC

/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 November 2, 2015

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.406 pertaining to licensee assessments	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Concerned Persons

1. On December 12, 2015, 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 or 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 December 2, 2015, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 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: MDOLcomments@mt.gov.

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

32.2.406 LICENSEE ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessment is levied: a fee of ~~$0.155~~ $0.275 per hundredweight per month~~, with a minimum of $50.00 per month, whichever is greater, or a maximum of $1,050.00 per month,~~ on the volume of all classes of milk produced and sold by a person licensed by the Milk and Egg Bureau of the department, to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. For a dairy licensed by the department, the minimum assessment is $225.00 per month and the maximum assessment is $950.00 per month. For other licensees the minimum assessment is $725.00 per month and the maximum assessment is $2,850.00 per month. For a person licensed both as a dairy and as another licensee, only one assessment will be levied, whichever amount is higher.

(2) and (3) remain the same.

AUTH: 81-1-102, 81-23-202, MCA
IMP: 81-1-102, 81-23-202, MCA

REASON: The department proposes the above-stated amendment to assess the milk inspection and milk diagnostic laboratory administration fee consistent with 81-23-202(4)(a), MCA, and to establish assessments that are commensurate with costs consistent with 81-1-102(2), MCA. The department has determined that the assessment, currently collected from dairies, should be collected from all persons

licensed by the Milk and Egg Bureau of the department, including licensees other than dairies. The assessment rate was calculated based on the department's fiscal projections of costs, the estimated average cost for administration of the milk inspection and milk diagnostic laboratory functions for dairies, and the estimated average cost for administration of the milk inspection and milk diagnostic laboratory functions for other persons licensed by the department. The minimum assessment is calculated as 50% of the average cost for each group of licensees, rounded to the nearest $25, and the maximum assessment is calculated as 200% of the average cost for each group of licensees, rounded to the nearest $25.

The assessment collected under the proposed amendment potentially will affect 72 persons in the state who are licensed by the department through the Milk and Egg Bureau for the production and sale of milk. The proposed amendment would result in a cumulative increase of approximately $130,000 for fiscal year 2016. The department estimates that the assessment rate may be reduced to approximately $0.145 per hundredweight per month for fiscal year 2017.

4. This amendment is proposed to be applied effective January 1, 2016.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., December 10, 2015.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., December 10, 2015.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be eight, based upon there being approximately 72 businesses licensed by the Milk and Egg Bureau.

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

delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the fee increase in the proposed amendment may significantly and directly impact some small businesses, as defined in 2-4-102(13), MCA. Small businesses in the early growth stage will be especially impacted. These businesses have not reached the commercial volumes necessary to cover additional costs. The department's impact analysis is available from the person in 5.

DEPARTMENT OF LIVESTOCK

BY:	/s/ Sherry Rust	BY:	/s/ Marty Zaluski
	Sherry Rust		Marty Zaluski
	Rule Reviewer		Interim Executive Officer
			Board of Livestock
			Department of Livestock

Certified to the Secretary of State November 2, 2015

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

In the matter of the adoption of New Rule I regarding the East Valley Controlled Groundwater Area	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

To: All Concerned Persons

1. On December 10, 2015, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 3, 2015, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-0581, fax (406) 444-0533, e-mail mheffner@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I EAST VALLEY CONTROLLED GROUNDWATER AREA

(1) There is designated an East Valley Controlled Groundwater Area for purposes of water quality. East Valley Controlled Groundwater Area (EVCGWA) means an area of approximately 1,924 acres or three square miles located in and around East Helena, Montana, consisting of two zones and is generally described as follows:

(a) Zone 1 beginning at the southeast corner of the NESE Section 36 T10N R3W, proceeding north along the section line and Montana Avenue to the alley north of the intersection of King Street and Montana Avenue, then proceeding west to Prickly Pear Creek passing just north of the East Helena Pool, then proceeding northwest along Prickly Pear Creek to the southeast corner of the NWSE of Section 23 T10N R3W, then proceeding north to the Helena Valley Irrigation Canal, then following the canal southwest to the intersection with the western edge of the SWNE of Section 23 T10N R3W, then proceeding south to the southeast corner of the SENW of Section 26 T10N R3W, then proceeding east, then south along the edge of the Seaver Park subdivision to Highway 12, then east along Highway 12 to the edge of section 26, then south to Smelter Road, then following Smelter Road approximately 135 yards southeast to a private driveway and the north edge of Section 36, then proceeding west to the northwest corner of Section 36, then proceeding south to the southwest corner of the NWSW of Section 36 T10N R3W, then proceeding east to the starting point.

(i) Within the lateral boundaries described in (1)(a), there exists vertical boundaries south of the section line between Sections 23 and 26 T10N R3W from the top of the water table to a depth of 200 feet and north of the section line between Sections 23 and 26 T10N R3W from the top of the water table to a depth of 300 feet; and

(b) Zone 2 beginning at the alley north of the intersection of King Street and Montana Avenue in East Helena, then proceeding west to Prickly Pear Creek passing just north of the East Helena Pool, then proceeding northwest along Prickly Pear Creek to the southeast corner of the NWSE of Section 23 T10N R3W, then proceeding north to the Helena Valley Irrigation Canal, then following the canal southwest to the intersection with the western edge of the SWNE of Section 23 T10N R3W, then proceeding south to the southeast corner of the SENW of Section 26 T10N R3W, then proceeding west to the southwest corner of the SENW of Section 26 T10N R3W, then proceeding north to Canyon Ferry Road, then following Canyon Ferry Road east to Wylie Drive, then following Wylie Drive south to the north edge of Section 25, then proceeding east to Valley Drive/Montana Avenue, then following Valley Drive/Montana Avenue south to the starting point.

(2) A map of the area within the EVCGWA described in (1) is posted at http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas/east-valley.

(3) The following controls apply in Zone 1 of EVCGWA.

(a) Except as provided in (3)(b), no new groundwater developments or changes to existing groundwater appropriations are allowed, and the department may not accept or process any of the following for groundwater:

(i) a Notice of Completion pursuant to 85-2-306(3), MCA;

(ii) a Replacement Well Notice, Form 634;

(iii) an Application for Beneficial Water Use Permit, Form 600; and

(iv) an Application for Change of Appropriation Right, Form 606.

(b) The department may accept and process the following applications and forms pursuant to 85-2-311 and 85-2-402, MCA, when the application or form is accompanied by documentation of prior written approval from Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation:

(i) a Redundant Well Construction Notice, Form 635, for a redundant well;

(ii) an Application for Change of Appropriation Right, Form 606, for the limited purpose of a replacement well; and

(iii) an Application for Change of Appropriation Right, Form 606, for the retirement of a well limited to the purpose of mitigation or marketing for mitigation.

(4) The following controls apply in Zone 2 of EVCGWA.

(a) No new groundwater developments pursuant to 85-2-306(3), MCA, are allowed and the department may not accept or process Notices of Completion.

(b) New groundwater developments or changes to existing groundwater appropriations are allowed and the department may accept and process the following applications and forms pursuant to 85-2-311 and 85-2-402, MCA, when the application or form is accompanied by documentation of prior written approval from

Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation:

(i) an Application for Beneficial Use Permit, Form 600;

(ii) an Application for Change of Appropriation Right, Form 606; and

(iii) a Redundant Well Construction Notice, Form 635.

(5) In addition to conditions necessary to satisfy the criteria in 85-2-311 and 85-2-402, MCA, a department order authorizing a new groundwater development or change to existing groundwater appropriation must include conditions consistent with the recommendations included in the prior written approval from Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation. The prior written approval pursuant to (3)(b) and (4)(b) must include recommendations for:

(a) well design and construction requirements necessary to measure the water level and water quality for any new well;

(b) water level measurement and water quality sample reporting requirements for any new well; and

(c) any other requirements necessary to ensure new wells can be operated in a manner consistent with the purpose of the EVCGWA.

(6) The Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation may establish a technical advisory group consisting of delegates from each for purposes of reviewing, monitoring, and making recommendations regarding applications and water use within the boundaries of the EVCGWA. Prior written approval by the technical advisory group satisfies the prior written approval required pursuant to (3)(b) and (4)(b).

AUTH: 85-2-506, 85-2-508, MCA
IMP: 85-2-506, 85-2-508, MCA

REASONABLE NECESSITY: 85-2-506, MCA, authorizes the department to designate temporary or permanent controlled groundwater areas. A petition to designate a controlled groundwater area was filed with the department by Lewis and Clark City-County Health Department on August 25, 2014. Data collected within the boundaries of the East Valley Controlled Groundwater Area indicate arsenic and selenium contamination, primarily from the former smelter, in the groundwater of Helena Valley alluvial aquifer. Concentrations in Zone 1 exceed human health standards. Contaminant concentrations in Zone 2 do not currently exceed human health standards but exceedances may occur due to future groundwater withdrawals or changes in the hydrogeologic system. The city of East Helena has established a moratorium zone on all new wells. Additional pumping from the aquifer is likely to increase the spread of the contaminant plumes. The proposed CGWA controls for Zone 1 and Zone 2 include monitoring requirements and restrictions on new

groundwater appropriations and changes to existing groundwater appropriations necessary to protect human health and safety.

A determination to initiate rulemaking proceedings was issued by the department on July 23, 2015.

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 in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on December 10, 2015.

5. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this notice of public hearing on proposed adoption is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this notice of public hearing on proposed adoption 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.

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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. 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 Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John E. Tubbs	/s/ Brian Bramblett
John Tubbs	Brian Bramblett
Director, Natural Resources & Conservation	Rule Reviewer

Certified to the Secretary of State on November 2, 2015.

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

In the matter of the amendment of ARM 37.40.830 pertaining to updating hospice reimbursement fee schedules to reflect new federal rates	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 2, 2015, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 25, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) remains the same.

(2) The department adopts and incorporates by reference 42 CFR 418.302, effective ~~August 6, 2009~~ August 6, 2015, and 42 CFR 418.306, effective ~~August 22, 2014~~ August 6, 2015, which sets forth the Medicare payment procedures. Copies of 42 CFR 418.302 and 42 CFR 418.306 are available at the federal web site: http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.

(3) through (7) remain the same.

(8) The department adopts and incorporates by reference 42 CFR 418.309, effective ~~August 4, 2011~~ August 6, 2015, which sets forth Medicare's methodology for calculating the hospice cap amount. Copies of 42 CFR 418.309 are available at the federal web site: http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.

(9) and (10) remain the same.

(11) The hospice fee schedules are effective October 1, ~~2014~~ 2015. Copies of the department's current fee schedules are posted at http://medicaidprovider.mt.gov and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule referenced in (11), effective October 1, 2015, in accordance with changes in federal hospice reimbursement rates set by the Center for Medicare and Medicaid Services (CMS) in the Federal Register effective October 1, 2015. Also being updated is the Code of Federal Regulations (CFR) references for 42 CFR 418.302 and 42 CFR 418.306 in (2), and 42 CFR 418.309 in (8), which are adopted and incorporated by reference. Medicaid hospice incorporates the Medicare reimbursement methodology and the reimbursement updates as specified in the Federal Register, by incorporating wage indexes and geographic factors specific for Montana counties.

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of one percent, as computed and published by CMS, which will apply to providers in 54 of Montana's 56 counties. A one percent increase in the hospice reimbursement rate equals approximately $50,000. Providers in two counties, Cascade County and Missoula County, will experience an aggregate rate decrease of approximately one-half percent and one percent, respectively. Additionally, four hospice providers will see a hospice reimbursement rate decrease of two percent for failure to comply with the federal quality data submission requirements during the prior fiscal year. A copy of the proposed hospice fee schedule can be found at http://medicaidprovider.mt.gov.

The proposed rule amendments are necessary to pay Medicaid providers according to the current Medicare fee schedule effective October 1, 2015, and to adopt by reference the current applicable federal regulations related to determination of payment rates. Failure to amend the rule as proposed will result in a deficient state hospice reimbursement rate from the current federal rate, which would result in underpayment to hospice providers, and introduces an inability for the state to comply with federal requirements pertaining to hospice providers.

Fiscal Impact

A majority of the hospice program's $5 million Medicaid budget funds reimbursement for hospice services delivered in nursing facilities in the form of room and board for inpatient nursing facility hospice. The funds impacted are from federal Medicaid fund (03585) and general fund (01100) sources.

In Fiscal Year 2015, approximately 384 Medicaid members received hospice benefits under Medicaid.

5. The department proposes to apply increases in the hospice reimbursement rates retroactively to October 1, 2015. The implementation date of the rate increase is consistent with the federal approval of the hospice reimbursement rate fee increase and the effective dates of the promulgated federal regulations. Decreases in hospice rates would not be applied retroactively, but would be effective upon adoption of the proposed rule amendment.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 10, 2015.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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 paragraph 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

12. 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the

method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not subject to the performance-based measures requirement of 53-6-196, MCA, as they implement a federal Medicaid requirement.

/s/ Valerie Bashor
Valerie Bashor, Attorney
Rule Reviewer

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

Certified to the Secretary of State November 2, 2015.

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

In the matter of the amendment of ARM 37.81.304 pertaining to updating the Big Sky Rx maximum premiums to match the federal monthly benefit benchmark	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 2, 2015, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 25, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~$30.00~~ $30.90 per month. The benefit amount will not exceed ~~$30.00~~ $30.90 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~$30.00~~ $30.90 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~$30.00~~ $30.90, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.81.304 regarding the Big Sky Rx monthly benefit payment. This rule is being updated to match the Low Income Subsidy (LIS) for Medicare Part D for this region as set forth in the Centers for Medicare and Medicaid Services (CMS) letter dated July 29, 2015.

The proposed amendment attempts to clearly communicate to the public, program rules and guidelines. These amendments were proposed only after extensive consideration of their impact on recipients.

ARM 37.81.304

The department is proposing to change the Big Sky Rx monthly maximum benefit from $30.00 to $30.90. This proposed amendment is necessary to ensure the monthly benefit does not exceed the LIS set for this region. Since the inception of Big Sky Rx, the benefit has mirrored the LIS to ensure a reasonable and prudent monthly benefit for enrolled members.

Fiscal Impact

The number of people affected by the increase of the maximum premium from $30.00 to $30.90 is 4,337. This would increase the monthly benefit by $3,903.30 and yearly benefit by $46,839.00.

5. The department intends to adopt this rule effective January 1, 2016.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 10, 2015.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

12. 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

/s/ Mary Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 2, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.114 and 44.5.115 pertaining to fees charged by the Business Services Division for the filing of annual reports	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 3, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed 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 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 November 25, 2015, 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) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES (1) through (3)(d) remain the same.

(e) annual report filed prior to April 15th	~~15.00~~ 20.00
(f) annual report filed after April 15th	~~30.00~~ 35.00

(g) through (5) remain the same.

AUTH: 2-15-405, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-15-405, 35-1-217, 35-1-1206, 35-1-1307, 35-2-119, 35-2-1003, 35-6-201, MCA

44.5.115 LIMITED LIABILITY COMPANY FEES (1) through (3)(c) remain the same.

(d) annual report filed prior to April 15th	~~15.00~~ 20.00
(e) annual report filed after April 15th	~~30.00~~ 35.00

(f) through (5) remain the same.

AUTH: 2-15-405, MCA
IMP: 2-15-405, 35-8-208, 35-8-211, 35-8-212, MCA

REASON: Over 126,000 annual reports were filed in the Secretary of State's Office in 2015. The sheer volume of annual reports requires a considerable amount of staff time to process. The filing of annual reports runs from January 1 to April 15 of each year. At the height of annual report filings from March to April, four staff persons are dedicated full time to filing annual reports as well as assisting filers. In March, nearly 100,000 reminders are mailed to corporations and limited liability companies that have yet to file their annual reports and risk involuntary dissolution. The Secretary of State reviewed the annual report filing fees for six states within the neighboring region of the northwest United States for comparison and found that annual report fees charged by other states range from no fee charged by Idaho to a fee of $275 for foreign profit corporations and limited liability companies charged by Oregon. The Secretary of State deposits the fees it receives into an enterprise fund and operates solely on the fees it charges. The Secretary of State is required by law to charge fees that are commensurate with the overall costs of the office and that reasonably reflect the prevailing rates charged in the public and private sectors for similar services. The Secretary of State believes the modest proposed $5.00 fee increase for the filing of annual reports is warranted based on the fees charged by other states and the overall costs of the office. This fee has not been increased since 2002. The effective date of the fee increase is January 1, 2016.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., December 11, 2015.

5. 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.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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.

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

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

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

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

10. The cumulative amount for all persons of the proposed fee changes is approximately $630,000 annually based on FY 2015 annual report filings. The number of persons affected is approximately 126,000 based on the number of corporations and limited liability companies that filed annual reports in FY 2015.

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

Dated this 2nd day of November, 2015.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.121.301 definitions, 24.121.406 nonroutine applications, 24.121.407 premises and general requirements, 24.121.601, 24.121.603, 24.121.605, and 24.121.607 pertaining to licensing, 24.121.602 military training or experience, 24.121.801, 24.121.803, 24.121.805, 24.121.807, and 24.121.808 pertaining to school operations, 24.121.1301 salons/booth rental, 24.121.1514 disinfecting agents, 24.121.1517 salon preparation storage and handling, and 24.121.1522 blood spills	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 10, 2015, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-13 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1340 of the 2015 Montana Administrative Register, Issue No. 17.

2. On October 2, 2015, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the October 9, 2015, deadline.

3. The board has amended ARM 24.121.301, 24.121.406, 24.121.407, 24.121.601, 24.121.602, 24.121.603, 24.121.605, 24.121.607, 24.121.801, 24.121.803, 24.121.805, 24.121.807, 24.121.808, 24.121.1301, 24.121.1514, 24.121.1517, and 24.121.1522 exactly as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, 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 November 2, 2015

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to certification of carbon sequestration equipment	)))	NOTICE OF ADOPTION

To: All Concerned Persons

1. On September 10, 2015, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-187 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1355 of the 2015 Montana Administrative Register, Issue Number 17.

2. The department has adopted the above-stated rule as proposed: New Rule I (36.22.1707).

3. No written comments or oral testimony were received.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

/s/ Linda Nelson
LINDA NELSON
Board Chair, Board of Oil and Gas Conservation

Certified to the Secretary of State November 2, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II, amendment of ARM 42.38.102 and 42.38.103, transfer of ARM 42.38.104, 42.38.203, and 42.38.206, and repeal of ARM 42.38.204 pertaining to unclaimed property	))))))	NOTICE OF ADOPTION, AMENDMENT, TRANSFER, AND REPEAL

TO: All Concerned Persons

1. On August 27, 2015, the Department of Revenue published MAR Notice No. 42-2-933 pertaining to the public hearing on the proposed adoption, amendment, transfer, and repeal of the above-stated rules at page 1249 of the 2015 Montana Administrative Register, Issue Number 16.

2. On September 21, 2015, a public hearing was held to consider the proposed adoption, amendment, transfer, and repeal. Gary Wiens of the Montana Electric Cooperatives' Association appeared and testified at the hearing. The department also received written comments from the Montana Telecommunications Association, Toni Cody, and Jinger Henke.

3. The department has amended ARM 42.38.102 and 42.38.103, transferred ARM 42.38.104 (42.38.220), 42.38.203 (42.38.305), and 42.38.206 (42.38.310), and repealed ARM 42.38.204 as proposed.

4. Based upon the comments received and after further review, the department has adopted New Rule I (42.38.208) and New Rule II (42.38.209) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.38.208) RURAL ELECTRIC OR TELEPHONE COOPERATIVES - DETERMINATION OF UNCLAIMED PROPERTY EXEMPT FROM ESCHEATMENT (1) Unclaimed patronage refunds of a rural electric or telephone cooperative are not presumed abandoned under 70-9-803, MCA, if the cooperative, upon the action of the board of trustees:

(a) maintains the unclaimed patronage refunds in a separate general ledger account or fund, which can only be used for educational purposes ~~in the cooperative's community~~;

(b) does not include the amount of the unclaimed patronage refunds in the cooperative's general fund ~~ledger~~;

(c) through (3) remain as proposed.

NEW RULE II (42.38.209) NONUTILITY COOPERATIVES - DETERMINATION OF UNCLAIMED PROPERTY EXEMPT FROM ESCHEATMENT

(1) Unclaimed shares in a nonutility cooperative are not presumed abandoned under 70-9-803, MCA, if the cooperative, upon the action of the board of trustees:

(a) maintains the unclaimed shares in a separate general ledger account or fund, which can only be used for charitable or civic purposes in the cooperative's community;

(b) does not include the amount of the unclaimed shares in the cooperative's general fund ~~ledger~~;

(c) through (2) remain as proposed.

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

COMMENT NO. 1: Gary Wiens appeared and testified on behalf of the Montana Electric Cooperatives' Association. Mr. Wiens stated that the association supports proposed New Rule I and appreciates the further amendments the department offered at the hearing to improve the proposed rule.

Mr. Wiens commented that the proposal is similar to a model policy for unclaimed patronage refunds adopted by the association last year to guide electric cooperatives. He stated that the proposed new rule will adequately resolve a question about interpretation of two separate statutes, 70-9-803 and 35-18-316, MCA. He commented that, as they understand it, under this proposal electric cooperatives will be able to continue to retain unclaimed funds for educational purposes provided the steps outlined in rule as further amended are followed.

Mr. Wiens further commented that he believes the proposed new rule is consistent with general practices of electric cooperatives regarding unclaimed patronages refunds. Unclaimed patronage refunds are retained by the cooperative for five years during which the cooperative shall make reasonable attempts to locate the rightful owner of this property, and on an annual basis shall transfer the unclaimed refunds to a separate account or fund that is not in the cooperative's general fund to be used for educational purposes at the discretion of the cooperative board of directors or one or more individuals designated by the board.

RESPONSE NO. 1: The department appreciates Mr. Wiens' comments on behalf of the Montana Electric Cooperatives' Association. As presented at the hearing, the department is striking "in the cooperative's community" from New Rule I (1)(a) and further amending New Rules I and II to add the term "general ledger" in (1)(a), and to strike the term "ledger" from (1)(b) for clarity.

COMMENT NO. 2: Jason B. Williams, counsel on behalf of the Montana Telecommunications Association (MTA) general manager, Geoff Feiss, submitted written comments on the proposed rules and the additional amendments agreed to by the department.

Mr. Williams explained that the MTA represents several rural telephone cooperatives operating in Montana that are subject to the statutory restrictions in 35-18-316, MCA, regarding the treatment of unclaimed patronage and that the

department's proposed changes directly affect rural telephone cooperatives doing business in Montana. Mr. Williams further commented that the MTA supports the proposed rules if they are amended to include the MTA's recommendations.

Mr. Williams commented that the MTA has a concern with the portion of proposed New Rule I (1)(a) which reads, "maintains the unclaimed patronage refunds in a separate account or fund." Member cooperatives track unclaimed patronage as a separate line item on their balance sheets and carefully account for these funds to ensure they are used only for educational purposes as authorized by 35-18-316, MCA. The proposed requirement to keep these funds "in a separate account or fund" is unnecessary and, because of its ambiguity, creates confusion as to the treatment of unclaimed patronage refunds.

The MTA recommends the proposed rule be changed to state, "accounts for unclaimed patronage as a separate account on its balance sheet" to clarify that there is no requirement to maintain a separate cash or other account for the sole purpose of unclaimed patronage.

Mr. Williams commented that the MTA is also concerned that the language in proposed New Rule I (1)(a), which reads, "maintains the unclaimed patronage refunds in a separate account or fund, which can only be used for educational purposes in the cooperative's community," is unlawful. Section 35-18-316(3), MCA, states that "refunds retained by the cooperative must be used for educational purposes." Adding "in the cooperative's community" qualifier narrows the scope for how rural telephone cooperatives may use unclaimed patronage credits to only the cooperative's community.

Mr. Williams further commented that the language is vague and raises questions. Imposition of this language in the new rule would nullify the primary purpose for which many MTA members use unclaimed member patronage refunds, college scholarships. Each year, telephone cooperatives across Montana give thousands of dollars to various colleges all over the country on behalf of deserving students in the form of scholarships. He commented that the proposed language could be interpreted to prohibit these companies from providing scholarships.

Mr. Williams stated that the MTA recommends the department strike "in the cooperative's community" from proposed New Rule I.

Mr. Williams commented that the proposed language in New Rule I (1)(b) that states, "does not include the amount of the unclaimed patronage refunds in the cooperative's general ledger" is ambiguous and an argument could be made that this language would prohibit cooperatives from recording unclaimed patronage refunds on their balance sheets, which would result in a material misstatement of financial statements. Instead, the MTA recommends deleting the word "ledger" to encapsulate the apparent intent to ensure that a cooperative's unclaimed patronage amounts are not comingled with its general funds, but rather as a separate amount on its balance sheet.

RESPONSE NO. 2: The department appreciates the comments from Mr. Williams on behalf of Mr. Feiss and the Montana Telecommunications Association, and agrees with their concerns. As presented at the hearing, the department is striking "in the cooperative's community" from New Rule I (1)(a) and further

amending New Rules I and II to add the term "general ledger" in (1)(a), and to strike the term "ledger" from (1)(b) for clarity.

COMMENT NO. 3: Jinger Henke e-mailed the department to ask if a "separate account or fund" refers to an actual bank account or just an accounting separation in a general ledger account, and if there is an official definition of "education purposes."

RESPONSE NO. 3: The department appreciates Ms. Henke's comments. The department does not intend for a separate account to be established and has further amended the new rules to add this clarity. The department does not define "education purposes" as the term is used in 70-9-803(6)(a) and 35-18-316(3), MCA, to allow the cooperative the discretion to use the funds for any education purpose designated by the board.

COMMENT NO. 4: Toni Cody e-mailed the department regarding the timeframe for determining when unclaimed patronage becomes abandoned as found in statute. Ms. Cody asked if there is a time limit in which the funds must be used for education purposes or if the proposed rule means they do not need to use the funds within five years before presumed abandoned.

RESPONSE NO. 4: The department appreciates Ms. Cody's comments. Unclaimed patronage refunds do not become unclaimed until five years after they are issued. New Rule I further aligns the 5-year period as the last day of the calendar year in which the patronage refund is issued. It is at this time the patronage refund becomes unclaimed and 70-9-803(6)(a) and 35-18-316(3), MCA, apply, which requires these refunds to be placed into a separate general ledger account to be used for educational purposes. These funds are not required to be used before this 5-year period in order to be exempt from escheatment under the Uniform Unclaimed Property Act.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 2, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.18.124, 42.18.128, 42.18.206, 42.18.207, 42.18.208, and repeal of ARM 42.18.132 pertaining to property valuation periods and property appraiser certification requirements	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 24, 2015, the Department of Revenue published MAR Notice No. 42-2-935 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1448 of the 2015 Montana Administrative Register, Issue Number 18.

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

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 2, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401, 42.19.402, 42.19.405, 42.19.501, 42.19.502, 42.19.503, 42.19.506, and repeal of ARM 42.19.406 pertaining to property tax assistance programs	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 24, 2015, the Department of Revenue published MAR Notice No. 42-2-936 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1453 of the 2015 Montana Administrative Register, Issue Number 18.

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

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 2, 2015

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.131 pertaining to rules governing the registration of business/mark names	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2015, the Secretary of State published MAR Notice No. 44-2-197 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1469 of the 2015 Montana Administrative Register, Issue Number 18.

2. The Secretary of State has amended the above-stated rule as proposed.

3. No member of the public commented on the rule notice. The Secretary of State received the following comment from Senator Dee L. Brown, the Chair of the State Administration and Veterans' Affairs Interim Committee.

COMMENT: Regarding (5) of ARM 44.5.131, which states, "The Secretary of State reserves the right to not register business names that are vulgar or grossly offensive," Senator Brown states "Are we becoming the filter for freedom of speech issues? Should there be a bigger group than one deciding this? Is there a standard already set by various agencies/states? Though I certainly agree with that some words are offensive, should there be some standards in place referencing what constitutes vulgar and grossly offensive instead of SOS being on the hook to decide?"

RESPONSE: This is an interesting question and one the Secretary of State struggled with. However, it was concluded that as the Legislature has criminalized profane language in 45-8-101, MCA, the Secretary of State should not allow it. If a name was rejected, the filer would have the option of seeking a court order to force the filing.

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

Dated this 2nd day of November, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.14.301, 44.14.302, and 44.14.304 through 44.14.311 pertaining to fees charged by the Records and Information Management Division	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2015, the Secretary of State published MAR Notice No. 44-2-210 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1473 of the 2015 Montana Administrative Register, Issue Number 18.

2. The Secretary of State has amended the following rules as proposed: ARM 44.14.302, 44.14.304 through 44.14.306, 44.14.308, and 44.14.311.

3. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.14.301 FEES FOR 16MM MICROFILM SERVICES (1) remains as proposed.

(a) Auto Exposure or Scanning	$.10
(b) Microfilm Services – Camera Rotary (all sizes)	.15

(b) remains as proposed, but is renumbered (c).

AUTH: 2-15-405, MCA
IMP: ~~2-6-203, 2-6-211,~~ 2-6-1101, 2-6-1114, MCA

44.14.307 FEES FOR JACKET LOADING/TITLING (1) remains as proposed.

~~(a) 16mm, each 5 channel jacket~~	~~$ 0.88~~
~~(b) 35mm, 1 and 2 channel jacket (each)~~	~~0.90~~
~~(c)~~ (a) jacket title (each)	$~~0~~.90
(b) jacket loading (each)	.90

AUTH: 2-15-405, MCA
IMP: ~~2-6-203, 2-6-211,~~ 2-6-1101, 2-6-1114, MCA

44.14.309 MISCELLANEOUS SUPPLIES (1) Fees for ~~the following filming~~ supplies and postage/freight will be as charged by the supplying vendor:

(a) and (b) remain as proposed.

~~(c) fiche envelopes (1 box/1000)~~

~~(d)~~(c) postage/freight
(d) miscellaneous supplies

AUTH: 2-15-405, MCA
IMP: ~~2-6-203, 2-6-211,~~ 2-6-1101, 2-6-1114, MCA

44.14.310 FEES FOR RECORDS CENTER SERVICES (1) remains as proposed.

(a) storage per cubic foot, per month $ 0.33
(b) through (k) remain as proposed.

AUTH: 2-15-405, MCA
IMP: ~~2-6-211,~~ 2-6-1114, MCA

4. No member of the public commented on the rule notice. The Secretary of State received the following comments from Senator Dee L. Brown, the Chair of the State Administration and Veterans' Affairs Interim Committee.

COMMENT: Chair Brown asked, "[U]nder section 44.14.301 is there a reason for wild swings in some of the charges, in other words, why not just a solid percentage increase throughout the fee structure? Regarding the new $25/hour charges, what happened previously in this category? What prompted this addition to fees when it wasn't in rule previously? Also, is this raising of fees normally through the rule making or disclosed during appropriations?"

RESPONSE: The Secretary of State undertook a full cost analysis that took several months. This cost analysis was completed for each line item at Records Management. The rates are based on calculations that included employee wages, the cost per square foot to lease the building, and the cost of materials.

The new fees are implemented because there is a service attached to each, and the Legislature mandates that the fees charged should be commensurate with costs.

The $25/per hour fee is the average cost of Records Center staff labor. In many instances, the charge will be by the quarter hour ($6.25 per 15 minutes).

Searches and file retrievals take much less than 15 minutes in most instances ($1.20 per) and the Secretary of State still wanted those fees as low as, if not lower than, surrounding states.

In the cost analysis, the lease of the building was also a factor, and the charge for the lease has increased over the years. Some materials that are purchased from vendors (boxes, film supplies) have also increased nearly 200% in the last year alone. An average across-the-board increase in fees could not be justified because some materials did not increase as much as others. The Secretary of State tries to sell the materials for the price they are purchased in order to keep prices as low as possible for all agencies.

Since this agency is an enterprise fund, and has explicit authority to charge fees for services commensurate with costs, it is not part of the appropriations process.

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

Dated this 2nd day of November, 2015.

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

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

Statute

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2015. This table includes those rules adopted during the period July 1, 2015, through September 30, 2015, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2015, this table, and the table of contents of this issue of the Register.

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 2015 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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