

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 2

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

### Page Number

## TABLE OF CONTENTS

### PROPOSAL NOTICE SECTION

#### ADMINISTRATION, Department of, Title 2

2-5-488 Amended Notice of Public Hearing on Proposed Amendment  
- State Procurement of Supplies and Services. 141

2-59-502 Notice of Proposed Adoption and Amendment - Derivatives  
Transactions - Securities Financing Transactions - Lending Limits. No  
Public Hearing Contemplated. 142-160

#### AGRICULTURE, Department of, Title 4

4-14-216 Notice of Public Hearing on Proposed Amendment -  
Noxious Weed Seed Free Forage Minimum Fees. 161-163

4-14-217 Notice of Public Hearing on Proposed Adoption - Corn Crop  
Advisory Committee - Annual Corn Crop Commodity Assessment -  
Corn Crop Research - Marketing Project Funds. 164-166

#### STATE AUDITOR, Office of, Title 6

6-206 (Commissioner of Securities and Insurance) Notice of Public  
Hearing on Proposed Amendment and Adoption - Continuing  
Education Program for Insurance Producers and Consultants. 167-173

COMMERCE, Department of, Title 8

8-94-120 Notice of Public Hearing on Proposed Amendment -  
Governing the Submission and Review of Applications for Funding  
Under the Treasure State Endowment Program (TSEP). 174-176

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-403 (Fish and Wildlife Commission and Department) Notice of  
Public Hearing on Proposed Adoption - Unauthorized Placement of  
Fish Into Public Waters. 177-182

ENVIRONMENTAL QUALITY, Department of, Title 17

17-352 (Board of Environmental Review) (Water Quality) Notice of  
Public Hearing on Proposed Amendment - Temporary Water Quality  
Standards. 183-186

LABOR AND INDUSTRY, Department of, Title 24

24-114-35 (Board of Architects and Landscape Architects) Notice of  
Public Hearing on Proposed Adoption - Military Training or  
Experience. 187-189

LIVESTOCK, Department of, Title 32

32-13-236 Notice of Proposed Amendment - License Fees - Permit  
Fees - Miscellaneous Fees - Definitions - Permit Required - Permits -  
Additional Requirements for Cattle - Horses, Mules, and Asses -  
Semen Shipped Into Montana - Definitions - Trichomoniasis -  
Licensing - Veterinary Fees. No Public Hearing Contemplated. 190-201

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-177 Notice of Public Hearing on Proposed Amendment -  
Appointment of Hearing Examiner - Temporary Leases. 202-204

RULE ADOPTION SECTION

ADMINISTRATION, Department of, Title 2

2-59-486 Notice of Repeal - Title Lending. 205

AGRICULTURE, Department of, Title 4

4-14-214 Notice of Amendment, Adoption, and Repeal - Plant  
Inspection Certificate and Survey Costs - Fees - Civil Penalties. 206-208

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-385 (Fish and Wildlife Commission) Notice of Amendment and Adoption - Recreational Use on Lake Alva, Harpers Lake, and Lake Marshall. 209-212

TRANSPORTATION, Department of, Title 18

18-144 (Transportation Commission) Notice of Adoption and Amendment - Community Welcome To Signs. 213-214

LABOR AND INDUSTRY, Department of, Title 24

24-147-35 (Board of Funeral Service) Notice of Amendment - Continuing Education Requirements. 215

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-176 Notice of Decision on Proposed Amendment and Adoption - Water Right Combined Appropriation. 216

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-644 Notice of Repeal - Placement Determinations. 217-218

37-645 Notice of Amendment and Repeal - Eligibility. 219

37-652 Notice of Adoption and Amendment - Medicaid Home and Community-Based Services Program. 220-227

37-658 Notice of Amendment - Laboratory Testing Fees. 228

REVENUE, Department of, Title 42

42-2-902 Notice of Adoption - Debt Collection Services Provided on Behalf of Other Agencies. 229

INTERPRETATION SECTION

Opinions of the Attorney General

Volume No. 55, Opinion No. 2

Fees - The Legislature Has Not Authorized the State to Collect 9-1-1 Fees for Prepaid Wireless Services Purchased From Independent Retail Stores - Department of Revenue - Absent Legislative Authority, the Department of Revenue Cannot Promulgate Rules to Allow for the Collection of the 9-1-1 Fees on the Sales of Prepaid Wireless Purchased From Independent Retail Stores - Statutory Construction - Montana Law Provides That When a Taxing Statute Is Susceptible of Two Meanings, It Is Ambiguous and Should Be Strictly Construed Against the Taxing Authority and In a Light Most Favorable to the Taxpayer.	230-237
--	---------

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	238-239
How to Use ARM and MAR.	240
Accumulative Table.	241-250
Boards and Councils Appointees.	251-255
Vacancies on Boards and Councils.	256-263

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	AMENDED NOTICE OF PUBLIC
2.5.201, 2.5.301, 2.5.302, 2.5.303,	)	HEARING ON PROPOSED
2.5.404, 2.5.406, 2.5.408, 2.5.502,	)	AMENDMENT
2.5.601, 2.5.602, 2.5.604, 2.5.610, and	)	
2.5.701 pertaining to state procurement	)	
of supplies and services	)	

TO: All Concerned Persons

1. On December 26, 2013, the Department of Administration published MAR Notice No. 2-5-488 regarding a public hearing scheduled for February 21, 2014, on the proposed amendment of the above-stated rules at page 2332 of the 2013 Montana Administrative Register, Issue No. 24.

2. A scheduling conflict necessitates the rescheduling of the hearing.

3. On March 6, 2014, at 2:00 p.m., the Department of Administration will hold a public hearing in Room 53 of the Mitchell Building, 125 North Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

4. No changes are being made to the rules as proposed or statements of reasonable necessity in the original notice.

5. The Department of Administration 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 Department of Administration no later than 5:00 p.m. on February 28, 2014, to advise us of the nature of the accommodation that you need. Please contact Jodi Gollehon, Department of Administration, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-7210; fax (406) 444-2529; or e-mail jgollehon@mt.gov.

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: Jodi Gollehon, Department of Administration, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-7210; fax (406) 444-2529; or e-mail jgollehon@mt.gov, and must be received no later than 5:00 p.m., March 6, 2014.

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

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

Certified to the Secretary of State January 21, 2014.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PROPOSED ADOPTION
RULES I, II, III, IV, and V pertaining to	)	AND AMENDMENT
derivatives transactions and securities	)	
financing transactions and the	)	NO PUBLIC HEARING
amendment of ARM 2.59.108 pertaining	)	CONTEMPLATED
to lending limits	)	

TO: All Concerned Persons

1. On March 3, 2014, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on February 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Department of Administration, P.O. Box 200546, Helena, Montana 50620-0546; telephone (406) 841-2920; fax (406) 841-2930; TDD (406) 444-1421; or e-mail [banking@mt.gov](mailto:banking@mt.gov).

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

GENERAL STATEMENT OF REASONABLE NECESSITY: The proposed rules in this notice were adapted from the Conference of State Bank Supervisors' (CSBS) Model Rules for state regulators' implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L.111-203, H.R. 4173 of 2010 (Dodd-Frank Act) requirements that are applicable to state banks. The CSBS Model Rules, in turn, were adapted from the federal Office of the Comptroller of the Currency (OCC) rules implementing the provisions of the Dodd-Frank Act as applied to national banks. Given that these model rules have been thoroughly vetted, the department saw no need to draft its own rules except that New Rule II is unique to Montana.

NEW RULE I DEFINITIONS APPLICABLE TO DERIVATIVE TRANSACTIONS AND SECURITIES FINANCING TRANSACTIONS (1) "Bank" or "state bank" has the same meaning as "eligible state bank" in (10).

(2) "Borrower" means:

(a) a person who is named as a borrower or debtor in a loan or extension of credit;

(b) a person to whom a bank has credit exposure arising from a derivative transaction or securities financing transaction entered by the bank; or

(c) any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the direct benefit or common enterprise tests in 12

CFR 32.5 and ARM 2.59.108.

(3) "Contractual commitment to advance funds" means:

(a) a bank's obligation to:

(i) make payment directly or indirectly to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed-upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) guarantee or act as surety for the benefit of a person;

(iii) advance funds under a qualifying commitment to lend, as defined in 12 CFR 32.2(t); or

(iv) advance funds under a standby letter of credit, as defined in 12 CFR 32.2(dd) and 12 CFR 208.24, a put, or other similar arrangement.

(b) The term does not include commercial letters of credit and similar instruments:

(i) under which the issuing bank expects the beneficiary to draw on the issuer;

(ii) that do not guarantee payment; and

(iii) that do not provide payment if a third party defaults.

(4) "Credit derivative" means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures to another party (the protection provider).

(5) "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest, or other rates, indices, or other assets. The term includes a securities financing transaction.

(6) "Effective margining arrangement" means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$25 million created by the derivative transactions covered by the agreement.

(7) "Eligible credit derivative" means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(a) the derivative contract meets the requirements of an eligible guarantee as defined in (8) and has been confirmed by the protection purchaser and the protection provider;

(b) any assignment of the derivative contract has been confirmed by all relevant parties;

(c) if the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally

to pay its debts as they become due, and similar events;

(d) the terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(e) if the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to reliably estimate loss with respect to the derivative and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(f) if the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld; and

(g) if the credit derivative is a credit default swap, the derivative contract:

(i) identifies the parties responsible for determining whether a credit event has occurred;

(ii) specifies that the determination is not the sole responsibility of the protection provider; and

(iii) gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(8) "Eligible guarantee" means a guarantee that:

(a) is written and unconditional;

(b) covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(c) gives the beneficiary a direct claim against the protection provider;

(d) is not unilaterally cancelable by the protection provider for reasons other than the beneficiary's breach of contract;

(e) is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(f) requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal action to pursue the obligor for payment;

(g) does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

(h) is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

(i) does not control the bank; and

(ii) is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies as applicable.

(9) "Eligible protection provider" means:

(a) a sovereign entity (a central government, including the U.S. government, an agency, department, ministry, or central bank);

(b) the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;



- (c) a federal home loan bank;
  - (d) the Federal Agricultural Mortgage Corporation;
  - (e) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 USC 1813(c);
  - (f) a bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 USC 1841;
  - (g) a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, 12 USC 1467a;
  - (h) a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 USC 78o, et seq.;
  - (i) an insurance company that is subject to the supervision of a state insurance regulator;
  - (j) a foreign banking organization;
  - (k) a non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and
  - (l) a qualifying central counterparty.
- (10) "Eligible state bank" means a bank organized under Montana laws that:
- (a) is well-capitalized as defined in the prompt corrective action rules applicable to the bank; and
  - (b) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the bank's most recent examination or subsequent review.
- (11) "Loans," "extensions of credit," or "obligations" have the meaning in 32-1-432, MCA, and any credit exposure determined under [NEW RULE V] arising from a derivative transaction or a securities financing transaction.
- (a) The terms include:
    - (i) a contractual commitment to advance funds;
    - (ii) a maker or endorser's obligation arising from a bank's discount of commercial paper;
    - (iii) a bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;
    - (iv) an overdraft, whether or not prearranged, but not an intraday overdraft for which payment is received before the close of business of the bank that makes the funds available;
    - (v) the sale of federal funds with a maturity of more than one business day, but not federal funds with a maturity of one day or less or federal funds sold under a continuing contract;
    - (vi) loans or extensions of credit that have been charged off on the books of the bank in whole or in part unless the loan or extension of credit is:

- (A) unenforceable by reason of discharge in bankruptcy;
  - (B) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or
  - (C) no longer legally enforceable for other reasons provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable; and
  - (vii) a bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period, but does not include a bank's purchase of Type I securities, as defined in (15), subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the Type I securities as collateral.
- (b) The terms do not include:
- (i) additional funds advanced for a borrower's benefit by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;
  - (ii) accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;
  - (iii) financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;
  - (iv) a renewal or restructuring of a loan as a new "loan or extension of credit," following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except in circumstances permitted under 12 CFR 32.3(b)(5)), a new borrower replaces the original borrower, or unless the department singly or in collaboration with the appropriate federal banking agency determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;
  - (v) amounts paid against uncollected funds in the normal process of collection;
  - (vi) with regard to participations:
    - (A) that portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event;
    - (B) when an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so

attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to the circumstances included in 12 CFR 32.2(q)(2)(vi)(B) rather than a violation if:

(I) the originating bank had a valid and unconditional participation agreement with one or more participants that was sufficient to reduce the loan to within the originating bank's lending limit;

(II) the participant reconfirmed its participation and the originating bank had no knowledge of information that would permit the participant to withhold its participation; and

(III) the participation was to be funded by close of business of the originating bank's next business day.

(12) "Qualifying central counterparty" has the same meaning as the term has in 12 CFR Part 3, Appendix C, Section 2.

(13) "Qualifying master netting agreement" means any written, legally enforceable bilateral agreement, provided that:

(a) the agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding of the counterparty;

(b) the agreement provides the bank the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default of the counterparty, including upon an event of bankruptcy, insolvency, or similar proceeding, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;

(c) the bank has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient documentation of that legal review) that:

(i) the agreement meets the requirements of (13)(b); and

(ii) in the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceedings), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;

(d) the bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and

(e) the agreement does not contain a walkaway clause (that is, a provision that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

(14) "Securities financing transaction" means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(15) "Type I securities" means:

(a) obligations of the United States;

(b) obligations issued, insured, or guaranteed by a department or an agency of the United States government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(c) obligations issued by a department or agency of the United States government or an agency or political subdivision of a state of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States have been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of nonpayment by the third party obligor(s); and

(d) general obligations of a state of the United States or any political subdivision thereof; and

(e) municipal bonds if the bank is well capitalized.

AUTH: 32-1-432, MCA

IMP: 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: Terms commonly used in reference to derivative transactions and securities financing transactions are specialized. For clarity purposes, the department believes it is necessary and advisable to include the specialized terms in a separate definition rule rather than to include them in a rule with other definitions that have more general applicability. The definitions in this rule are patterned after the derivative transaction and securities financing transaction rules adopted by the OCC at 12 CFR Part 32 applicable to national banks, and after the model derivative transaction rules developed by the CSBS. Uniformity in the use and definitions of terms related to derivative transactions promotes effective communication between and among banks, bank regulatory agencies, and bank examiners.

The department is not proposing to adapt and adopt one of the OCC's exclusions from the definition of loans and extensions of credit in (11)(b). The OCC regulation, 12 CFR 32.2(q)(2)(vii), states that for lending limit purposes, the term "loan or extension of credit" does not include that portion of one or more loans or extensions of credit, not to exceed 10 percent of capital and surplus, with respect to which the national bank or savings association has purchased protection in the form of a single-name credit derivative that meets the requirements of 12 CFR 32.2(m)(1) through (7) from an eligible protection provider if the reference obligor is the same legal entity as the borrower in the loan or extension of credit and the maturity of the protection purchased equals or exceeds the maturity of the loan or extension of credit. The department considered adapting the OCC regulation recited above to more closely conform to Montana law concerning capital for lending limit purposes even though use of the federal regulation could be used in this context without adaptation. The department elected instead to propose omission of the OCC exclusion altogether because it believes that the exclusion of any portion of total credit exposure from credit derivatives for purposes of the lending limit is inconsistent with bank safety and soundness principles.

NEW RULE II ELIGIBLE STATE BANK'S PERMISSIBLE DERIVATIVE TRANSACTIONS (1) An eligible state bank as defined in [NEW RULE I] may engage in any derivative transaction if the bank has a written policy approved by its board of directors that:

- (a) identifies the types of derivative transactions in which the bank is authorized to engage;
- (b) establishes an exposure limit for each type of authorized derivative transaction and an aggregate exposure limit for all of the bank's authorized derivative transactions expressed in relation to the bank's lending limit;
- (c) is consistent with bank safety and soundness principles; and
- (d) requires the designation of an employee to be in charge of the bank's derivatives program who:
  - (i) has demonstrable expertise and understanding of derivative transactions; and
  - (ii) is responsible for periodic testing of the model(s) used to measure credit exposure against actual outcomes.

AUTH: 32-1-432, MCA

IMP: 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: The threshold eligibility criteria for banks to enter into derivative transactions are contained in the definition of the term "eligible state bank" in [NEW RULE I]. The definition differs from the OCC's threshold eligibility criteria in that the definition in [NEW RULE I (10)(b)] is based only on the bank's composite rating and not on the rating of any particular CAMELS component(s), i.e., capital, asset quality, management, earnings, liquidity, or sensitivity to market risks. That distinction was made because the department deems the composite rating to be a better benchmark for eligibility than are ratings assigned to individual CAMELS components.

The department believes that it is the management prerogative of an eligible state bank's board of directors to establish the parameters of the bank's derivatives program including identifying the types of derivative transactions that the bank is willing to authorize. The department further believes that part of the exercise of that prerogative must include setting a credit exposure tolerance for the bank consistent with safety and soundness principles. In the past, derivative transactions have not been routinely engaged in by a majority of banks organized under the laws of this state. The department believes that it is necessary for the bank to designate an employee with demonstrable expertise to be in charge of its derivatives program to guard against the bank relying too heavily on the expertise of third-party vendors or contract program administrators in derogation of the bank's own ultimate responsibility for the program and for the safety and soundness of the bank.

NEW RULE III LENDING LIMITS APPLICABLE TO DERIVATIVE TRANSACTIONS (1) For purposes of 32-1-432, MCA, derivative transactions and securities financing transactions must be included in the calculation of lending limits.

(2) The calculation of credit exposure arising from derivative transactions and securities financing transactions for lending limit purposes under 32-1-432, MCA, must be determined pursuant to Appendix A to [NEW RULE V].

(3) Loans not subject to lending limits of 32-1-432, MCA, and this regulation are:

- (a) credit exposures arising from transactions financing certain government securities. Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in [NEW RULE I] and 12 CFR 1.2(j);
- (b) intraday credit exposures arising from derivative transactions or securities financing transactions; and
- (c) other exceptions as applicable.

AUTH: 32-1-432, MCA

IMP: 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to clarify that the rules proposed in this notice all pertain to derivative transactions and securities financing transactions by summarizing the basic premises underlying the rules: that credit exposures arising from derivative transactions and securities financing transactions must be included in the calculation of lending limits; that there are limited exemptions; and that credit exposure arising from derivative transactions and securities financing transactions must be measured/quantified using approved models specified in NEW RULE V and Appendix A.

Derivative transactions and securities financing transactions are not "loans or extensions of credit" as that term has traditionally been defined and understood in the banking industry. The number of banks that enter into over-the-counter (OTC) and other derivative transactions and securities financing transactions has grown substantially over the years as has the aggregate credit exposure of all banks arising from the transactions. As a result of the 2008 financial crisis, Congress enacted the Dodd-Frank Act. Included in the Dodd-Frank Act were laws to bring derivatives markets and OTC derivatives transactions under closer bank management and regulatory scrutiny consistent with bank safety and soundness principles. Requiring the credit exposures to be included in the calculation of lending limits ensures appropriate transparency, recognition, and consistent treatment among banks and regulators of the credit exposures arising from these transactions.

Section 611 of the Dodd-Frank Act, as amended, prohibits a state-chartered bank from entering into derivative transactions after October 1, 2013, unless the lending limit laws of the chartering state take into consideration credit exposure arising from derivative transactions. The department's bill in response to the Dodd-Frank Act provisions concerning derivatives and securities financing transactions (SB 61) was passed by the 2013 Legislature and signed into law by the Governor effective March 29, 2013. These rules are intended to implement SB 61, 2013 LAWS.

Section 610 of the Dodd-Frank Act contains requirements for inclusion of credit exposures arising from derivative transactions in the determination of national banks' lending limits. In addition, Section 610 contains requirements pertaining to inclusion of credit exposures of national banks arising from securities financing transactions in lending limit calculations. The securities financing provision is not included in Section 611 applicable to state-chartered banks. The department proposes to adopt and apply those additional requirements pertaining to securities financing transactions to banks organized under Montana laws to maintain

competitive parity between the federal and state charters and because the credit exposures arising from securities financing transactions are as much a bank obligation as are exposures arising from derivative transactions. Both can affect the bank's safety and soundness if large losses occur with respect to the transactions.

Stifling business innovation and decision making is not the department's purpose or legislative mandate. These rules allow banks to engage in derivative transactions and securities financing transactions under the parameters set by their boards of directors as well as by the department through these rules. The objective of the rules is to assure that the resulting credit exposures are transparent and properly measured and managed. Treatment of the credit exposures in the context of lending limit determinations under the requirements of the Dodd-Frank Act is intended to help assure responsible use of derivative transactions and securities financing transactions for sound business purposes including, but not limited to, hedging interest rate risk.

NEW RULE IV NONCONFORMING LOANS AND EXTENSIONS OF CREDIT (1) A loan or extension of credit within a bank's legal lending limit when made will not be deemed a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's lending limit because:

(a) the bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules changed;

(b) collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value; or

(c) in the case of a credit exposure arising from a derivative transaction or a securities financing transaction and measured by either the Current Exposure Method or the Basel Collateral Haircut Method specified in [NEW RULE V and Appendix A], the credit exposure subject to the lending limits of 32-1-432, MCA, or this rule increases after execution of the transaction.

(2) A bank shall use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of (1)(a) or (1)(c) into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(3) A bank shall bring a loan that is nonconforming as a result of circumstances described in (1)(b) into conformity with the bank's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent it from taking action.

AUTH: 32-1-432, MCA

IMP: 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to put banks on notice of the level of regulatory response that can be expected concerning lending limit irregularities. The rule distinguishes between a loan or extension of credit that flatly violates a lending limit and a loan or extension of credit that, in the circumstances described in (1)(a), (1)(b), and (1)(c), warrants a designation of "nonconforming." The distinction could conceivably make a difference in a bank's

CAMELS ratings in the appropriate circumstance. The dual corrective action requirements in (2) and (3) are intended to be proportionate to the seriousness of the circumstance that triggered the "nonconforming" designation. The practice of distinguishing violations from nonconformance is already familiar to banks with respect to traditional loans or extensions of credit. This rule introduces a circumstance that would warrant a "nonconforming" treatment when a lending limit irregularity arises from increases in a bank's credit exposure during the term of a derivative transaction or securities financing transaction so long as the credit exposure was properly measured using authorized methods and models in the first instance.

**NEW RULE V CREDIT EXPOSURE ARISING FROM DERIVATIVES AND SECURITIES FINANCING TRANSACTIONS** (1) For purposes of determining a bank's lending limit under 32-1-432, MCA, the bank's credit exposure arising from a derivatives transaction or a securities financing transaction entered by a bank must be calculated in accordance with the methods and models contained in Appendix A which is adopted and incorporated by reference. Appendix A may be found on the department's web site at <http://banking.mt.gov/bank.mcp>.

AUTH: 32-1-432, 32-1-433, MCA  
IMP: 32-1-432, 32-1-433, MCA

NOTE: Appendix A is included here for ease of use by the public.

Appendix A to [New Rule V]

**Methods and Models for Calculating Credit Exposure  
from Derivatives or Securities Financing Transactions**

**(1) Derivative Transactions**

(a) **Non-credit derivatives:** A bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods:

(i) **Conversion Factor Matrix Method.** The credit exposure arising from a derivative transaction under the Conversion Factor Matrix Method shall equal and remain fixed at the potential future credit exposure of the derivative transaction which shall equal the product of the notional amount of the derivative transaction and a fixed multiplicative factor determined by reference to Table 1.

Table 1 – Conversion Factor Matrix for Calculating Potential Future Credit Exposure<sup>1</sup>

Original Maturity <sup>2</sup>	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other <sup>3</sup> (includes commodities and precious metals except gold)
1 year or less	.015	.015	.20	.06
Over 1 to 3 years	.03	.03	.20	.18



Over 3 to 5 years	.06	.06	.20	.30
Over 5 to 10 years	.12	.12	.20	.60
Over 10 years	.30	.30	.20	1.0

<sup>1</sup> For an over-the-counter (OTC) derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

<sup>2</sup> For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

<sup>3</sup> Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

(ii) **Current Exposure Method.** The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the Current Exposure Method shall be calculated pursuant to 12 CFR part 3, Appendix C, Sections 32(c)(5), (6), and (7); 12 CFR part 167, Appendix C, Sections 32(c)(5), (6), and (7); or 12 CFR part 390, subpart Z, Appendix A, Sections 32(c)(5), (6), and (7), as appropriate.

(b) **Credit Derivatives**

(i) **Counterparty Exposure.** Notwithstanding (2)(a), a bank that uses the Conversion Factor Matrix Method or Current Exposure Method without entering into an effective margining arrangement as defined in [NEW RULE I] must calculate the counterparty credit exposure arising from the credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(ii) **Reference Entity Exposure.** A bank must calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the net notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

(c) **Special Rule for Central Counterparties.** In addition to amounts calculated under previous sections of this rule, the measure of counterparty exposure to a central counterparty must include the sum of the initial margin posted by the bank plus any contributions made by it to a guaranty fund at the time such contribution is made.

(d) **Mandatory or Alternative Method.** The department may, in its discretion, require or permit a bank to use a specific method or methods set forth in this rule to calculate the credit exposure arising from all derivative transactions or any specific derivative transaction or type or category of derivative transactions if it finds, in its discretion, that such method is consistent with the safety and soundness of the bank.

## (2) **Securities Financing Transactions**

(a) **Calculation Methods.** In general, a bank must calculate the credit exposure arising from a securities financing transaction by one of the methods in this section appropriate to the transaction. Except as provided by (2)(d), a bank must use the same method for calculating credit exposure arising from all of its securities financing transactions.

(b) **Basic Method.** A bank may calculate the credit exposure of a securities financing transaction as follows:

(i) **Repurchase Agreement.** The credit exposure arising from a repurchase agreement shall equal and remain fixed at the market value at execution of the transaction of the securities transferred to the other party less cash received.

### (ii) **Securities Lending Transaction**

(A) **Cash Collateral Transactions.** The credit exposure arising from a securities lending transaction where the collateral is cash shall equal and remain fixed at the market value at execution of the transaction of securities transferred less cash received.

(B) **Non-cash Collateral Transactions.** The credit exposure arising from a securities lending transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in Table 2 below, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security lent and the notional-weighted average of the haircuts associated with the securities provided as collateral.

(iii) **Reverse Repurchase Agreement.** The credit exposure arising from a reverse repurchase agreement shall equal and remain fixed as the product of the haircut associated with the collateral received, as determined in Table 2 below, and the amount of cash transferred.

### (iv) **Securities Borrowing Transaction**

(A) **Cash Collateral Transactions.** The credit exposure arising from a securities borrowed transaction where the collateral is cash shall equal and remain fixed as the product of the haircut on the collateral received, as determined in Table 2 below, and the amount of cash transferred to the other party.

(B) **Non-Cash Collateral Transactions.** The credit exposure arising from a securities borrowed transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in Table 2 below, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security lent and the notional-weighted average of the haircuts associated with the securities provided as collateral.

Table 2 – Collateral Haircuts  
Sovereign Entities

	Residual Maturity	Haircut without currency mismatch <sup>1</sup>
OECD Country Risk Classification <sup>2</sup> 0-1	≤ 1 year	0.005
	> 1 year, ≤ 5 years	0.02
	> 5 years	0.04
OECD Country Risk Classification 2-3	≤ 1 year	0.01
	>1 year, ≤ 5 years	0.03
	> 5 years	0.06

Corporate and Municipal Bonds That Are Bank-Eligible Investments

	Residual Maturity	Haircut without currency mismatch
All	≤ 1 year	0.02
All	> 1 year, ≤ 5 years	0.06
All	> 5 years	0.12

Other Eligible Collateral

Main index <sup>3</sup> equities (including convertible bonds)	0.15
Other publicly traded equities (including convertible bonds)	0.25
Mutual funds	Highest haircut applicable to any security in which the fund can invest
Cash collateral held	0

<sup>1</sup> In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8% haircut will apply.

<sup>2</sup> Organization for Economic Cooperation and Development (OECD) Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credit Arrangement.

<sup>3</sup> Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the covered company can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(c) **Basel Collateral Haircut Method.** A bank may calculate the credit exposure of a securities financing transaction pursuant to 12 CFR part 3, Appendix C, Sections 32(b)(2)(i) and (ii); 12 CFR part 167, Appendix C, Sections 32(b)(2)(i) and (ii); or 12 CFR part 390, subpart Z, Appendix A, Sections 32(b)(2)(i) and (ii), as appropriate.

(d) **Mandatory or Alternative Method.** The department may, in its discretion, require or permit a bank to use a specific method or methods set forth in (2) to calculate the credit exposure arising from all securities financing transactions or any specific, or category of, securities financing transactions if it finds, in its

discretion, that such method is consistent with the safety and soundness of the bank.

(3) Banks that hold government securities in a fiduciary capacity for customers in conjunction with a repurchase agreement must comply with FDIC regulations, 12 CFR Part 344, including but not limited to recordkeeping, confirmations, and having written policies and procedures. Custodial holdings of government securities are subject to examination by the department for compliance with fiduciary requirements. Banks must adopt policies applying to custodial holdings of government securities all of the requirements imposed by their appropriate federal regulator that are applicable to government securities held in a fiduciary capacity.

STATEMENT OF REASONABLE NECESSITY: The department deems it necessary and consistent with bank safety and soundness principles to establish permissible models or methods for measuring credit exposure arising from derivative transactions and securities financing transactions and require that the same model be used for all derivative transactions except as provided in (2)(d) of Appendix A. The department deems consistency in measuring credit exposure key to a bank's awareness of its aggregate exposure and to its effective management of the credit exposures. The models and methods give banks the means of measuring credit exposure for purposes of lending limit determinations and benchmarks for comparing actual outcomes against model-based projected outcomes pertaining to derivative transactions and securities financing transactions.

Requiring use of the specific models and methods specified in Appendix A is necessary to enable the department to more easily review a bank's determination of its derivative transaction and securities financing transaction credit exposures and verify whether the bank is in compliance with lending limits. The department believes that required use of the Appendix A models and methods coupled with the definition of "eligible bank" in NEW RULE I will provide a good foundation for responsible use of derivative and securities financing transactions.

Section (3) of Appendix A is not a CSBS model rule provision and is not patterned after OCC regulation. With respect to (3), the U.S. Treasury Department, which is responsible for implementing and enforcing the Government Securities Act (GSA) of 1986, as amended, determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the former Office of Thrift Supervision governing the holding of government securities in a fiduciary capacity by the depository institutions subject to the GSA, are adequate. Accordingly, the depository institutions are exempt from Title 17 CFR Part 450 regarding their holdings of government securities in a fiduciary capacity and holdings of government securities in a custodial capacity provided that: (i) the institution has adopted policies and procedures applying to the custodial holdings all the requirements imposed by the institution's appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and (ii) the custodial holdings are subject to examination by the appropriate regulatory agency for compliance with fiduciary requirements. Section (3) of Appendix A is intended to assure continued

exemption of banks organized under Montana laws from the regulatory oversight of the U.S. Treasury Department under Title 17 CFR Part 450 with respect to holdings of government securities in a fiduciary or a custodial capacity by making the same standards applicable to the banks under these rules and the regulatory oversight of the department.

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

2.59.108 LIMITATIONS ON LOANS (1) In the context of this rule, the following definitions apply:

- (a) remains the same, but is renumbered (f).
- (b) through (b)(ii) remain the same.
- (iii) undisbursed portions of credit card plans; and
- (iv) through (c)(i)(A) remain the same.

(B) the expected source of repayment for each loan or extension of credit is the same for two or more of the persons, and those persons lack another source of income from which the loans or extensions of credit, together with the person's other liabilities, may be fully repaid; and

- (ii) through (B) remain the same.

~~(d) "Control" means the following:~~

~~(i) the ownership, control or ability to vote 25% or more of a corporation's outstanding voting stock.~~

~~(ii) the ability to control, in any manner, the election of a majority of a corporation's directors;~~

~~(iii) the power to exercise a controlling influence over the management or policies of a corporation.~~

~~(e)~~(d) "Direct benefit" means that tThe proceeds of a loan or extension of credit to a person will be deemed to be used for the "direct benefit" to the advantage of another person and the amount of the loan will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to the other person. For the purpose of this definition, when the proceeds are used to acquire property, goods, or services through a bona fide arm's length transaction, a direct benefit will not have occurred with regard to the seller of the property, goods, or services.

- (e)(i) remains the same, but is renumbered (a).

~~(f)~~(e) "Loan or extension of credit" includes, but is not limited to:

(i) direct loans, whether on the bank's books or charged off the bank's books, subject to the exclusions in (3)(a) ~~below~~<sub>1</sub>;

(ii) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the bank<sub>1</sub>;

(iii) letters of credit, other than standby letters of credit<sub>1</sub>;

(iv) overdrafts, excluding intraday overdrafts for which the bank receives payment prior to its close of business; and

(v) any credit exposure of a bank to a counterparty arising from a derivative transaction or a securities financing transaction as defined in [NEW RULE I].

(2) For lending limit purposes, ~~loans or extensions of credit will be combined as follows:~~

(a) remains the same.

(i) proceeds of a loan or extension of credit are to be used for the direct benefit of the other person; ~~or~~

(ii) a common enterprise is deemed to exist between the persons, to the extent that loan proceeds are used for the benefit of the common enterprise and repayment is dependent upon the common enterprise; ~~and~~

(b) a loan or extension of credit guaranteed by a person shall be aggregated with the person's other loans and extensions of credit only to the extent that the person receives direct benefit from the loan; and

(c) through (3)(a) remain the same.

(i) the loan, extension of credit, or the portion of the loan or extension of credit sold as a participation is sold without recourse to the selling bank; ~~and~~

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

(iii) no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable; ~~and~~

(c) credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j);

(d) intraday credit exposures arising from a derivative transaction; and

~~(e)~~(e) all other loans or portions of loans specifically exempted by provisions of 32-1-432, MCA, or other applicable laws.

AUTH: 32-1-432, MCA

IMP: 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: Definitions of terms relating specifically to derivative transactions and securities financing transactions were purposely included in NEW RULE I rather than incorporated into this rule, which contains terms having more general applicability to traditional loans and extensions of credit. The department believes, however, that this rule must be amended to incorporate certain basic information relating to credit exposures arising from derivative transactions and securities financing transactions for lending limit purposes to avoid ambiguity and the appearance of conflict between statutes, rules, and definitions. Derivative transactions are not actually loans or extensions of credit in the traditional sense at all. By passing the Dodd-Frank Act, Congress determined that the best way and place to take credit exposures arising from derivative transactions and securities financing transactions into account for bank safety and soundness purposes was to treat them as if they were loans and extensions of credit in the lending limit context. Lending limits as calculated in reference to credit exposures arising from traditional loans and extensions of credit were already familiar to banks and regulators alike. Essentially, the Dodd-Frank Act created something of a legal fiction to accomplish the objective of bringing transparency and uniformity to the regulatory treatment of derivative transactions and securities financing transactions for bank safety and soundness purposes.

The definition of "control" in (1)(d) is being deleted because the term is defined in 32-1-109, MCA. In this case, it is not necessary or appropriate to

duplicate a statute in rule. The definition of "loan or extension of credit" is being amended to include credit exposure arising from a derivative transaction or securities financing transaction in (1)(d)(v). Inclusion of credit exposures arising from derivative transactions and securities financing transactions in the definition is necessary in order to implement 32-1-432, MCA, as amended by SB 61 in the 2013 legislative session. That bill was necessitated by the Dodd-Frank Act, Sec. 611 which, as amended, stated that after October 1, 2013, a state-chartered bank may not engage in derivative transactions as defined in 12 USC 84(b)(3) unless the lending limit law in the state in which the bank is organized takes into consideration credit exposures arising from derivative transactions. In addition, Sec. 610 of the Dodd-Frank Act required that national banks also take into consideration credit exposures arising from securities financing transactions (i.e., repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions) for lending limit purposes. The Dodd-Frank Act left it up to state bank regulators to decide whether to include credit exposures arising from securities financing transactions in state-bank lending limits. The department proposes to do so in (1)(d)(v). Montana state-chartered banks enter into securities financing transactions regularly. The department believes that taking all credit exposures into account for lending limit purposes is consistent with bank safety and soundness principles.

The department proposes to amend (3) to add subsection(c), which omits from lending limit calculations credit exposures arising from securities financing transactions involving government securities known as "Type 1 securities." Bank safety and soundness principles are not comprised by doing so and that treatment is also consistent with the way government securities collateralizing regular loans and extensions of credit are treated for lending limit purposes under 32-1-432(1)(c), MCA. In addition, (3)(d) is being added to omit intraday credit exposures arising from derivative transactions and securities financing transactions because the exposures resolve by close of business. That treatment is also consistent with the treatment of intraday overdrafts in (1)(d)(iv) of this rule.

All proposed amendments to this rule are consistent with OCC derivatives rules, CSBS Model Derivatives Rules, and NEW RULES I through IV. The rule is also being amended to bring the formatting into compliance with current standards.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Lorraine A. Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov), and must be received no later than 5:00 p.m., February 28, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any written comments to the person listed in 5 above no later than 5:00 p.m., February 28, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six persons based on 57 existing state-chartered banks.

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

9. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. 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 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, apply and have been fulfilled. The primary bill sponsor was contacted by mail on April 4, 2013, and by telephone and e-mail on April 11, 2013.

11. The department has determined that under 2-4-111, MCA, the proposed new rules and rule amendment will not significantly and directly affect small businesses.

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

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

Certified to the Secretary of State January 21, 2014.



BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On February 19, 2014, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, PO Box 200201, Helena, Montana, 59620; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [cojensen@mt.gov](mailto:cojensen@mt.gov).

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

4.5.313 FEES (1) A field inspection fee of \$4.50 per acre or a ~~\$25~~ 45 minimum charge per field for forage inspection will be charged to the person for whom the forage was inspected. State mileage and per diem rates may also be assessed by the department or its agents.

(2) remains the same.

(3) Agents must submit a copy of the department completed inspection form and submit \$2.25 per acre or ~~\$20.00~~ 22.50 minimum inspection fee, whichever is greater, by September 15 of each year to ensure that the persons producing certified forage will be included on the NWSFF producer list.

(4) through (7) remain the same.

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

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

REASON: During the recent administrative rule change that addressed noxious weed seed free forage fees, the minimum charge per field for forage inspections was not changed and should have been changed under ARM 4.5.313(1) from \$25 to \$45. In addition, under ARM 4.5.313(3) the minimum inspection fee was incorrectly stated as \$20.00, instead of \$22.50. The proposed changes will accurately reflect the 10-acre minimum.

**ECONOMIC IMPACT STATEMENT:** There were 83 field inspections in 2013 that were 10 acres or less and paid the minimum fee. The cost of those inspections with 10 acres or less will increase by \$20.00.

In the second instance, as the administrative rule is currently written, agents (inspectors) are required to submit \$20.00 of the \$25 minimum charge to the department, leaving the agent with only \$5. This results in less funding for the agents than was intended and does not reflect the intended 50/50 split between the department and the agent. The change will restore the 50/50 split, providing the agent with \$22.50 of the \$45 minimum charge. Individual agent revenue from inspections is dependent upon the number of acres inspected in a particular growing season.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, PO Box 200201, Helena, Montana, 59620; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [cojensen@mt.gov](mailto:cojensen@mt.gov), and must be received no later than 5:00 p.m., February 27, 2014.

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

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

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

Certified to the Secretary of State January 21, 2014.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IV pertaining to Corn	)	PROPOSED ADOPTION
Crop Advisory Committee, Annual	)	
Corn Crop Commodity Assessment	)	
and Corn Crop Research and	)	
Marketing Project Funds	)	

TO: All Concerned Persons

1. On February 19, 2014, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [cojensen@mt.gov](mailto:cojensen@mt.gov).

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

NEW RULE I MONTANA CORN CROP ADVISORY COMMITTEE (1) The committee shall be a six-member committee consisting of individuals actively involved in the corn industry in the production, research, or marketing of corn crops.

(2) A majority of the committee members must be corn "producers" per 80-11-50, MCA. "Producer" is defined in 80-11-503, MCA.

(3) On initial appointment by the director of the Montana Department of Agriculture, three members shall be appointed for a one-year term, three members for a two-year term. All terms thereafter, will be for two years.

AUTH: 80-11-504, 80-11-510, MCA

IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

NEW RULE II DEFINITIONS When used in these rules, the following definitions apply:

(1) "Corn" means all types of corn/maize.

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

(3) "Net receipts" are defined as net weight multiplied by the price paid to the producer.

AUTH: 80-11-504, 80-11-510, MCA

IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

NEW RULE III ANNUAL CORN CROP COMMODITY ASSESSMENT–COLLECTION (1) Section 80-11-516, MCA, charges the Montana Department of Agriculture with collecting the commodity assessment.

(2) The assessment shall be 1% of the net receipts of all corn crops produced in Montana.

(3) The assessment per 80-11-515, MCA, will occur at the time of first sale by a seller and must be collected by the first purchaser of the commodity from the seller. It shall occur at the time of each settlement for the commodity purchased or by invoice form provided by the Montana Department of Agriculture.

AUTH: 80-11-504, 80-11-510, MCA

IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

NEW RULE IV APPLICATIONS FOR CORN CROP RESEARCH AND MARKETING PROJECT FUNDS (1) Applications for project funding shall be filed with the department on or before December 1 of each year. Filing requirements will be satisfied by receipt of the original and ten copies of each application at the Montana Department of Agriculture.

(2) The advisory committee, at the first regular meeting of each calendar year, will review education, production, research, and marketing project applications and a recommendation made to the department as to which projects they would propose to fund and the amount of funding suggested. Recommended projects will be determined by amount of funds, type of project, need as determined by the industry, and whether the project is new or ongoing.

(3) Applicants shall be notified within 30 days after the committee's first calendar year meeting whether or not their application(s) have been granted and the amount to be funded for each approved project.

(4) The department shall evaluate all outstanding project agreements semiannually for adequate and satisfactory financial control, accounting, and performance by project participants.

(5) The department may modify or terminate the funding of any project if a determination is made that the grantee has not complied or cannot comply with a provision of the project agreement. The department shall notify the grantee in writing within 30 days of such determination of the reasons for the determination, and the effective date of the modification or termination.

AUTH: 80-11-504, 80-11-510, MCA

IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

REASON: As corn has started to get significant acreage, growers have asked the department to implement a check-off. The size, amount of the check-off, and rules of the committee were designed to be consistent with other check-off programs in

the state and to provide a manageable size for meetings with the minimum definitions in place to avoid confusion.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [cojensen@mt.gov](mailto:cojensen@mt.gov), and must be received no later than 5:00 p.m., February 27, 2014.

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

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

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

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

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

/s/ Cort Jensen

Cort Jensen  
Rule Reviewer

/s/ Ron de Yong

Ron de Yong  
Director  
Agriculture

Certified to the Secretary of State January 21, 2014.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 6.6.4202, 6.6.4203, 6.6.4206,	)	PROPOSED AMENDMENT AND
6.6.4208, 6.6.4211, 6.6.4212, and	)	ADOPTION
6.6.4213 and the adoption of NEW	)	
RULE I pertaining to Continuing	)	
Education Program for Insurance	)	
Producers and Consultants	)	

TO: All Concerned Persons

1. On February 20, 2014, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor, will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), 840 Helena Ave., Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing, or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m., February 13, 2014, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

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

6.6.4202 DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) and (2) remain the same.

(3) ~~"Certificate of completion~~ Biennial cycle" means the 24-month period in which required continuing education must be completed. An initial cycle may be longer than 24 months. ~~a document issued by the sponsoring organization to the licensee signifying satisfactory completion of a course and reflecting credit hours earned by the licensee.~~

(4) through (8) remain the same.

(9) "SBS" means the electronics system owned by the NAIC and enhanced in partnership with state insurance departments that provides a comprehensive, web-based application for use by state regulators.

(9) through (11) remain the same but are renumbered (10) through (12).

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1203, 33-17-1204, MCA

6.6.4203 COURSE SUBMISSIONS (1) through (2)(b) remain the same.

- ~~(c) the proposed date(s) of offering course goals and objectives;~~
- ~~(d) course goals and objectives course length;~~
- ~~(e) major course topic(s) a syllabus or course outline;~~
- ~~(f) course length a summary of each course outline element;~~
- ~~(g) a list of other states that have approved the course and the credits granted the course in other states method of instruction, such as classroom, self-study, videotape, audiotape, teleconference, etc.;~~
- ~~(h) a syllabus or course outline method of administering examinations, if any;~~
- ~~(i) a summary of each course outline element method of attendance verification;~~
- ~~(j) method of instruction, such as classroom, self study, videotape, audiotape, teleconference, etc. instructors, if any;~~
- ~~(k) method of administering examinations, if any a designated contact person; and~~
- ~~(l) method of attendance verification; a written explanation of examination security measures and examination administration methods.~~
- ~~(m) method of student record maintenance;~~
- ~~(n) instructors, if any;~~
- ~~(o) a designated contact person;~~
- ~~(p) a written explanation of examination security measures and examination administration methods; and~~
- ~~(q) written notification of additional dates of course offering to the department three days in advance.~~
- (3) through (5) remain the same.
- (a) if a course is canceled for any reason, all charges are refundable in full, ~~unless the refund policy is clearly defined in the enrollment application;~~
- (b) through (d) remain the same.
- (6) A sponsoring organization ~~shall~~ must provide proof of course completion to each course participant who successfully completes the approved course of study within one month of course completion or prior to the end of the calendar year during which the participant completed the course. The commissioner may grant the sponsoring organization up to two months to provide such proof of course completion, if the sponsoring organization notifies the course participants in writing, in advance of the course. submit course completion attendance through SBS for each course participant within 30 days of the course completion. A sponsoring organization's compliance with this rule satisfies the annual reporting requirements of 33-17-1205(4), MCA.
- (7) remains the same.
- (8) Except as provided in (15) ~~below~~, course approval is for a period of two years following the course approval date. A course without significant changes may be renewed without advisory council approval in a form approved by the commissioner.
- (9) through (14) remain the same.
- (15) Any credit hours assigned to a course submitted as described in (14), are available only to the producer, adjuster, or consultant who made the course submission for that ~~one~~ offering.



AUTH: 33-1-313, 33-17-1206, MCA  
IMP: 33-17-1204, MCA

6.6.4206 CERTIFICATION REQUIREMENTS FOR LICENSEES AND LIMIT ON CREDIT FOR COURSES REPEATED AND TIMING OF EARNING CREDITS

(1) ~~Each licensee subject to these rules must file an appropriate certificate of completion and pay the required certification fee each year in the first six months of the calendar year for courses completed in the preceding year. Such certification must be submitted on a schedule established on forms supplied or approved by the commissioner, and completed in their entirety. A licensee may not earn credit for any courses repeated as either student or instructor within the same biennial cycle.~~

(2) ~~Producers, adjusters, and consultants may not earn credit for any courses repeated as either student or instructor within a two-year period. A licensee may earn credit as soon as the licensee is licensed.~~

AUTH: 33-1-313, 33-17-1206, MCA  
IMP: 33-17-1203, 33-17-1204, MCA

6.6.4208 NONRESIDENT REQUIREMENTS (1) ~~A nonresident licensee whose state of residence imposes continuing education requirements similar to those of Montana, may comply with Montana's continuing education requirement by submitting a completed compliance certification form or a letter of certification from the resident state confirming compliance in that state. A nonresident licensee from a state that does not require continuing education shall satisfy the continuing education requirements of his or her designated home state. If the designated home state does not require continuing education, a licensee shall submit proof of course completion which demonstrates compliance with the basic requirements of 33-17-1203, MCA.~~

(2) ~~Nonresident licensees from states that do not require continuing education must meet the requirements of this state.~~

AUTH: 33-1-313, 33-17-1206, MCA  
IMP: 33-17-1203, 33-17-1204, MCA

6.6.4211 REQUESTS FOR RECONSIDERATION OF CREDIT HOUR ASSIGNMENT (1) through (1)(c) remain the same.

(2) The advisory council, ~~at its next meeting,~~ shall evaluate any submitted requests for reconsideration, the original course submission, and any additional materials provided to support the request for reconsideration within 60 days of the submission.

(3) through (6) remain the same.

AUTH: 33-1-313, 33-17-1206, MCA  
IMP: 33-17-1204, MCA

6.6.4212 REQUESTS FOR RECONSIDERATION OF COURSE DISAPPROVAL (1) through (1)(c) remain the same.

(2) The advisory council shall review a request ~~Requests~~ for reconsideration, the original course submission, and any additional materials provided to support the request ~~will be presented at the next corporal meeting, as defined in 2-3-202, MCA,~~ of the advisory council within 60 days of the request. The advisory council may then make a recommendation to the commissioner to approve or disapprove.

~~(3) After evaluating the request for reconsideration, the advisory council may recommend to the commissioner to approve or disapprove the course.~~

(4) ~~(3)~~ The commissioner ~~will~~ shall review the recommendation of the advisory council and approve or disapprove the course.

~~(5) (4)~~ Credit hours assigned a course approved by the commissioner ~~will~~ must be granted to licensees who complete the course after the submission date of the request for reconsideration of course disapproval.

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1204, MCA

#### 6.6.4213 CONDITIONS OF NONRESIDENT SPONSORING

ORGANIZATIONS (1) ~~The following conditions apply to nonresident sponsoring organizations whose state has signed a compact regarding sponsoring organizations that includes this state as a signatory: A nonresident sponsoring organization doing business in this state through any agreement conveying reciprocity to such an entity is subject to the following conditions:~~

(a) the commissioner may not require the sponsoring organization to file courses for substantive review that have been awarded credit by the resident state. However, the sponsoring organization shall file a course outline with the commissioner. The sponsoring organization shall also file the instructors' names and social security numbers;

~~(b) once the sponsoring organization's resident state reviews and approves the instructor's qualifications, the commissioner may not review the instructor's qualifications again;~~

(c) and (d) remain the same, but are renumbered (b) and (c).

~~(e)(d)~~ the commissioner shall accept the ~~midwest zone~~ NAIC standard continuing education form or a substantially similar form provided by a nonresident sponsoring organization;

(f) through (h) remain the same, but are renumbered (e) through (g).

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1204, MCA

4. The NEW RULE proposed to be adopted provides as follows:

#### NEW RULE I EXTENSIONS OF TIME FOR COURSE COMPLETION

(1) A request for an extension of time for required credit hour completion must be in writing and must include a narrative description of the reasons for the request and any available documentation to support the request.

(2) The licensee's licenses and appointments must remain in effect during an extension period granted by the commissioner.

AUTH: 33-1-313, 33-17-1206, MCA  
IMP: 2-4-631, 33-17-1205, MCA

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

The proposed rule amendments are necessary to adapt to technological changes in the insurance field.

ARM 6.6.4202 includes a new definition for the software utilized by both the CSI and the NAIC. It is necessary to define this term since all continuing education requirements will be submitted via the online database.

The amendment to ARM 6.6.4203 is necessary to clean up superfluous language and provide clarity for those offering continuing education courses. The stricken language was irrelevant to the validity of the course, duplicative, or referenced information that is readily accessible via SBS.

The amendment to ARM 6.6.4206 is necessary to allow licensees to begin earning credit as soon as the license is granted. Since the initial licensing period may be longer than 24 months, there was some confusion within industry and the CSI as to when a new licensee could begin earning credit. The other change to the rule is necessary because SBS puts the burden of submission on the course offeror, not the licensee. Therefore, requiring licensees to submit data already submitted would be duplicating efforts.

ARM 6.6.4208 makes home state continuing education requirements identical to home state licensing requirements regarding designating home states. The rule is necessary to ensure there is not a situation wherein the CSI issues a license to a person under Title 33, Ch. 17, and then restricts that person's attempts to satisfy current continuing education requirements which comport with the person's designated home state.

The amendment to ARM 6.6.4211 is necessary to ensure the advisory council has adequate time to review a request for reconsideration of credit hour assignment. As worded, the rule required the council to review the request at its next meeting. This change allows the advisory council flexibility in review as participants are statewide and may not be available. ARM 6.6.4212 addresses this same concern regarding course approval.

The amendment to ARM 6.6.4213 is necessary to allow for any type of nonresident sponsoring organization to enter this state, not just one allowed by compact. The bill also removes requirements for social security numbers pursuant to legislative

directive. Finally, the amendment recognizes that the NAIC sets forth standards, not zones within the NAIC.

New Rule I is necessary to clarify what the commissioner expects to be presented when a licensee requests an extension for good cause. Furthermore, it is necessary to continue licensee appointments so that the licensee may continue to write business pursuant to an extension.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Brett O'Neil, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail [bo'neil@mt.gov](mailto:bo'neil@mt.gov), and must be received no later than 5:00 p.m., February 28, 2014.

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

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

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

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

10. The proposed rules do not significantly and directly impact small businesses; therefore, the requirements of 2-4-111, MCA, do not apply.

/s/ Nick Mazanec  
Nick Mazanec  
Rule Reviewer

/s/ Jesse Laslovich  
Jesse Laslovich  
Chief Legal Counsel

Certified to the Secretary of State January 21, 2014.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 8.94.3814 and 8.94.3815	)	PROPOSED AMENDMENT
pertaining to governing the	)	
submission and review of applications	)	
for funding under the Treasure State	)	
Endowment Program (TSEP)	)	

TO: All Concerned Persons

1. On February 24, 2014, at 11:30 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., February 19, 2014, to advise us of the nature of the accommodation that you need. Please contact Becky Anseth, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2865; TDD (406) 841-2702; facsimile (406) 841-2771; or e-mail to banseth@mt.gov.

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

8.94.3814 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS (1) The Department of Commerce adopts and incorporates by reference the ~~2013~~ 2014 Montana Treasure State Endowment Program Project Administration Manual, published by it as rules for the administration of TSEP grants.

(2) and (3) remain the same.

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule because 90-6-710, MCA, requires the department to adopt rules to implement the program.

8.94.3815 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM – PROJECT GRANTS

(1) The Department of Commerce adopts and incorporates by reference the 2014 Montana Treasure State Endowment Program Application Guidelines

(December 2011 Draft) as rules governing the submission and review of applications under the TSEP program.

(2) remains the same.

(3) Copies of the regulation adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/TSEP/default.mcp>~~x~~ <http://comdev.mt.gov/TSEP>, or may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule because 90-6-710, MCA, requires the department to adopt rules to receive and review the program.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; by facsimile to (406) 841-2771, or e-mail to [banseth@mt.gov](mailto:banseth@mt.gov), and must be received no later than 5:00 p.m., February 27, 2014.

5. Becky Anseth, TSEP Program Manager, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [bmartello@mt.gov](mailto:bmartello@mt.gov), or by completing a request form at any rules hearing held by the department.

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

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

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

/s/ Kelly A. Lynch  
KELLY A. LYNCH  
Rule Reviewer

/s/ Douglas Mitchell  
Douglas Mitchell  
Deputy Director  
Department of Commerce

Certified to the Secretary of State on January 21, 2014



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

In the matter of the adoption of New     )  
Rules I, II, III, IV, and V pertaining to     )  
the unauthorized placement of fish     )  
into public waters     )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 24, 2014 at 7:00 p.m., the Fish and Wildlife Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed adoption of the above-stated rules.

On February 25, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed adoption of the above-stated rules.

On March 3, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Headquarters Office, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

On March 3, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed adoption of the above-stated rules.

On March 4, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed adoption of the above-stated rules.

On March 4, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 6 Office, 54078 US Highway 2 West, Glasgow, Montana, to consider the proposed adoption of the above-stated rules.

On March 11, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed adoption of the above-stated rules.

On March 11, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed adoption of the above-stated rules.

2. The commission and 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 February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

NEW RULE I GENERAL PURPOSE (1) As determined by the department, these rules pertain to the department's response to the placement of live fish into public waters without authorization by the department whether the cause of the placement is known or unknown. These rules are intended to cover all placement of unauthorized species into the public waters, including from outside or inside the state through introduction or transplantation. Unauthorized species include any live fish placed into public waters without authorization.

(2) The unauthorized placement of fish into public waters is of significant concern and is likely to have many adverse impacts, including but not limited to:

- (a) adverse impacts on native, wild and stocked fish populations;
- (b) potential to spread disease;
- (c) degradation of water quality;
- (d) degradation of aquatic habitat;
- (e) increased fishery management costs;
- (f) loss of angling opportunities and quality; and
- (g) harm to local and regional tourism economies.

(3) The department and commission shall make prevention of and response to unauthorized species a priority.

(4) During efforts to respond to the placement of unauthorized species, the department will endeavor to protect the previously existing fishery and suppress or eradicate the unauthorized species to maintain the existing management objectives for that fishery.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE II DEPARTMENT'S INITIAL RESPONSE AND ACTION PLAN

(1) The department shall begin an initial investigation within 30 days after the report of the presence of an unauthorized species in an attempt to confirm that an unauthorized placement has occurred and to estimate the distribution, abundance, age structure, and potential population expansion of the unauthorized species.

(2) The department shall prepare an action plan for responding to an unauthorized species. The action plan will identify the department's immediate and long-term management objectives for the unauthorized species and the management actions that may be implemented to achieve those objectives. The management objectives shall be based on a risk and feasibility assessment, with consideration for the following:

- (a) the risk that the unauthorized species could expand into connected or nearby waters;
- (b) the current distribution of the unauthorized species and the proximity of those populations to the new placement;
- (c) the probability that the unauthorized species will survive and propagate;
- (d) the impact that the unauthorized species might have on the existing fishery, especially threatened or endangered species, native species, game species, and important forage species;
- (e) the immediate and long-term impacts that the unauthorized species might have on previously existing angling opportunities; and
- (f) the immediate and long-term economic impacts that the unauthorized species might have on the department, the public, and the economy.

(3) To protect existing fisheries, local economies, wildlife enjoyment, and angler opportunities, the department shall attempt eradication or suppression of the unauthorized species.

(4) The department shall attempt to identify and cite any individuals responsible for the unauthorized placement and seek penalties and restitution pursuant to the penalties and fines outlined in law.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE III MANAGEMENT ACTIONS (1) The department's action plan for responding to a confirmed unauthorized species placement may include, as determined by the department, the following management actions for eradication or suppression:

- (a) prohibit or discontinue stocking the water body if the presence of the unauthorized species reduces the effectiveness of the stocking effort;
- (b) prohibit or discontinue stocking of any forage fish species that benefits the unauthorized species;
- (c) modify angling regulations for the immediate and connected water bodies with unauthorized species including:
  - (i) liberalizing or removing daily angling limits;
  - (ii) enacting catch-and-release fishing;
  - (iii) extending or removing the angling season;
  - (iv) allowing capture methods other than hook and line;
  - (v) instituting mandatory catch-and-kill regulations; or
  - (vi) closing the water to all fishing.
- (d) deny applications for fishing contests that target the unauthorized species, except in cases where the department determines the contest is an essential tool for suppression or eradication and requires that the contest has catch-

and-kill rules;

(e) authorize commercial harvest or economic harvest incentives for the unauthorized species if statutory authority is provided and is prescribed by a management plan;

(f) implement physical control measures to reduce the population of unauthorized species, including:

(i) installation of fish barriers;

(ii) removal using chemical or mechanical methods;

(iii) netting spawning fish;

(iv) habitat manipulation (e.g., reservoir drawdown);

(v) removing illegal species when encountered incidental to other management or survey activities; or

(vi) disturbing spawning areas to reduce survival.

(g) implement angler harvest incentive programs.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE IV ADAPTIVE MANAGEMENT APPROACH FOR UNAUTHORIZED SPECIES (1) The department may amend its management objectives for a body of water if after a reasonable period of time the department concludes that:

(a) the management actions have succeeded and the department has accomplished the management objectives and that continued implementation of the existing action plan is no longer necessary; or

(b) the management actions have failed to accomplish the management objectives, and that continued implementation of the existing action plan is unlikely to accomplish the desired outcome.

(2) Revisions to the management objectives may prescribe management actions that are more tolerant or less tolerant of the presence of the unauthorized species and must include a rationale for any changes. The department shall report any revisions to the management objectives to the commission.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE V REPORTING REQUIREMENTS (1) The department shall maintain an electronic repository utilizing a standardized format to document the initial investigation and subsequent management actions taken in response to each unauthorized species.

(2) Documentation must include, but is not limited to:

(a) results of the department's initial investigation to confirm the presence of the unauthorized species and information collected on the distribution, abundance, age structure, and potential population expansion of the unauthorized species;

(b) the action plan for responding to the unauthorized species, including the management objectives and potential management actions;

(c) a summary of management actions taken to respond to the unauthorized

species; and

(d) changes to any action plan taken under the adaptive management approach.

(3) The electronic repository shall be updated on an annual basis to include all new unauthorized species and changes to documentation regarding previously reported unauthorized species.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

Reasonable Necessity: The department and the commission propose new rules that outline how the department will respond to the placement of fish into the public waters of Montana without authorization from the department. The new rules will address the placement of unauthorized species into a water body as a significant concern and could potentially have many adverse impacts on existing fish species, aquatic habitat, angling opportunities, and the economy.

4. Concerned persons may present their data, views, or arguments either orally or in writing, at any one of the hearings. Written data, views, or arguments may also be submitted to Fish, Wildlife and Parks, Fisheries Division, PO Box 200701, Helena, MT, 59620-0701; fax 406-444-4952; e-mail fwpfsh@mt.gov, and must be received no later than March 21, 2014.

5. Don Skaar or another hearing officer appointed by the department has been designated to preside over and conduct these hearings.

6. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notices and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1712 9th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

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

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

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

/s/ M. Jeff Hagener

Jeff Hagener

Director

Department of Fish, Wildlife and Parks

/s/ Rebecca Dockter

Rebecca Dockter

Rule Reviewer

/s/ Dan Vermillion

Dan Vermillion

Commission Chairman

Fish and Wildlife Commission

Certified to the Secretary of State January 21, 2014

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.30.630 pertaining to temporary water )  
quality standards )  
)  
NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT  
  
(WATER QUALITY)

TO: All Concerned Persons

1. On February 20, 2014, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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., February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

17.30.630 TEMPORARY WATER QUALITY STANDARDS (1) Following are the temporary water quality standards and related provisions for New World Mining District:

(a) and (b) remain the same.

(c) Temporary water quality standards for Daisy Creek, from its headwaters to its confluence with the Stillwater River in the Yellowstone River Drainage, are as follows. No increase from existing conditions (no decrease for pH) is allowed at any point in Daisy Creek for any of the following parameters. These standards are in effect until June 4, ~~2014~~ 2019. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and pH standards are in standard units (su).

<u>Parameter</u>	<u>In Daisy Creek at its confluence with the Stillwater River, the following standards shall not be exceeded more than 3% of the time.</u>
	<u>µg/liter</u>
Aluminum	9,510.
Cadmium	4.
Copper	3,530.
Iron	6,830.
Manganese	1,710.
Zinc	540.

pH must be maintained above 4.6 su.

(d) Temporary water quality standards for a headwater portion of the Stillwater River, a tributary of the Yellowstone River, from Daisy Creek to the Absaroka-Beartooth wilderness boundary, are as follows. No increase from existing conditions (no decrease for pH) is allowed at any point in this reach of the Stillwater River for any of the following parameters. These standards are in effect until June 4, 2014 2019. Metals standards are in terms of micrograms per liter ( $\mu\text{g}/\text{liter}$ ) total recoverable concentrations and pH standards are in standard units (su).

<u>Parameter</u>	<u>In the Stillwater River at the Absaroka-Beartooth wilderness boundary, the following standards shall not be exceeded more than 3% of the time.</u>
	<u><math>\mu\text{g}/\text{liter}</math></u>
Aluminum	670.
Copper	200.
Iron	1,320.
Lead	13.
Manganese	86.
Zinc	49.
pH	must be maintained above 5.5 su.

(e) Temporary water quality standards for Fisher Creek, from its headwaters to its confluence with Lady of the Lake Creek, the headwaters of the Clark's Fork of the Yellowstone River, are as follows. No increase from existing conditions (no decrease for pH) is allowed at any point in Fisher Creek for any of the following parameters. These standards are in effect until June 4, 2014 2019. Metals standards are in terms of micrograms per liter ( $\mu\text{g}/\text{liter}$ ) total recoverable concentrations and pH standards are in standard units (su).

<u>Parameter</u>	<u>In Fisher Creek at its confluence with the Lady of the Lake Creek, the following standards shall not be exceeded more than 3% of the time.</u>
	<u><math>\mu\text{g}/\text{liter}</math></u>
Aluminum	470.
Copper	110.
Iron	750.
Lead	2.
Manganese	82.
Zinc	44.
pH	must be maintained above 5.7 su.

AUTH: 75-5-201, 75-5-312, MCA  
IMP: 75-5-312, MCA

REASON: The U.S. Forest Service has conducted remediation in the vicinity of Daisy Creek, the Stillwater River, and Fisher Creek over the past 15 years to



mitigate contamination from historic mining. The board set temporary standards for these streams effective June 4, 1999, to allow the Forest Service to conduct remediation for the existing contamination in the streams. The temporary standards expire June 4, 2014.

An evaluation of data collected from 2003 to 2012 shows that water quality has improved significantly, but that several contaminants in the streams are still well above Department Circular DEQ-7 water quality criteria. If the temporary standards expire in 2014, the much more stringent DEQ-7 water quality criteria will apply and several water quality criteria will be exceeded.

According to 75-5-312, MCA, temporary standards are allowed for a maximum of 20 years. The board proposes to extend the expiration date to June 4, 2019, completing the 20-year maximum allowance for temporary standards. This will provide additional time to allow natural processes to occur and water quality to improve.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., February 27, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board 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; openpit 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](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

8. 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.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE

Chairman

Certified to the Secretary of State, January 21, 2014.

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

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to military training ) PROPOSED ADOPTION  
or experience )

TO: All Concerned Persons

1. On February 20, 2014, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

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 Architects and Landscape Architects (board) no later than 5:00 p.m., on February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdark@mt.gov.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as an architect or landscape architect.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an architect or landscape architect. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdark@mt.gov](mailto:dlibsdark@mt.gov), and must be received no later than 5:00 p.m., February 28, 2014.

5. An electronic copy of this notice of public hearing is available at [www.architect.mt.gov](http://www.architect.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.

6. 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 Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdark@mt.gov](mailto:dlibsdark@mt.gov); or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

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

Documentation of the board's above-stated determination is available upon request to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail [dlibsdark@mt.gov](mailto:dlibsdark@mt.gov).

9. Joslyn Hunt, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND  
LANDSCAPE ARCHITECTS  
BAYLISS WARD, PRESIDENT

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

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

Certified to the Secretary of State January 21, 2014

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.401, license fees;	)	AMENDMENT
32.2.404, permit fees; 32.2.405,	)	
miscellaneous fees; 32.3.201,	)	NO PUBLIC HEARING
definitions; 32.3.204, permit required;	)	CONTEMPLATED
32.3.207, permits; 32.3.212,	)	
additional requirements for cattle;	)	
32.3.216, horses, mules, and asses;	)	
32.3.220, semen shipped into	)	
Montana; 32.3.501, definitions;	)	
32.3.502, trichomoniasis; 32.3.1505,	)	
licensing; 32.15.209, veterinary fees	)	

TO: All Concerned Persons

1. On April 1, 2014, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

<u>32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES</u> (1) <del>Condensed,</del>	
<del>evaporated, or powdered milk factory license as required by 81-21-102, MCA</del>	<del>\$5.00</del>
(2) <del>Cream station license as required by 81-22-208, MCA</del>	<del>5.00</del>
(3) <del>Dairy license as required by 81-21-102, MCA</del>	<del>5.00</del>
(4) <del>Dairy producing milk for manufacturing purposes license</del>	
<del>as required by 81-22-208, MCA</del>	<del>5.00</del>
(5) <del>Egg dealer's retail buying license as required by 81-20-201, MCA</del>	<del>5.00</del>
(6) <del>Egg dealer's wholesale license as required by 81-20-201, MCA</del>	<del>20.00</del>
(7) <del>Egg grader's license as required by 81-20-201, MCA</del>	<del>5.00</del>
(8) <del>Fluid milk plant license as required by 81-21-102, MCA</del>	<del>50.00</del>
(9) <del>Garbage feeder license as required by 81-2-502, MCA</del>	<del>5.00</del>
(10) <del>Grader weigher sampler license as required by 81-22-208, MCA</del>	<del>5.00</del>
(11) <del>Hauler license as required by 81-22-208, MCA</del>	<del>5.00</del>
(12) <del>Hide dealer or buyer's license as required by 81-9-411, MCA</del>	<del>5.00</del>

(13) Livestock broker or dealer license as required by 81-8-271 and 81-8-276, MCA	100.00
(14) Manufactured dairy products plant license as required by 81-22-208, MCA	50.00
(15) Milk or cream route license as required by 81-22-204, MCA	5.00
(16) Milk or cream tester's license as required by 81-22-205, MCA	10.00
(17) Producer, producer-distributor, distributor, or jobber as required by 81-23-202, MCA	10.00
(18) Rendering or disposal plant license as required by 81-9-301, MCA	5.00
(19) Satellite video auction market operator as required by 81-8-264, MCA	100.00
(20) Slaughterhouse, meat packing house, meat depot, or mobile slaughter facility license as required by 81-9-201, MCA	25.00
(21) Tester license as required by 81-22-208, MCA	10.00
(1) Animal Health:	
(a) Brucella ovis-free flocks certification - new	\$40.00
(b) Brucella ovis-free flocks certification - renewal	18.00
(c) Garbage feeder license - new	170.00
(d) Garbage feeder license - renewal	50.00
(e) Licensed equine-approved feedlot	1450.00
(f) Montana bull stud service	350.00
(g) Rendering or disposal plant license	5.00
(h) Trichomoniasis feedlot license - new	100.00
(i) Trichomoniasis feedlot license - renewal	12.00
(2) Brand Enforcement:	
(a) Hide dealer or buyer's license	5.00
(b) Livestock broker or dealer license	100.00
(c) Satellite video auction market operator	100.00
(3) Meat Inspection:	
(a) Slaughterhouse, meat packing house, meat depot, or mobile slaughter facility license	25.00
(4) Milk and Egg Inspection:	
(a) Condensed, evaporated, or powdered milk plant license	5.00
(b) Cream station license	5.00
(c) Dairy license	5.00
(d) Dairy producing milk for manufacturing purposes license	5.00
(e) Egg dealer's retail buying license	5.00
(f) Egg dealer's wholesale license	20.00
(g) Egg grader's license	5.00
(h) Fluid milk plant license	50.00
(i) Grader-weigher-sampler license	5.00
(j) Hauler license	5.00
(k) Manufactured dairy products plant license	50.00
(l) Milk or cream route license	5.00
(m) Milk or cream tester's license	10.00
(n) Producer, producer-distributor, distributor, or jobber	10.00

(o) Tester license	10.00
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AUTH: 81-1-102, 81-22-102, MCA

IMP: 81-1-102, 81-2-502, 81-3-107, 81-3-205, 81-3-211, ~~81-3-214~~, 81-5-112, 81-7-504, ~~81-8-164~~, 81-8-256, 81-8-271, 81-8-276, 81-8-304, 81-9-112, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, 81-22-208, 81-23-202, MCA

<u>32.2.404 DEPARTMENT OF LIVESTOCK PERMIT FEES</u>	
<del>(1) Aerial hunting permit as required by 81-7-504, MCA</del>	<del>\$50.00 or portion thereof</del>
<del>(2) Adjacent state transportation permit as required by 81-3-214, MCA</del>	<del>\$10.00</del>
<del>(3) Adjoining county transportation permit as required by 81-3-211, MCA</del>	<del>10.00</del>
<del>(4) Annual sheep permit for show purposes only within the state of Montana</del>	<del>1.00</del>
<del>(5) Market consignment permit or transportation permit before removal from a county as required by 81-3-205, MCA</del>	<del>1.00</del>
<del>(6) Permanent horse transportation permit as required by 81-3-205, MCA</del>	<del>25.00 per head</del>
<del>(7) Sheep removal permit as required by 81-5-112, MCA</del>	<del>1.00</del>
<del>(8) Domestic bison transportation permit as required by 81-5-211, MCA</del>	<del>1.00</del>
<u>(1) Animal Health:</u>	
<u>(a) Annual NPIP Poultry permit</u>	<u>\$4.00</u>
<u>(b) Biologics, conditional - new</u>	<u>30.00</u>
<u>(c) Biologics, conditional - renewal</u>	<u>10.00</u>
<u>(d) Biologics, unconditional</u>	<u>10.00</u>
<u>(e) Bovine semen, annual - domestic</u>	<u>4.00</u>
<u>(f) Bovine semen, annual - international</u>	<u>42.00</u>
<u>(g) Cross border grazing - new</u>	<u>37.00</u>
<u>(h) Cross border grazing - renewal</u>	<u>14.00</u>
<u>(i) Equine permit, annual</u>	<u>5.00</u>
<u>(j) Equine semen, annual</u>	<u>7.00</u>
<u>(k) Six-month horse passport</u>	<u>5.00</u>
<u>(2) Brand Enforcement:</u>	
<u>(a) Aerial hunting permit - annual</u>	<u>50.00</u>
<u>(b) Adjacent state transportation permit</u>	<u>10.00</u>
<u>(c) Adjoining county transportation permit</u>	<u>10.00</u>
<u>(d) Annual sheep permit for show purposes only within the state of Montana</u>	<u>1.00</u>
<u>(e) Domestic bison transportation permit</u>	<u>1.00</u>
<u>(f) Market consignment permit or transportation permit before removal from a county</u>	<u>1.00</u>
<u>(g) Permanent horse transportation permit</u>	<u>25.00 per head</u>
<u>(h) Sheep removal permit</u>	<u>1.00</u>



AUTH: 81-1-102, 81-22-102, MCA

IMP: 81-3-205, 81-3-211, ~~81-3-214~~, 81-5-112, 81-7-504, 81-8-256, 81-8-276, MCA

32.2.405 DEPARTMENT OF LIVESTOCK MISCELLANEOUS FEES

- (1) brand book - CD \_\_\_\_\_ \$15.00
- (2) brand book - data download \_\_\_\_\_ fee commensurate with cost
- (3) brand book - paper copy (per county) \_\_\_\_\_ 30.00
- (4) Certified copy of brand or mark record and duplicate certificate \_\_\_\_\_ 10.00
- (5) Copy of original livestock bill of sale as required by 81-3-205, MCA \_\_\_\_\_ 10.00
- (6) Filing of livestock security interests as required by 81-8-304, MCA \_\_\_\_\_ 25.00
- (7) Game farm animal inspection as required by 81-3-211, MCA \_\_\_\_\_ 3.00 a head  
(Inspector may also charge necessary actual expenses if required to wait for the animals to be presented for inspection)
- (8) Hide inspection as required by 81-9-112, MCA \_\_\_\_\_ 1.00 a head
- (9) Horses, mules, or asses inspection before removal from  
a county or before change of ownership as required by 81-3-205, MCA \_\_\_\_\_ 6.00 a head
  - (a) if more than ten animals of the same type are offered for inspection on  
the same day by the same owner, starting with the eleventh animal \_\_\_\_\_ 3.00 a head
- (10) Horses, mules, or asses inspection before sold or offered for  
sale at a licensed livestock market as required by 81-3-205, MCA \_\_\_\_\_ 6.00 a head
- (11) Livestock inspection before removal from a county or  
before change of ownership as required by 81-3-205, MCA \_\_\_\_\_ 75 cents a head
  - (a) cow/calf pairs-spring going to pasture only \_\_\_\_\_ 75 cents per pair
- (12) Livestock inspection before being sold or offered for sale at a licensed  
livestock market or slaughtered at a licensed slaughterhouse as required by 81-3-  
205, MCA \_\_\_\_\_ 75 cents a head
- (13) Livestock market operator certificate as required by  
81-8-251, 81-8-256, MCA \_\_\_\_\_ 100.00
- (14) Recording a new mark or brand, recording a mark or brand  
transfer as required by 81-3-107, MCA \_\_\_\_\_ 200.00
  - (a) rerecording a mark or brand as required by 81-3-107, MCA \_\_\_\_\_ 100.00
- (15) Releasing an animal, except horses, mules, or asses, for  
purpose of removal from a licensed livestock market as required by  
81-3-205, MCA \_\_\_\_\_ 75 cents a head
- (16) Releasing horses, mules, or asses, for purpose of removal from a  
licensed livestock market as required by 81-3-205, MCA \_\_\_\_\_ \$6.00 a head
- (17) Estray sale cost and disposition of animals if no bid is offered as  
required by 81-4-603(4), MCA:
  - (a) cost for estray sale \_\_\_\_\_ 100.00
  - (b) cost if owner claims before sale \_\_\_\_\_ 50.00
  - (c) should no bids be received, the department may re-offer for sale or give  
the animal to an individual or rescue facility in the area, or if there are no other  
options, condemn and destroy or otherwise dispose of it.
- (18) A research/copy scan fee may be charged for livestock inspection  
lookups in the country and/or markets based on MDOL Public Records Request  
Guidelines.

(1) Animal Health:

<u>(a) Forms:</u>	
<u>(i) alternative livestock tags - deer (small)</u>	<u>\$27.50</u>
<u>(ii) alternative livestock tags - elk (medium)</u>	<u>42.00</u>
<u>(iii) SV-7 - large animal cvi book</u>	<u>24.00</u>
<u>(iv) SV-7A - cvi convoy replica book</u>	<u>25.00</u>
<u>(v) SV-7B - cvi continuation pages</u>	<u>37.00</u>
<u>(vi) SV-7GF - alternative livestock cvi book</u>	<u>35.00</u>
<u>(vii) SV-7GFc - alternative livestock continuation</u>	<u>15.00</u>
<u>(viii) SV-7HP - 6-month horse passport book</u>	<u>55.00</u>
<u>(ix) SV-69A - trichomoniasis test report</u>	<u>37.00</u>
<u>(x) trichomoniasis tags (5)</u>	<u>5.75</u>
<u>(xi) trichomoniasis tags (10)</u>	<u>11.50</u>
<u>(xii) trichomoniasis tags (25)</u>	<u>32.25</u>
<u>(2) Brand Enforcement:</u>	
<u>(a) Brand book - CD</u>	<u>15.00</u>
<u>(b) Brand book - data download</u>	<u>fee commensurate with cost</u>
<u>(c) Brand book - paper copy (per county)</u>	<u>30.00</u>
<u>(d) Certified copy of brand or mark record and duplicate certificate</u>	<u>10.00</u>
<u>(e) Copy of original livestock bill of sale</u>	<u>10.00</u>
<u>(f) Estray sale cost and disposition of animals if no bid is offered:</u>	
<u>(i) cost for estray sale</u>	<u>100.00</u>
<u>(ii) cost if owner claims before sale</u>	<u>50.00</u>
<u>(iii) the department may re-offer for sale or give the animal to an individual or rescue facility in the area, or if there are no other options, condemn and destroy or otherwise dispose of it.</u>	
<u>(g) Game farm animal inspection</u>	<u>3.00 a head</u>
<u>(i) inspector may also charge necessary actual expenses if required to wait for the animals to be presented for inspection.</u>	
<u>(h) Filing of livestock security interests</u>	<u>25.00</u>
<u>(i) Hide inspection</u>	<u>1.00 a head</u>
<u>(j) Horses, mules, or asses inspection before removal from a county or before change of ownership</u>	<u>6.00 a head</u>
<u>(k) If more than ten animals of the same type are offered for inspection on the same day by the same owner, starting with the eleventh animal</u>	<u>3.00 a head</u>
<u>(l) Horses, mules, or asses inspection before sold or offered for sale at a licensed livestock market</u>	<u>6.00 a head</u>
<u>(m) Livestock inspection before removal from a county or before change of ownership</u>	<u>75 cents a head</u>
<u>(i) cow/calf pairs-spring going to pasture only</u>	<u>75 cents per pair</u>
<u>(n) Livestock inspection before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse</u>	<u>75 cents a head</u>
<u>(o) Livestock market operator certificate as required</u>	<u>100.00</u>
<u>(p) Recording a new mark or brand, recording a mark or brand transfer</u>	<u>\$200.00</u>
<u>(i) Rerecording a mark or brand</u>	<u>100.00</u>

- (q) Releasing an animal, except horses, mules, or asses, for purpose of removal from a licensed livestock market 75 cents a head
- (r) Releasing horses, mules, or asses, for purpose of removal from a licensed livestock market \$6.00 a head
- (s) Research/copy-scan fees may be charged for livestock inspection lookups in the country and/or markets based on MDOL Public Records Request.

AUTH: 81-1-102, 81-22-102, MCA

IMP: 81-3-107, 81-3-205, 81-3-211, 81-8-304, 81-9-112, MCA

REASON: The Montana Department of Livestock is proposing to raise Animal Health fees commensurate with costs (81-1-102 and 37-1-134, MCA). In addition, ARM 32.2.401, 32.2.404, and 32.2.405 were reorganized for clarity.

FISCAL IMPACT:

Veterinarian Forms:

These fee increases will affect approximately 439 large animal veterinarians. Fees associated with costs (printing, packaging, handling, postage, and data entry) for veterinarian forms have not been adjusted since 2003. Also, the federal traceability rule requires that MDOL enter identification of sexually intact livestock over 18 months of age leaving Montana. The additional time to enter this information from paper certificates is significant. Total costs for data entry processing the Large Animal Health Certificates is significantly higher than what is assessed, but is offset by federal cooperative agreement traceability money. Fee increases are necessary to provide revenue to help recover the cost of processing these forms.

<u>Current Revenue</u>	<u>Current Costs</u>	<u>Projected Revenue</u>
\$15,523.90	30,443.36	30,670.90

Licenses and Permits:

License and special permit fee increases will affect approximately 1448 persons.

The Animal Health division has statutory oversight over the importation of biological products such as animal vaccines. The time required to review applications from pharmaceutical companies for the sale and distribution of vaccines is not being recouped. Other administrative costs are associated with Animal Health licenses such as Montana Bull Stud Service and Licensed Equine-approved Feedlot which provide necessary and convenient services for the livestock industry and the public.

In addition, the Animal Health division has developed a variety of "special" permits in response to veterinarian or animal owner requests over the years. Special permits, such as the Annual Equine Import permit, Seasonal Grazer permit, Six-Month Horse Passport, and several others, often provide added flexibility and extended dates for animal movement.

Fees for licenses and special permits are now necessary to help bring our revenue and expenditures in line.

<u>Current Revenue</u>	<u>Current Costs</u>	<u>Projected Revenue</u>
\$0.00	19,192.25	19,238.00

32.3.201 DEFINITIONS (1) In this subchapter:

~~(a)~~ (b) "Brucellosis test-eligible goat" means all sexually intact goats six months of age or older.

~~(b)~~ (c) "Dairy cattle" means cattle of dairy breeds or dairy types that may at some time be used for the production of milk or milk products for human consumption.

~~(c)~~ (d) "Dairy goats" means goats of dairy breeds or dairy types that may at some time be used for the production of milk or milk products for human consumption.

(f) "Licensed equine-approved feedlot" means a facility with specific exemptions to the equine import requirements in ARM 32.3.216 and that has on file with the department an approved and signed MOU.

~~(d)~~ (g) "Livestock" means cattle, horses, mules, asses, sheep, swine, goats, domestic bison, llamas, and ratites.

(h) "Montana-approved bull stud" means a licensed facility that meets the requirements in ARM 32.3.220.

~~(e)~~ (a) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, furbearing and wild mammals, poultry, and other birds.

~~(f)~~ (k) "Poultry" means domesticated birds including, but not limited to, chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants.

~~(g)~~ (e) "Health certificate" means a legible record written on an official health certificate form of the state of origin or an equivalent form of the U.S. Department of Agriculture attesting that the animals described thereon have been visually inspected and found to meet the entry requirements of the state of Montana. In addition, the health certificate shall conform to the requirements of ARM 32.3.206.

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

~~(i)~~ (j) "Permit" means an official document issued by the Montana Department of Livestock after proper application which allows the movement of animals, or, biologics into Montana. In addition, the permit shall conform to the requirements of ARM 32.3.207.

~~(j)~~ (l) "Sporting bovine" means bucking bull, steer-wrestling steer, or roping bovine.

(m) "Test-eligible bison" means all domestic bison two months of age and over.

~~(k)~~ (n) "Tuberculosis test-eligible cattle" means all cattle two months of age and older.

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

~~(m)~~ (p) "Virgin bull" means a sexually intact male bovine less than 12 months of age or a sexually intact male bovine 12 to 24 months of age that is accompanied by a signed affidavit from the owner or manager as having had no potential breeding contact with sexually intact female cattle.

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

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

REASON: These changes are necessary to bring all ARM language in line with the newly proposed fee rules. Punctuation edits and renumbering were changed for clarity and to comply with ARM standard formatting.

32.3.204 PERMIT REQUIRED FOR LIVESTOCK, GAME, FURBEARING ANIMALS, AND WILD ANIMALS, EMBRYOS, AND SEMEN (1) Livestock may not enter the state of Montana unless accompanied by a Montana permit. This requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state.

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

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

REASON: Changes to the catchphrase are necessary to bring all ARM language in line with the newly proposed fee rules.

32.3.207 PERMITS (1) remains the same.

(2) Permits are valid for no longer than ten days from the date of issuance unless otherwise specified as follows:

(a) blanket:

(i) permanent market, until rescinded;

(ii) temporary market, up to 30 days;

(b) cross border grazer, nine months;

(c) entry extended, 30 days;

(d) equine annual, yearly;

(e) NPIP poultry, yearly;

(f) re-entry, up to 30 days;

(g) semen:

(i) equine, annual;

(ii) bovine, domestic, annual;

(iii) bovine, international, annual; and

(h) six-month horse passport, six months.

(3) through (5) remain the same.

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

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

REASON: These changes are necessary to bring all ARM language in line with the newly proposed fee rules.

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

(a) cattle being transported or moved through Montana with no intent to unload in the state are exempt from this section. In an emergency situation, they may be unloaded in compliance with quarantine rules promulgated by the Department of Livestock under 81-2-102, MCA- ;

(b) through (6) remain the same.

(7) Test-eligible cattle that are sexually intact dairy cattle, sporting bovines, or sexually intact beef cattle originating from outside of the United States must have one negative tuberculosis test within 60 days prior to importation. Cattle ~~or bison~~ originating directly from Mexico must meet the requirements set forth in ARM 32.3.212B.

(8) through (9)(e) remain the same.

(f) those imported to a Montana bull stud; ~~CSS (certified semen services) bull stud or its equivalent (ARM 32.3.220) providing testing is performed upon admittance;~~

(g) through (15) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

REASON: MDOL has been in an ongoing process to update all rules to incorporate long-standing official orders. Importation requirements for bison are outlined in ARM 32.3.224 and therefore no longer need to be referenced in ARM 32.3.212. Changes to (9)(f) are necessary to bring all ARM language in line with the newly proposed fee rules.

32.3.216 HORSES, MULES, AND ASSES (1) through (5) remain the same.

(6) Equids being moved directly to a USDA-approved equine slaughter or a licensed equine-approved feedlot establishment may be exempted from EIA test requirements.

(7) and (8) remain the same.

AUTH: 81-2-102, ~~81-20-101~~, MCA

IMP: 81-2-102, ~~81-20-101~~, MCA

REASON: These changes are necessary to bring all ARM language in line with the newly proposed fee rules. Authorizing and implementing citations are being updated.

32.3.220 SEMEN SHIPPED INTO MONTANA; PERMIT REQUIRED

(1) remains the same.

(2) Bovine semen may not be transported into Montana for the purpose of artificial insemination and bovine semen may not be used for artificial insemination unless it originates from bulls whose health status conforms to the requirements that follow:

- (a) ~~an annual permit is obtained from the Montana state veterinarian for an individual animal; or All bulls must meet all of Montana's import requirements; or~~  
(b) ~~an annual blanket permit is obtained from the Montana state veterinarian (at his or her discretion) for semen from bulls in a designated stud. The All bulls must be permanent residents of the bull stud, and a licensed accredited veterinarian must certify that the testing is being done. A permanent resident is a bull that has passed all testing requirements and is qualified to remain in the stud as long as it meets the biannual requirements. ;~~  
(i) through (v) remain the same.  
(vi) ~~Bulls must not be~~ Permits will not be granted for semen from sires showing evidence of infection with Paratuberculosis, Bluetongue disease, or Bovine Leukosis.  
(3) through (8) remain the same.

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

REASON: These changes are necessary for clarity and to bring all ARM language in line with the newly proposed fee rules.

- 32.3.501 DEFINITIONS (1) through (24) remain the same.  
(25) "Virgin bull" is defined in ARM 32.3.201(h).  
(26) and (27) remain the same.

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

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) remains the same.

- (2) For bovines that require a certificate of veterinary inspection, the following statement must be included: "The bull(s) identified on this certificate are all negative T. foetus bulls in accordance with ARM 32.3.502(43)."

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA  
IMP: 81-2-102, 81-2-703, MCA

REASON: Changes to ARM 32.3.501 and 32.3.502 are necessary to conform to ARM standard formatting.

- 32.3.1505 BLOOD TESTING WITH SALMONELLA ANTIGENS (1) through (6) remain the same.  
(7) The Montana Department of Livestock, Animal Health Division may designate or license authorized testing agents who have demonstrated the ability to perform the duties of pullorum-typhoid testing to the satisfaction of the department.  
(a) through (c) remain the same.

AUTH: 81-20-101, MCA

IMP: 81-20-101, MCA

REASON: These changes are necessary to bring all ARM language in line with the newly proposed fee rules.

32.15.209 VETERINARY FEES (1) The fees for health certification for interstate shipment and for necessary tests or vaccinations will be paid by the owner of the livestock, ~~except in the case of calves officially vaccinated for brucellosis at the expense of the United States Department of Agriculture.~~

AUTH: 81-2-102, 81-8-231, MCA

IMP: 81-2-102, 81-8-231, MCA

REASON: These changes are necessary to bring all ARM language in line with the newly proposed fee rules.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., March 31, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the above address no later than 5:00 p.m., March 31, 2014.

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

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of



State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

#### DEPARTMENT OF LIVESTOCK

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

BY: /s/ Robert Stutz  
Robert Stutz  
Rule Reviewer

Certified to the Secretary of State January 21, 2014.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 36.12.203 and 36.12.2101 ) PROPOSED AMENDMENT  
regarding appointment of hearing )  
examiner and temporary leases )

To: All Concerned Persons

1. On February 27, 2014, at 10:00 a.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 amendment of the above-stated rules.

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 February 20, 2014, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

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

36.12.203 HEARING EXAMINERS (1) When the department orders a contested case hearing, the director shall assign a hearing examiner to hear the case. The director may not assign as hearing examiner an individual that was involved in the preliminary determination on the application. The file that is submitted to the hearing examiner, subsequent to the assignment of the case, shall contain the parties' applications, notices of applications, petitions, objections to applications, or permits under consideration to be modified or revoked. After reviewing the file, the hearing examiner shall contact the parties and advise them as to the location and time during which a hearing should be held. Except as required under the circumstances of ARM 36.12.232, no hearing shall be scheduled on a Saturday, Sunday, or legal holiday.

(2) remains the same.

AUTH: 2-4-201~~(2)~~, 85-2-113~~(2)~~, MCA  
IMP: 2-4-611, MCA

REASONABLE NECESSITY: The proposed amendment ensures that an individual involved in preliminary determination on a water right application on behalf of the department will not serve as a hearing examiner in a contested case hearing on that application in order to make certain that hearings are fair and without bias.

36.12.2101 TEMPORARY LEASE OF APPROPRIATION RIGHT

(1) through (3) remain the same.

(4) The department will use the following standards for consumptive use when reviewing applications for temporary leases:

(a) for irrigation, consumptive volume may not exceed 1.0 acre-foot per acre irrigated as defined in 85-2-427(2), MCA; Consumptive volume for irrigation is the lesser of:

(i) the historic consumptive use as calculated using the methodology from ARM 36.12.1902(14) through 36.12.1902(16)(f); or

(ii) 1.0 acre-foot per acre irrigated;

(b) through (6) remain the same.

AUTH: 85-2-113, 85-2-427, MCA

IMP: 85-2-427, MCA

REASONABLE NECESSITY: 85-2-427, MCA, provides: "The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 1.0 acre-foot per acre irrigated." The amendment to ARM 36.12.2101(4)(a) clarifies that the department will determine the consumptive volume for irrigation based upon the method set forth in ARM 36.12.1902(14) through 36.12.1902(16)(f), which is an accepted method for determining consumptive volume of irrigation rights, to ensure the amount of water leased for an irrigation right does not exceed the lesser of the total consumptive volume, or 1.0 acre-foot per acre irrigated. It further notifies applicants of the methodology to be used in calculating consumptive volume for irrigation under the rule.

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, PO 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 February 27, 2014.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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, PO 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.

7. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail on January 16, 2014.

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

/s/ John E. Tubbs

JOHN E. TUBBS

Director

Natural Resources and Conservation

/s/ Brian Bramblett

BRIAN BRAMBLETT

Rule Reviewer

Certified to the Secretary of State on January 21, 2014.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM                    ) NOTICE OF REPEAL  
2.59.1401 through 2.59.1419 pertaining            )  
to title lending    )

TO: All Concerned Persons

1. On November 27, 2013, the Department of Administration published MAR Notice No. 2-59-486 pertaining to the proposed repeal of the above-stated rules at page 2204 of the 2013 Montana Administrative Register, Issue Number 22.

2. The department has repealed ARM 2.59.1401 through 2.59.1419 exactly as proposed.

3. No comments were received.

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

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

Certified to the Secretary of State January 21, 2014.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 8, 2013, the Department of Agriculture published MAR Notice No. 4-14-214 pertaining to the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 1399 of the 2013 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 4.12.1411 and 4.12.1431 as proposed.

3. The department has adopted New Rule II (4.12.1439), III (4.12.1440), IV (4.12.1441), V (4.12.1442), and VI (4.12.1443) as proposed.

4. The department has repealed ARM 4.12.1408, 4.12.1410, and 4.12.1412 through 4.12.1424 as proposed.

5. The department has decided not to amend ARM 4.12.1405.

6. The department has decided not to adopt New Rule I.

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

COMMENT #1: The proposed fee increase to phytosanitary fees is too much and will price certain (nursery) businesses out of the market.

RESPONSE #1: The issuance of phytosanitary certificates is an entirely fee-for-service program and the proposed fees are required for the department to continue providing this service. Phytosanitary certificates are available from the federal government. The department is removing the fee increase from this proposed rule and will propose different rates in a separate notice at a later date.

COMMENT #2: Commodities that pay phytosanitary or other similar fees should pay more and subsidize nurseries.

RESPONSE #2: The expense to the department to provide phytosanitary certification services is similar for all types of commodities. All commodity types should pay an amount that supports the services provided to the applicant. The department is removing the fee increase from this proposed rule and will propose different rates in a separate notice at a later date.

COMMENT #3: The department should relocate offices and hire part-time people to make the fees lower for certain users.

RESPONSE #3: The department has eight field offices that provide services across the entire state. Locations are based on the workload from all of the department's programs. Plant science specialists that issue phytosanitary certificates are required to have specific educational and experience requirements and maintain certification through USDA Export Services. The department has not been able to hire part-time seasonal personnel who are able to meet these requirements and maintain the required USDA certification. This suggestion of part-time staff located next to big nurseries is not a realistic solution.

COMMENT #4: The department should consider cutbacks in other areas like the director's office and central services instead of a fee increase in nursery or phytosanitary fees.

RESPONSE #4: The Department of Agriculture is largely a fee-for-service agency and all programs must support both program costs and indirect charges in a fair and equitable manner. It would not be fair to charge others more so these programs could pay less.

COMMENT #5: General fund or money from other parts of agriculture should subsidize nursery because the regulations in question benefit other industries more than they benefit the nursery trade.

RESPONSE #5: The nursery trade, including the international, interstate, and intrastate movement of live plant material, is a high-risk pathway for the introduction of invasive plant pests and disease that can harm Montana's agriculture and environment. Montana's agriculture is a significant and vital portion of the Montana economy. The mission of the Department of Agriculture includes protecting producers and consumers from pest risks including those in the nursery industry. The nursery program is authorized in the MCA, and the funding and role of the department can only be changed through the legislature.

COMMENT #6: The department's inspectors are not qualified to do the job of inspection and not worth the higher fees.

RESPONSE #6: The department disagrees. Plant science specialists that issue phytosanitary certificates and conduct nursery inspections are required to have

specific educational and experience requirements and maintain certification through USDA Export Services.

COMMENT #7: The nursery industry cannot afford more fees.

RESPONSE #7: The nursery program is a fee-for-service program. The proposed fees are required to run the program. Phytosanitary certification and nursery certification exist to mitigate the risks of the movement of live plant material. Individual businesses can reduce their fees by not shipping products internationally or to other states that restrict the movement of live plant material.

The department is removing the fee increase from this proposed rule and will propose different rates in a separate notice at a later date.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

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

Certified to the Secretary of State January 21, 2014.



BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 12.11.501, 12.11.3901,	)	ADOPTION
12.11.3940 and the adoption of NEW	)	
RULE I regarding recreational use on	)	
Lake Alva, Harpers Lake, and Lake	)	
Marshall	)	

TO: All Concerned Persons

1. On May 9, 2013, the Fish, Wildlife and Parks Commission published MAR Notice No. 12-385 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 755 of the 2013 Montana Administrative Register, Issue Number 9.

2. On September 5, 2013, at page 1563 of the 2013 Montana Administrative Register, Issue Number 17, the Fish and Wildlife Commission (commission) published a notice of extension of comment period and a proposed alternative to be considered for Lake Alva.

3. The commission has amended ARM 12.11.501, 12.11.3901, and 12.11.3940, and adopted NEW RULE I (ARM 12.11.3962) as proposed on May 9, 2013.

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

The commission received a total of 272 comments, 131 supporting and 122 opposing the adoption of the rule regarding recreational use on Lake Alva. Another 15 comments offered alternatives that were more restrictive on motor use than a no wake rule, such as no motors allowed, electric motors only, or a horsepower restriction. Four comments supported an alternative of allowing a wake from August 1 through Labor Day. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 1: Thirty-two comments stated that the no wake rule would benefit common loons.

Response 1: Boat wakes can reduce nesting and rearing success of common loons. However, human disturbance of the nests can reduce nest success and chick survival as well. Nest disturbance by people happens often on Lake Alva, regardless of the craft used. In addition, there are other factors such as weather and predation that affect nesting and rearing success on Lake Alva. Therefore, the influence a no wake regulation could have on success of nesting and rearing of

common loons is uncertain and likely minor with the current disturbances of nests by people.

Comment 2: Forty-three comments suggested that displacement of existing boaters on Lake Alva would result in more crowding on nearby lakes.

Response 2: The number of users that could be displaced from Lake Alva is small considering the multiple other lakes available in the area. Furthermore, boaters looking for a no wake speed experience should move from other lakes to Lake Alva.

Comment 3: Fourteen comments suggested that the Forest Service campground would be used less as a result of a no wake regulation.

Response 3: The campground is not expected to see a change in the number of visitors. Not all campground visitors use Lake Alva specifically, and while some high-speed users would be displaced, they should be replaced by users looking for a slower paced motorized or non-motorized experience.

Comment 4: Fourteen comments wanted more restrictions on motor use other than a no wake rule including horsepower restriction, electric motors only, or no motors at all.

Response 4: A no wake rule achieves the objective of a slower paced, quieter recreational setting without regulating the type of watercraft used. The rule does not exclude users based on their watercraft; however, it requires some users to use their craft differently on Lake Alva than they did previously.

Comment 5: A few comments suggested an alternative of allowing wakes only during the summer or just the warmer part of the day, for example from 11 a.m. to 6 p.m. when high speed use is common and fishing and paddling are rare.

Response 5: The warmer part of the year and part of the day is when most people want to be on the water, so allowing wakes just during the warmer part of the season or day would not reduce the conflicts. Furthermore, the no wake rule on Lake Alva will likely help address conflicts on other lakes by moving users that want a slower paced experience to Lake Alva. Allowing wakes only during the warmer times of the day is difficult to enforce with varied awareness of the time of day by users and availability of enforcement personnel.

Comment 6: A few comments suggested that Lake Alva was a lesser used lake than the others in the area and provides a unique experience for high-speed users.

Response 6: If speed remains unrestricted it is a concern that high-speed use of Lake Alva will increase, making this lower use characteristic temporary. Lake

Alva is less crowded and has no residential development and is used by people who wish to recreate in a less developed area.

Comment 7: A few comments suggested that there were plenty of opportunities for high speed use in the area while a few comments stated there were plenty of opportunities for no wake speed use in the area.

Response 7: Boating opportunities are ample in the Seeley Lake area. Lake Alva (300 acres) is one of seven medium to large lakes (290 – 1,200 acres) that provide high-speed motorized opportunity. Lake Inez has limited public-access parking and ramp limitations. There are many smaller lakes (100 acres or less) in the area with motorized or no wake restrictions. Only three of these smaller lakes (Harpers Lake, Upsata Lake, and Elbow Lake; 15-90 acres) have a ramp that facilitates access. There is no parking available at the Elbow Lake ramp. In the past, the public and Forest Service have requested that the commission consider a no wake proposal on Lake Alva. Low- and high-speed boating use can be incompatible and there is limited accessible low-speed boating opportunity in the area. Proposing a no wake rule on Lake Alva can address conflicts on other lakes in the area as well.

The commission received a total of 52 comments, 38 supporting and 14 opposing the adoption of the rule regarding recreational use of Harpers Lake. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 8: Six comments suggested that allowing electric motors would improve accessibility for seniors and those with disabilities.

Response 8: Allowing electric motors provides boating opportunities for recreationists that are unable to or find it difficult to row a boat.

Comment 9: Six comments preferred a no wake regulation.

Response 9: Allowing only electric motors is more consistent with the current slow and quiet use of Harpers Lake for fishing. Allowing gas motors would add noise and possibly speed.

Comment 10: Two comments suggested the lake would become too crowded by allowing electric motors.

Response 10: Use on other lakes in the area that allow electric motors has not resulted in overcrowding. The access to Harpers Lake is excellent and the lake is small lending itself to crowding, but the lake is stocked with trout for anglers. Anglers requested electric motor use to be permitted on the lake. The commission expects electric motors will keep the current angling and recreational experience of the lake while providing accessibility to only a few extra people.

The commission received a total of 42 comments, 32 supporting and 10 opposing the adoption of the rule regarding recreational use on Lake Marshall. The commission has thoroughly considered the comments received and the commission's responses are as follows:

Comment 11: Three comments preferred a no wake regulation on Lake Marshall and one comment suggested improving access to the lake. Combined, these comments suggest making Lake Marshall an accessible, no wake alternative for boating.

Response 11: A no wake regulation would allow any sized motor and therefore boat onto Lake Marshall. Lake Marshall is located on the Marshall Creek Wildlife Management Area (WMA) owned by the Department of Fish, Wildlife and Parks. The WMA was acquired for wildlife protection and production. Developing Lake Marshall into a destination recreation area would be inconsistent with the management goals of the WMA.

Comment 12: Two comments suggested banning all motors on Lake Marshall.

Response 12: The use of electric motors is consistent with the wildlife management goals of the WMA and would not require further development of a site to accommodate their use. Lake Marshall is 80 acres in size and therefore large enough to possibly require an electric motor to use.

Comment 13: One comment suggested limiting motors to 10-15 horsepower.

Response 13: A 10-15 horsepower motor would have a similar efficiency as some electric motors. By allowing electric motors only, a more quiet setting for recreation and wildlife is maintained.

/s/ Dan Vermillion

Dan Vermillion, Chairman  
Fish and Wildlife Commission

/s/ Zach Zipfel

Zach Zipfel  
Rule Reviewer

Certified to the Secretary of State January 21, 2014

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 18.6.202 and 18.6.247 pertaining to community welcome to signs ) NOTICE OF ADOPTION AND AMENDMENT )

TO: All Concerned Persons

1. On November 14, 2013, the Department of Transportation published MAR Notice No. 18-144 pertaining to the proposed adoption and amendment of the above-stated rules at page 2018 of the 2013 Montana Administrative Register, Issue Number 21.

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

The department has adopted the above-stated rule as proposed: New Rule I (18.6.238).

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

COMMENT NO. 1: One comment was received stating new rules or amended rules regarding community welcome to signs should comply with local land use controls and applicable permits. The comment suggested amending New Rule I to include language stating outdoor advertising permits shall be not issued until the applicant has provided proof of compliance with local jurisdiction's permits and regulations, including building, zoning, land use, electrical, floodplain and signage. The comment stated there should be coordination between the county and MDT permitting processes to avoid potential conflict points.

RESPONSE: MDT notes that all outdoor advertising permit applicants are already required to comply with all federal, state, county, and local statutes, rules, and ordinances on outdoor advertising under ARM 18.6.205(7). In addition, ARM 18.6.205(6) already states that MDT rules do not supersede the rights and powers of the counties and cities to enact outdoor advertising ordinances, if the ordinances do not conflict with or set lower standards than MDT's rules. In addition, MDT's outdoor advertising permit process already requires a county planning official to sign-off on the application, thus ensuring MDT's permitting process will coordinate with the local county regulations, and allow the county to enforce its own regulations. Welcome to sign applications will follow this same process, which already ensures coordination between the county and MDT in issuance of outdoor advertising permits; thus, no change to the proposed New Rule I language is necessary.

COMMENT NO. 2: One comment was received stating New Rule I (1) does not define "qualifying communities" except to state that tourist areas do not qualify. The

comment stated this is potentially "dangerous and vague language" which is of concern to resort area communities which were formed primarily because of tourism impacts and improvements. The comment stated that existing resort area communities and unincorporated communities may not qualify for a welcome to sign, or may be "at risk" if they attempt to modify their existing welcome to signs. The comment suggested the rules should clearly include resort area communities and unincorporated communities.

RESPONSE: MDT specifically drafted New Rule I to avoid limiting the qualifying communities to "incorporated" or "unincorporated." New Rule I states that any "community, county or sovereign nation may erect welcome to signs"; thus, there is no intent or limiting language which would prohibit a resort area community from qualifying for a welcome to sign on the basis of incorporation status alone. New Rule I only specifically prohibits states and tourist area regions from qualifications. New Rule I(13) would only require a "grandfathered" welcome to sign to meet the rule requirements in the event of upgrades or structural modifications beyond routine maintenance. New Rule I does not appear to pose a "risk" to a resort area community for loss of qualification for a welcome to sign, or for prevention of upgrades or structural modifications if New Rule I standards are met.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Kevin Howlett  
Kevin Howlett  
Chair  
Transportation Commission

Certified to the Secretary of State January 21, 2014.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 24.147.2101 continuing                )  
education requirements                     )

TO: All Concerned Persons

1. On October 31, 2013, the Board of Funeral Service (board) published MAR Notice No. 24-147-35 regarding the proposed amendment of the above-stated rule, at page 1894 of the 2013 Montana Administrative Register, Issue No. 20.
2. No comments were received by the November 29, 2013 comment deadline.
3. The board has amended ARM 24.147.2101 exactly as proposed.

BOARD OF FUNERAL SERVICE  
R.J. (DICK) BROWN, CHAIRPERSON

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

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

Certified to the Secretary of State January 21, 2014

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

In the matter of the amendment of	)	NOTICE OF DECISION ON
ARM 36.12.101, 36.12.102,	)	PROPOSED AMENDMENT AND
36.12.103, 36.12.115 and the	)	ADOPTION
adoption of New Rules I and II	)	
regarding water right combined	)	
appropriation	)	

To: All Concerned Persons

1. On December 26, 2013, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-176 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 2389 of the 2013 Montana Administrative Register, Issue Number 24.

2. The department canceled the public hearing on the proposed amendment and adoption of the above-stated rules that was scheduled for January 23, 2014, at 10:00 a.m., at the Department of Natural Resources and Conservation in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana.

3. On January 9, 2014, the Environmental Quality Council objected pursuant to 2-4-305(9), MCA, to the above-stated proposed rulemaking amending the department's definition of "combined appropriation" in ARM 36.12.101(13).

4. The department previously proposed an amendment to the definition of "combined appropriation" in ARM 36.12.101(13) in MAR Notice No. 36-22-175. The Environmental Quality Council also objected to this proposed rule, under 2-4-305(9), MCA, by letter dated September 13, 2013. The department published a notice of decision to withdraw this proposed rulemaking on November 14, 2013.

5. Given the objection by the Environmental Quality Council on this noticed proposed rulemaking in combination with similar action on the previous MAR Notice on this same matter (MAR Notice No. 36-22-175), the department finds that any further attempt at rulemaking regarding the definition of "combined appropriation" is futile at this time and sees no option moving forward. Therefore the department shall not proceed with amending or adopting the rules as proposed but shall withdraw this proposal notice.

/s/ John E. Tubbs  
John E. Tubbs  
Director  
Natural Resources and Conservation

/s/ Anne Yates  
Anne Yates  
Rule Reviewer

Certified to the Secretary of State January 21, 2014.



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

In the matter of the repeal of ARM        ) NOTICE OF REPEAL  
37.34.301, 37.34.302, 37.34.306,        )  
37.34.307, 37.34.308, 37.34.309,        )  
37.34.310, 37.34.311, 37.34.318,        )  
37.34.319, 37.34.325, 37.34.329,        )  
37.34.330, and 37.34.335, pertaining    )  
to placement determinations            )

TO: All Concerned Persons

1. On September 5, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-644 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 1570 of the 2013 Montana Administrative Register, Issue Number 17.

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

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

COMMENT #1: One commenter stated that this rulemaking process is contrary to the Montana Administrative Procedure Act (MAPA) in that the department is proposing this change in response to direction from the federal government without affording interested parties the opportunity to comment to a rulemaking process. The commenter also expressed concern that, once this set of rules was repealed, there would be no governing rules for the screening process and that the retroactive implementation potentially has a negative impact on those persons on the waiting list for services who may have been screened into services under the previous screening process.

RESPONSE #1: The department is required to implement amendments to the waivers as directed by the federal government in order to maintain federal funding. The department received the notice from the Center for Medicare and Medicaid (CMS) that dictated the change to the screening policy effective July 1, 2013 on June 24, 2013. Due to the length of the MAPA process it was not possible to allow for the rulemaking process prior to implementation of this federal requirement. However, in order to better align this rule repeal with the adoption of the new screening rule in MAR Notice No. 37-652, the department chose to hold the adoption of this notice in order to coincide with the adoption of MAR Notice No. 37-652, which incorporates the new screening requirements. By holding the adoption of this rule, it afforded the opportunity for interested parties to make comment to the proposed screening rule. The department must follow the federal mandate during the

timeframe from CMS waiver renewal (July 1, 2013) to the adoption of MAR Notice No. 37-652.

/s/ Cary B. Lund

Cary B. Lund  
Rule Reviewer

/s/ Richard H. Opper

Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State January 21, 2014.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.34.201 and the repeal of	)	REPEAL
ARM 37.34.202, 37.34.207,	)	
37.34.208, 37.34.211, 37.34.212,	)	
37.34.217, 37.34.222, 37.34.225, and	)	
37.34.226, pertaining to eligibility	)	

TO: All Concerned Persons

1. On September 5, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-645 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1574 of the 2013 Montana Administrative Register, Issue Number 17. On November 14, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment and Repeal at page 2034 of the 2013 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

/s/ Cary B. Lund  
Cary B. Lund  
Rule Reviewer

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

Certified to the Secretary of State January 21, 2014.

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

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through III and the	)	AMENDMENT
amendment of ARM 37.34.901,	)	
37.34.902, 37.34.906, 37.34.907,	)	
37.34.911, 37.34.912, 37.34.913,	)	
37.34.917, 37.34.918, 37.34.919,	)	
37.34.925, 37.34.926, 37.34.929,	)	
37.34.930, 37.34.933, 37.34.934,	)	
37.34.937, 37.34.938, 37.34.941,	)	
37.34.942, 37.34.946, 37.34.947,	)	
37.34.950, 37.34.951, 37.34.954,	)	
37.34.955, 37.34.956, 37.34.957,	)	
37.34.960, 37.34.961, 37.34.962,	)	
37.34.963, 37.34.967, 37.34.968,	)	
37.34.971, 37.34.972, 37.34.973,	)	
37.34.974, 37.34.978, 37.34.979,	)	
37.34.980, 37.34.981, 37.34.985,	)	
37.34.986, 37.34.987, and 37.34.988	)	
pertaining to Medicaid home and	)	
community-based services program	)	

TO: All Concerned Persons

1. On October 31, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-652 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1906 of the 2013 Montana Administrative Register, Issue Number 20.

2. The department has adopted New Rule I (37.34.989), as proposed.

3. The department has amended ARM 37.34.901, 37.34.902, 37.34.906, 37.34.913, 37.34.917, 37.34.918, 37.34.919, 37.34.925, 37.34.926, 37.34.929, 37.34.930, 37.34.933, 37.34.934, 37.34.937, 37.34.938, 37.34.941, 37.34.942, 37.34.946, 37.34.950, 37.34.951, 37.34.954, 37.34.955, 37.34.956, 37.34.957, 37.34.960, 37.34.961, 37.34.962, 37.34.963, 37.34.967, 37.34.968, 37.34.971, 37.34.972, 37.34.973, 37.34.974, 37.34.978, 37.34.979, 37.34.980, 37.34.981, 37.34.985, 37.34.986, 37.34.987, and 37.34.988 as proposed.

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

NEW RULE II (37.34.908) 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SELF-DIRECTED SERVICES, DEFINITIONS

(1) "Agency with choice model" means an agency that is the legal entity that ~~is the fiscal agent to assist the person conducting the business of self-direction. The legal entity is the legal employer and is responsible for all aspects of hiring and managing staff and service documentation requirements.~~ under a contract with the Developmental Disabilities Program to administratively undertake legally necessary tax and labor law compliance responsibilities in relation to the delivery of services on behalf of a person receiving services who is authorized by the program to select and direct the staff who deliver those services. The person receiving services manages the scheduling, orienting, instructing, supervising, evaluating, and work records of the staff. The contracted agency is responsible for the following activities as they pertain to the person's staff:

(a) compiles records necessary for the reporting and payment of wages and benefits for the person's staff;

(b) calculates, withholds, and pays federal and state taxes;

(c) calculates and pays wages; and

(d) undertakes all other legally necessary activities.

(2) and (3) remain as proposed.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

NEW RULE III (37.34.909) 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SELF-DIRECTED SERVICES, REQUIREMENTS

(1) remains as proposed.

(2) In order to elect ~~the a~~ a self-directed ~~with employer authority using an FMS service option,~~ the person must:

(a) through (4) remain as proposed.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

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

37.34.907 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SELECTION AND ENTRY (1) and (2) remain as proposed.

(3) The selection for consideration of persons with the same waiting list date will be made through a random selection process by the department.

(4) through (14) remain as proposed.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.911 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: AVAILABLE SERVICES (1) The following services may be provided under the Medicaid Home and Community-based Services Program:

- (a) through (w) remain as proposed.
- (x) remote monitoring equipment, as provided in ARM 37.34.968;
- (y) through (3) remain as proposed.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.912 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PROVIDER REQUIREMENTS (1) through (4) remain as proposed.

(5) A provider must document the completion of training in the personnel file of the staff or in the provider's staff training file including:

- (a) through (7) remain as proposed.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.947 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: JOB DISCOVERY (1) through (4) remain as proposed.

(5) ~~Self-directed service options~~ Job discovery must be provided in a community setting with 1:1 staff ratio.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

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

COMMENT #1: A few commenters expressed concern regarding the online CPR/first aid requirements. One commenter stated it will have a fiscal impact of approximately \$7,000.00 per year as well as increased liability. The commenters stated that having a little knowledge of CPR and first aid is more dangerous than having no knowledge. The commenters suggest the requirement be amended to require enrollment within 30 days of hire and full certification within 120 days.

RESPONSE #1: Upon consideration of the comments, the department agrees to amend the requirement to 120 days for full CPR certification. However, in congregate settings, there must be at least one staff person on every shift who is fully CPR-certified.

COMMENT #2: A few commenters stated that requiring 20 hours per year of additional training is cost prohibitive and arbitrary. One commenter also stated that it should be left to the discretion of the provider to determine staff training

requirements because depending on staff duties and the persons served, they may need more or less training.

RESPONSE #2: The department thinks it is important for a staff person working with the person receiving service to receive equitable annual training regardless of the full time equivalent (FTE) of the staff person. However, the department considered the comments and researched national standards and determined that in order to make annual training more equitable, while still maintaining quality standard of care, the annual training requirement for staff regardless of the FTE will be lowered to 12 hours annually.

COMMENT #3: One commenter requested the department reconsider the requirement to keep training agendas in each staff's personnel file. The commenter stated that current practice based on this provider's policy is to keep training documentation and agendas in a separate training file for all staff.

RESPONSE #3: The department agrees to amend the language to allow for documentation to be maintained in a training file maintained by the provider.

COMMENT #4: Several commenters stated that the children's waiver rules were written by someone who doesn't know children's waiver services. They state that the developmental disabilities program (DDP) does not back children's waiver providers and the rules have been very outdated. They asked how it was possible that DDP did not know the requirements for screening when the waiver application was submitted to the Center for Medicare and Medicaid (CMS). The commenters also asked why the rules were not a topic of discussion at the town hall meetings that were currently held.

RESPONSE #4: The department disagrees with the commenter. The department has written the rules to afford equal opportunity for all providers, regardless of the population they choose to serve. The department agrees that the rules have been very outdated and has been making substantial progress towards updating all of developmental disabilities program rules. The requirements for screening have been in the approved waiver since at least 2003; therefore, DDP did not know that CMS would choose to implement a change in the screening requirements. The town hall meetings were steered by Rocky Mountain Development Council and as such it was not the appropriate venue for DDP-directed rules discussion. The DDP came as a guest to the town hall meetings with the intention to gather input shared by providers.

COMMENT #5: One commenter stated that after 38 years of providing services the commenter cannot understand the proposed rules and believes there isn't enough time to review the rules.

RESPONSE #5: This MAR notice was published on October 31, 2013, and the end of the comment period was November 29, 2013. Per 2-4-302, MCA, and ARM 1.3.307, the department allowed the required 28-day timeframe for public comment.

The department cannot respond to the commenter's confusion regarding the proposed rules without specific information as to what the commenter does not understand.

COMMENT #6: One commenter stated that in New Rule I (37.34.989), the requirements for targeted case management do not meet the needs for children's providers, the tools needed for children's case management differ, and are not focused on children. The commenter also stated that targeted case management requirements do not provide the right skills or knowledge for children. The commenter also stated that there is no direct delivery of family intervention which is the current practice in waiver funded children's case management.

RESPONSE #6: All case managers are required to have a 4-year degree and experience or various combinations thereof. The rule establishes the minimum requirements. If there are requirements that the provider believes are pertinent for the staff, the provider may choose to implement specific requirements the provider determines instrumental for the population they serve. The function of family intervention has never been an approved function in waiver funded children's case management and should be provided under another appropriate service category.

COMMENT #7: One commenter stated the rules are poorly written and make no sense, that DDP changes day in and day out and requests the rules be discarded and meet with children's waiver service providers.

RESPONSE #7: The department will proceed with this rulemaking process. The department met with children's waiver service providers on December 2, 2013 per the request of the providers.

COMMENT #8: One commenter requested that waiver funded children's case management and caregiver training and support be combined into one service. The commenter stated that by separating the function, two people have to go into the home and this does not help the family in the right direction.

RESPONSE #8: CMS required the department to unbundle waiver funded children's case management and caregiver training and support into two discrete services. One person may still provide both services to the family if the family chooses that, so long as that person meets the requirements necessary for both services.

COMMENT #9: One commenter stated that the commenter recognizes the need for rules based upon the waiver but the commenter thinks there are unfunded mandates in the proposed rules. The commenter requested a meeting with the department administrators to discuss the requirements.

RESPONSE #9: The department met with the providers on December 2, 2013 in response to this request.



COMMENT #10: One commenter questioned the department's adherence to the administrative rule process stating that the department failed to provide adequate notice as to the changes in the rule as well as insufficient rationale. The commenter stated that this is especially true regarding the training requirements and other requirements included on the matrix.

RESPONSE #10: This MAR notice was published on October 31, 2013; the end of the comment period was November 29, 2013. Per 2-4-302, MCA, and ARM 1.3.307, the department allowed the required 28-day timeframe for public comment. If the commenter has specific questions regarding the statement of reasonable necessity, the department will respond accordingly.

COMMENT #11: One commenter stated that the definition of agency with choice in New Rule II (37.34.908) does not reflect the shared responsibility and authority of the person receiving the service in hiring and managing employees and is inconsistent with the generally accepted definition of agency with choice.

RESPONSE #11: The department will amend the definition to better define agency with choice.

COMMENT #12: One commenter questioned the use of the term "legal representative" as it pertains to self-directed services stating that those persons self-directing services should be able to appoint a "personal representative" without going through the legal process to appoint one.

RESPONSE #12: The department disagrees with this comment. A representative is a person who has been empowered with the authority to act on behalf of someone else to protect the interest of the person and as such, it is important to have a way in which to address concerns if they arise if the person with that authority fails to protect the best interest of the person they represent.

COMMENT #13: One commenter stated that (2) of New Rule III (37.34.909) needs to be applicable for both the agency with choice and employer authority using a financial management service option.

RESPONSE #13: The department agrees with this comment and will amend the language to reflect that (2) of New Rule III (37.34.909) applies to both self-directed options.

COMMENT #14: One commenter stated that the use of "delivery approach" in ARM 37.34.901(2)(e) is unclear and would like clarification from the department, or alternatively, would like it removed from the rule.

RESPONSE #14: In order to clarify the term "delivery approach," in the technical guide entitled, "Application for a §1915(c) Home and Community-Based Waiver, Version 3.5," the Centers for Medicare and Medicaid Services (CMS) state that states have the latitude to:

- (a) determine target groups of Medicaid beneficiaries;
- (b) specify the services that are furnished;
- (c) incorporate opportunities for participants to direct and manage their services;
- (d) determine the qualifications of waiver providers;
- (e) design strategies to assure the health and welfare of a person receiving services;
- (f) manage the waiver to promote cost-effective delivery of services;
- (g) line the delivery of waiver services to other programs; and
- (h) develop and implement quality improvement strategies.

COMMENT #15: One commenter stated that in ARM 37.34.907(5) through (9), the timeframes for which a person has to meet with prospective providers does not allow enough time for the opportunity to do so to take place.

RESPONSE #15: A person who is selected to enter into waiver services is frequently in need of services in a timely manner. The department established the timeframes found in ARM 37.34.907(5) through (9) in order to ensure the process was completed in a timely manner.

COMMENT #16: One commenter noted that in ARM 37.34.907(10) and (11) the priorities for life-threatening physical condition and emergency criteria do not appear to include a person who may potentially critically harm another person or a member of the general public.

RESPONSE #16: The commenter is correct. The purpose of criteria established for priority placement is to provide services to a person who, without services, may cease to exist.

COMMENT #17: One person commented that placement from an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID) is not subject to the selection and entry procedures. The commenter would like clarification.

RESPONSE #17: The commenter is correct. A person exiting ICF/IID is not subject to the selection and entry procedures described in the 0208 waiver. There are 30 waiver slots reserved and funding set aside for that population. The process and procedures in which that takes place for that population are not applicable to the 0208 waiver and therefore are outside of the scope of this rulemaking.

COMMENT #18: One commenter asked for clarification regarding the 1-to-1 staff ratio required in Job Discovery in ARM 37.34.947 and if this is also a requirement for agency-based services.

RESPONSE #18: The department will amend the rule language to state that Job Discovery as a service must be provided with a 1-to-1 staff ratio, regardless of the provider type.

/s/ Cary B. Lund

Cary B. Lund  
Rule Reviewer

/s/ Richard H. Opper

Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State January 21, 2014

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.12.401 pertaining to            )  
laboratory testing fees                 )

TO: All Concerned Persons

1. On November 27, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-658 pertaining to the proposed amendment of the above-stated rule at page 2227 of the 2013 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State January 21, 2014.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New        )  
Rules I through IX regarding debt        )  
collection services provided on behalf        )  
of other agencies        )

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On December 12, 2013, the department published MAR Notice Number 42-2-902 regarding the proposed adoption of the above-stated rules at page 2292 of the 2013 Montana Administrative Register, Issue Number 23.

2. A public hearing was held on January 7, 2014, to consider the proposed adoption. No one appeared at the hearing to testify and no written comments were received. Therefore, the department adopts New Rules I (42.10.501), II (42.10.502), III (42.10.503), IV (42.10.504), V (42.10.505), VI (42.10.506), VII (42.10.507), VIII (42.10.508), and IX (42.10.509), as proposed.

3. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. Select the "Resources" tab at the top of the homepage and then locate the "Adoption Notices" section below. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan  
LAURIE LOGAN  
Rule Reviewer

/s/ Mike Kadas  
MIKE KADAS  
Director of Revenue

Certified to the Secretary of State January 21, 2014

VOLUME NO. 55

OPINION NO. 2

FEES - The Legislature has not authorized the State to collect 9-1-1 fees for prepaid wireless services purchased from independent retail stores;

REVENUE, DEPARTMENT OF - Absent legislative authority, the Department of Revenue cannot promulgate rules to allow for the collection of the 9-1-1 fees on the sales of prepaid wireless purchased from independent retail stores;

STATUTORY CONSTRUCTION - Montana law provides that when a taxing statute is susceptible of two meanings, it is ambiguous and should be strictly construed against the taxing authority and in a light most favorable to the taxpayer;

ADMINISTRATIVE RULES OF MONTANA - Rules 42.31.401, 42.31.406, 42.31.407, 42.31.408, 42.31.409;

MONTANA CODE ANNOTATED - Sections 1-2-10, 10-4-101(24), 10-4-201, (1), (a), (b), (c), (2), (3), (4), 10-4-202, 10-4-203, 10-4-204(3), (4), 15-53-127 to -156, 53-19-311.

HELD: The Legislature has not authorized the State to collect 9-1-1 fees for prepaid wireless services purchased from independent retail stores. Absent this legislative authority, the Department of Revenue cannot promulgate rules to allow for the collection of the fees on these sales.

January 16, 2014

Representative Mark Blasdel  
Speaker of the House  
P.O. Box 291  
Somers, MT 59932-0291

Dear Speaker Blasdel:

You have requested my opinion as to two questions which I have restated below:

1. Does Mont. Code Ann. § 10-4-201 apply to amounts charged for prepaid wireless services that are not purchased pursuant to monthly contracts with providers but instead are purchased on an "as needed" basis by purchasers from independent retail stores?
2. If such fees do not apply under the statute, is the Department of Revenue authorized to adopt administrative regulations to

impose the fees on prepaid wireless services purchased from independent retail stores?

Nine-one-one (9-1-1) is the phone number most people in the U.S. call to get help in a police, fire or medical emergency. A 9-1-1 call goes over dedicated phone lines to the 9-1-1 answering point closest to the caller, and trained personnel then send the emergency help needed. Enhanced 9-1-1, or E9-1-1, is a system which routes an emergency call to the 9-1-1 center closest to the caller, and automatically displays the caller's phone number and address.

The State of Montana Department of Administration, Information Technology Services Division (ITSD), is responsible for administering the State's 9-1-1 Program on behalf of all local 9-1-1 jurisdictions and providing a single point of coordination and support for managing the 9-1-1 Program on behalf of the local jurisdictions. The State of Montana 9-1-1 Program established a statewide emergency 9-1-1 system that provides citizens with rapid, direct access to public safety agencies. The objective of this is to provide more accessible public safety services and reduce the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

Each household or business pays a small monthly fee for 9-1-1 service on each telephone line that appears on phone bills. Fees totaling \$1.00 per access line are imposed on each service subscriber for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services. Providers of these services are required to collect the fees from the subscribers every month.

Prepaid wireless service is not a monthly service but is purchased by subscribers or customers on a "pay-as-you-go" basis, usually in the form of prepaid wireless airtime cards that are sold in various quantities. Prepaid wireless services or cards are also often sold to consumers by independent retailers and many others in thousands of retail outlets. There are no monthly or other periodic bills sent to prepaid wireless users, because the service or cards are paid for entirely in advance in independent retail stores. Once a prepaid wireless handset is activated by the customer, and the wireless airtime is loaded or redeemed into the handset, the service functions like any other standard postpaid or billed wireless service.

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*Does Mont. Code Ann. 10-4-201 apply to amounts charged for prepaid wireless services that are not purchased pursuant to monthly contracts with providers but instead are purchased on an "as needed" basis by purchasers from independent retail stores?*

Central to your first question is whether prepaid wireless service sold through independent retailers clearly fits within the definitions of statute to require companies offering those services to collect the 9-1-1 fees. This question is answered through a basic statutory construction analysis.

A primal rule of statutory interpretation requires courts to apply plain and unambiguous statutes according to their express terms. Mont. Code Ann. § 1-2-10. A court cannot amend, omit or insert terms of the statute. *Id.* "When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation." *In re Marriage of Christian*, 1999 MT 189, ¶ 12, 295 Mont. 352, 983 P.2d 966; *State ex rel. Cobbs v. Montana Dep't of Social and Rehabilitation Servs.*, 274 Mont. 157, 162, 906 P.2d 204, 207 (1995) ("The Court is to effectuate the intent of the Legislature, and if the Legislature's intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation."); *Ravalli County v. Erickson*, 2004 MT 35, ¶ 11, 320 Mont. 31, 85 P.3d 772 ("This Court has repeatedly held that the role of courts in applying a statute has always been to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted . . .").

Montana law provides that when a taxing statute is susceptible of two meanings, it is ambiguous and should be strictly construed against the taxing authority and in a light most favorable to the taxpayer. See *Western Energy Co.*, 297 Mont. 55, 58, 990 P.2d 767, 769 and *Canbra Foods v. Department of Rev.*, 278 Mont. 368, 373, 925 P.2d 855, 857-58 (1996).

The key provision governing imposition and collection of the 9-1-1 fees is Mont. Code Ann. § 10-4-201, which reads as follows:

10-4-201. Fees imposed for services. 9-1-1, (1) Except as provided in 10-4-202:

(a) for basic 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services;

(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; and

(c) for wireless enhanced 9-1-1 services, a fee of 50 cents a month per access line or subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.

(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.



Each of the three fees is established by the Act at the rates of \$.25, \$.25, and \$.50 per month per access line on each service "subscriber", and each fee is imposed on the "amount charged" for three types of services--"exchange access services, wireless telephone service, or other 9-1-1 accessible services".

Plainly interpreted, several pertinent statutory definitions and provisions show the Legislature did not consider prepaid wireless transactions when Mont. Code Ann. § 10-4-201 was enacted:

1. "Subscriber" is defined as an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services. Mont. Code Ann. § 10-4-101(24). In the case of prepaid wireless service, the prepaid customer does not enter into a contract with a wireless provider that is typical with conventional billed wireless subscribers.
2. The 9-1-1 fee is a recurring monthly fee. Mont. Code Ann. § 10-4-201(1). The statutes do not address prepaid wireless services, which is procured when a customer purchases the service, not on a monthly basis. A monthly fee cannot be calculated and applied to a non-monthly service.
3. Montana Code Annotated § 10-4-201(1) further provides that the fee is applicable to the "amount charged" for wireless telephone service. For traditional services, the amount charged is what is collected by the provider on monthly bills, which includes the cost of wireless service plus applicable taxes or fees, including 9-1-1. For prepaid wireless, the amount charged is the retail price paid by the customer in independent retail stores. The provider is not a party to the transactions in independent retail stores, where the "amount charged" is the obligation of the store.
4. The law also requires that the "provider shall collect the fees" that are applicable to the "amounts charged" by such provider. Mont. Code Ann. § 10-4-201(3). It does not require the provider to collect fees in connection with "amounts charged" by independent retailers, because the provider is not a direct party to such transactions. The law imposes no collection duties on non-providers.
5. Finally, the statute calls for providers to remit the fees based on the "net amount billed for the exchange access service fee", which equals the "gross amount billed for such service, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments." Mont. Code Ann.

§ 10-4-204(3), (4). While this section pertains to filing of returns and remitting fees applicable to exchange access lines, the section would necessarily also apply to "wireless telephone service, or other 9-1-1 accessible service". Otherwise, there would be no requirement for providers collecting fees from wireless and other services to file returns and to remit the fees to the state, a result the legislature could not have intended.

While the issue of imposing a duty on prepaid wireless to collect 9-1-1 fees has not been addressed by a Montana court or tax board, Montana cases have looked at whether other statutes specifically mandate that companies collect other types of telecommunication taxes and fees on prepaid wireless.

In 2012, the district court in Montana's First Judicial District held that the Montana retail telecommunications excise tax (RTET) and the telecommunications relay services (TRS) fee did not apply to prepaid wireless service. *Alltel Communications v. Department of Rev.*, 2012 Mont. Dist. LEXIS 28 (2012). With respect to the TRS fee, the issue was whether the statute, which was amended in 2007 to specifically cover prepaid wireless, applied to prepaid wireless prior to the new legislation. The pre-2007 statute created a fund consisting of "all charges billed and collected pursuant to 53-19-311", which assessed a fee on access lines "provided and billed" by certain providers of local exchange and wireless services. Consequently, the provider was required to "bill each customer for the charge" and to transmit "all charges billed and collected" to the state, but the provider was allowed to deduct and retain some of the "total charges billed and collected" to cover compliance costs.

In *Alltel Communications*, the district court rejected the Department of Revenue's claim that the term "bill" means to maintain an accounting system rather than actually sending statements to customers. In addition, the court relied on legislative history, which revealed that HB 611 was passed to explicitly address a prepaid wireless company's duty to collect the TRS fees. The court emphasized:

More persuasive to the Court is the fact that the legislature found it necessary to amend the statute to specifically provide application to prepaid services. "It is a rule of statutory construction that the legislature does not pass meaningless legislation." *In re Seizure of 1988 Chevrolet Van*, 251 Mont. 180, 189, 823 P.2d 858, 859 (1991).

The court came to the same conclusion regarding the RTET tax (Mont. Code Ann. § 15-53-127 to -156), which applied to wireless service "that is billed to the customer." The court rejected the Department of Revenue's arguments that bills are just customer accounts, saying:

The Court considers the more applicable interpretation of the phrase "that are billed to" as requiring application of the tax to situations in which the customer is actually sent a bill.

In a case similar to the *Alltel Communications* decision, the State Tax Appeal Board ruled that the RTET did not apply to the prepaid wireless services of TracFone Wireless, Inc., and rejected assertions by the Department of Revenue that TracFone should conform its business model to the RTET to make the tax apply. *TracFone Wireless v. Montana Dep't of Rev.*, Cause No. MT 2009-3 (2011). The State Tax Appeal Board determined that "there is no justification for the DOR's strained interpretation of clear legislative language" to make the RTET apply to prepaid wireless.

The issue of collecting similar 9-1-1 fees has been addressed in other jurisdictions where, as in Montana, legislatures did not clearly envision prepaid wireless purchases from independent retailers when statutes were adopted. For example, the Texas Supreme Court recently held in *TracFone Wireless v. Commission on State Emergency Communications*, 397 S.W.3d 173, (Tex. 2013), that Texas law did not apply to prepaid wireless because:

. . . the mandatory mechanics of the pre-2010 statute seem nearly impossible to apply coherently to prepaid service. For one thing, it requires providers to collect the fee from customers on a monthly basis, even though prepaid is not sold in monthly increments, and customers use an unpredictable number of months of prepaid service. Similarly, the pre-2010 statute requires that the fee be billed "in the same manner" a service provider otherwise bills its customers, even though prepaid customers are not billed on a recurring basis.

Although an analysis beyond the plain meaning of the Montana statutes is unnecessary, the legislative record likewise clearly shows that the Legislature has not authorized the State to collect 9-1-1 fees for prepaid wireless services purchased from independent retail stores. On two occasions, efforts have been made in the Legislature to address the 9-1-1 collection requirement in situations involving prepaid wireless sales from independent retailers. In 2007, the Department of Revenue lobbied for House Bill 33 to cover prepaid wireless. A Department of Revenue employee who lobbied for the bill at the House Federal Relations, Energy and Telecommunications Committee hearing on January 17, 2007 stated that the bill provided needed "clarification" to address the "problem" the State had in collecting the 9-1-1 fees on prepaid wireless services. The effort to clarify the law was unsuccessful and the bill died.

In 2013, House Bill 509 was introduced to allow prepaid wireless customers to pay 9-1-1 fees in connection with purchases of prepaid wireless cards in independent retail stores. House Bill 509 passed out of the Legislature, but was vetoed by the Governor.

While the Legislature has the authority to authorize the collection of 9-1-1 fees from prepaid wireless services sold by independent retailers, it has not done so. Plainly read, Mont. Code Ann. § 10-4-201 and the related definitions reveal that the 9-1-1 fee collection requirement does not apply to prepaid wireless services. This

conclusion is consistent with the decision in *Alltel Communications* regarding the RTE tax and TRS fee, the State Tax Appeal Board's decision in the *TracFone* case regarding RTET, and with cases from other jurisdictions involving similar state laws.

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*If such fees do not apply under the statute, is the Department of Revenue authorized to adopt administrative regulations to impose the fees on prepaid wireless services purchased from independent retail stores?*

After the failure of HB 33 in the 2007 Legislative Session, the Department of Revenue promulgated new rules (Mont. Admin. R. 42.31.406, 42.31.407, 42.31.408, 42.31.409 and an amendment to Mont. Admin. R. 42.31.401) to accomplish the goals of HB 33. The Department stated that its authority to implement its new rules originated from Mont. Code Ann. § 10-4-203, which states:

Every provider responsible for the collection of the fee imposed by 10-4-201, MCA shall keep records, render statements, make returns, and comply with the rules adopted by the Department of Revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.

As explained in the answer to your first question, Mont. Code Ann. § 10-4-201 does not include prepaid wireless transactions. Consequently, the Department does not have the authority to impose the 9-1-1 fees on prepaid wireless transactions.

THEREFORE, IT IS MY OPINION:

The Legislature has not authorized the State to collect 9-1-1 fees for prepaid wireless services purchased from independent retail stores. Absent this legislative authority, the Department of Revenue cannot promulgate rules to allow for the collection of the fees on these sales.

Sincerely,

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

tcf/jb/jym

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

- Definitions:
- Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.
- Montana Administrative Register (MAR or Register)** is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

- |                  |   |
|------------------|---|
| Known<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |



## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2013. This table includes those rules adopted during the period October 1, 2013, through December 31, 2013, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2013, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2013/2014 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

### ADMINISTRATION, Department of, Title 2

2.5.201	and other rules - State Procurement of Supplies and Services, p. 2332
2.21.1931	and other rules - VEBA Plan, p. 296, 1083
2.21.3103	Payroll Rules, p. 1644, 2233
2.59.301	and other rules - Service of Process - Advertising - Fee Disclosures and Computation of Interest - Credit Insurance - Fees to Public Officials - Receipt Form - Licensee Records Affecting Consumer Loan Licensees, p. 2345
2.59.1001	and other rule - Merger Application Procedures, p. 1375, 1817
2.59.1401	and other rules - Title Lending, p. 2204
2.59.1701	and other rules - Definition of Origination of a Mortgage Loan - Certificate of Bona Fide Not-For-Profit Entity - State-Specific Prelicensing Education - When an Application Is Deemed Abandoned - Definitions - Proof of Experience - Standardized Forms - Reinstatement of Licenses - Reporting Forms for Mortgage Servicers - Licensing Exemptions - Mortgage Loan Originator Testing - Written Exemption Form, p. 1866, 2417

### (Montana Public Employees' Retirement Board)

I-III	Criteria to Be Used by the Board's Actuary to Obtain Information Related to PERS, Its Amortization Period, Its Funding Status, Its Future GABA Rates, and Its Actuarial Equivalent Factors, p. 1466, 2069
-------	---

- 2.43.1501 and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board, p. 1749, 2240
- 2.43.2110 Calculation of Highest Average Compensation or Final Average Compensation, p. 1735, 2235
- 2.43.2114 and other rule - Establishing a Process for the Payment on Employer Contributions on Behalf of Working Retirees, Including Independent Contractors and Other Workers in PERS-Covered Positions, p. 1161, 1519
- 2.43.2114 and other rule - Required Employer Reports Regarding Employer Contributions Paid on Behalf of University Employees Who Elect to Participate in the Optional Retirement Program Rather Than in the Public Employees' Retirement System, p. 1470, 2070
- 2.43.2114 and other rules - Name Change of the Montana University System Optional Retirement Program, p. 1741, 2237
- 2.43.2115 and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board, p. 1738, 2236
- 2.43.2318 and other rule - Guaranteed Annual Benefit Adjustment Coverage - PERS, SRS, and GWPORS, p. 1746, 2238
- 2.43.3502 and other rule - Investment Policy Statement - Defined Contribution Retirement Plan - 457 Deferred Compensation Plan, p. 1165, 1815
- 2.43.5101 Adoption of Deferred Compensation Plan Document and Trust Agreement, p. 1732, 2234

(State Compensation Insurance Fund)

- 2.55.320 and other rule - Classifications of Employments - The Individual Loss Sensitive Dividend Distribution Plan, p. 2200

(State Banking Board)

- I-VII Applications for Shell Banks, p. 1383, 1818

(State Lottery Commission)

- 2.63.201 and other rules - Procedural Rules - Definitions - Retailer Commissions - Business Changes - Prizes - License Requirements and Endorsements - Sale of Scratch Tickets, p. 2358

AGRICULTURE, Department of, Title 4

- 4.5.112 Noxious Weed Management Advisory Council Member Terms, p. 737, 1176
- 4.5.206 and other rules - Modification of the Noxious Weed Priority 1A Category Statement - Changing the Priority Category of Dyer's Woad, Flowering Rush, Eurasian Watermilfoil, and Curlyleaf Pondweed, p. 2014, 2419
- 4.5.313 Noxious Weed Seed Free Forage Fees, p. 1395, 2071

- 4.12.1308 Exterior Plant Health Quarantine for Japanese Beetle, p. 739, 983, 1432  
4.12.1405 and other rules - Plant Inspection Certificate and Survey Costs Fees and Civil Penalties, p. 1399

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

- I-V Patient-Centered Medical Homes, p. 1414, 1686  
6.6.507B and other rules - Medicare Supplements, p. 1228, 1819  
6.6.3702 and other rules - Reporting by Holding Company Systems, p. 1755  
6.10.705 Composition of the Committee, p. 1168, 1824

COMMERCE, Department of, Title 8

- I-IV Implementation of the Montana Indian Language Preservation Pilot Program, p. 891, 1331  
8.2.501 and other rule - Administration of the 2015 Biennium Quality Schools Grant Program-Planning Grants - Administration of the 2015 Biennium Quality Schools Grant Program - Emergency Grants, p. 741, 1178  
8.94.3727 Administration of the 2013-2014 Federal Community Development Block Grant (CDBG) Program, p. 1646, 2074  
8.94.3814 Governing the Submission and Review of Applications for Funding Under the Treasure State Endowment Program (TSEP), p. 889, 1330  
8.97.801 and other rules - Montana Capital Companies, p. 744, 1181  
8.99.511 Microbusiness Finance Program, p. 2209  
8.99.801 and other rules - Implementation of the Primary Sector Workforce Training Grant Program, p. 747, 1182  
8.111.602 and other rule - Low Income Housing Tax Credit Program, p. 750, 1183  
(Montana Coal Board)  
8.101.302 and other rule - Policies of the Montana Coal Board - Applications for Montana Coal Board Grant Assistance, p. 1

EDUCATION, Department of, Title 10

(Montana State Library)

- 2.12.301 and other rules - Montana Land Information Act, p. 1880, 2420

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.8.702 and other rules - Primitive Fishing Access Sites, p. 1565, 2242

(Fish and Wildlife Commission)

- I State Land Access Tax Credit, p. 2212  
12.9.1301 and other rules - Gray Wolf Management, p. 1886

(Fish, Wildlife and Parks Commission)

I Salvage Permits, p. 1300, 2077

12.11.501 and other rules - Recreational Use on Lake Alva, Harpers Lake, and Lake Marshall, p. 755, 1563

ENVIRONMENTAL QUALITY, Department of, Title 17

I-VIII Infectious Waste, p. 1419, 1825

17.36.802 and other rule - Fee Schedules – Changes in Subdivision, p. 1474, 1827

17.50.301 State Solid Waste Management - Resource Recovery Plan, p. 465, 1439

17.56.201 and other rule - Performance Standards for New UST Systems - Upgrading of Existing UST Systems, p. 1428, 1826

(Board of Environmental Review)

I Reclamation - Administrative Requirements for Limited Opencut Operations, p. 2367

17.24.905 Reclamation - Rules Not Applicable to In Situ Coal Operations, p. 2364

17.30.702 and other rules - Department Circular DEQ-4, p. 2529, 90, 895, 2081

TRANSPORTATION, Department of, Title 18

18.5.101 and other rules - Highway Approaches, p. 985, 1442

18.6.202 and other rules - Community Welcome To Signs, p. 2018

18.8.414 and other rules - Motor Carrier Services, p. 759, 1184

18.8.1501 and other rules - Motor Carrier Services Safety Assistance Program, p. 4

JUSTICE, Department of, Title 23

I-IV Chrome for Kids Motorcycle License Plates, p. 1000

23.3.129 and other rules - Collection and Verification of Social Security Numbers for Drivers' Licenses and Identification Cards, p. 996

23.3.505 and other rule - Type 2 Endorsements for Commercial Motor Vehicle Operators, p. 2024, 117

23.12.401 and other rules - Fire Safety - Fireworks - Uniform Fire Code - Equipment Approval, p. 897, 1338, 1832

23.12.601 Fire Safety and Fireworks and Uniform Fire Code, p. 2027, 2422

23.12.1203 and other rules - Montana Law Enforcement Academy Preservice Applicants, p. 2371

23.16.102 and other rules - Large-Stakes Card Game Tournaments - Small-Stakes Card Game Tournaments - Grounds for Denial of Gambling License - Permit or Authorization - Confiscation of Temporary Dealer License - Card Game Tournament Rules - How to Acquire the Official Montana Poker Rule Book - Player Restrictions - Dealer Restrictions -

House Players - Operation of the Games – Table Stakes - Betting - Posting of Rules and Pot Limits - Definitions - Sports Pool Cards - Maximum Price of Sports Pool Chances - Determination of Sports Pool Winners – Prizes - Authorized Sports Pool Prize Value - Sports Tab Game Conduct - Maximum Price of Sports Tab - Sports Tab Game Prize Value - Sports Tab Game Seller Record Keeping Requirements –Decal Inventories - Quarterly Reporting Requirements - Reporting Frequency for Approved Tier I Automated Accounting Systems - General Software Specifications for Video Gambling Machines - Testing Fees - Repairing Machines – Approval - Casino Night Prizes - Web Site Address Access to Forms, p. 1302, 1606  
23.16.1822 and other rule - Increase in Video Gambling Machine Permit Fees, p. 904, 1340

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I-III            Licensure of Professional Employer Organizations, p. 2380  
24.11.204       and other rules - Unemployment Insurance, p. 1649  
24.17.107       and other rule - Prevailing Wage Rates – Districts for Public Works Projects, p. 1479, 1977  
24.29.1401A    and other rules - Medical Services Rules for Workers' Compensation Matters, p. 557, 1185  
24.351.215      and other rules - License Fee Schedule - Split Weighing Allowed, p. 1004, 1984

(Board of Personnel Appeals)

24.26.697       and other rule - Stay of an Informal Investigation, p. 2030

(Board of Chiropractors)

I                Military Training or Experience, p. 10  
24.126.301      and other rules - Definitions - Inactive Status - Continuing Education, p. 809, 1982

(State Electrical Board)

24.141.405      Fee Schedule, p. 907, 1524

(Board of Funeral Service)

24.147.402      and other rules - Mortician Application - Inspections - Examination - Federal Trade Commission Regulations - Licensing - Sanitary Standards - Disclosure Statement on Embalming - Transfer or Sale of Mortuary License - Continuing Education Requirements - Sponsors - Unprofessional Conduct - Mortuary Branch Establishment - Continuing Education Definitions - Conditional Permission to Practice - Renewal of Cemetery License - Branch Facility - Complaint Filing, p. 382, 1191

24.147.2101 Continuing Education Requirements, p. 1894

(Board of Hearing Aid Dispensers)

24.150.401 and other rule - Fees - Military Training or Experience, p. 13

(Licensed Addiction Counselors Program)

I Military Training or Experience, p. 17

24.154.301 and other rules - Fee Schedule - Education Requirements - Application Procedures - Supervised Work Experience - Nonresident Counselor Services - Renewals - Continuing Education - Unprofessional Conduct - Complaint Procedure - Licensure by Endorsement - Inactive Status and Conversion - Supervision - Certification - Examinations, p. 468, 1688

24.154.301 and other rules - Definitions - Supervised Work Experience - Unprofessional Conduct, p. 2215, 118

(Board of Medical Examiners)

24.156.603 Applications for Licensure, p. 576, 1695

24.156.615 and other rules - Renewals - License Categories - Reactivation of License, p. 1897

(Board of Nursing)

24.159.301 and other rules - Definitions - Advanced Practice Registered Nurses - Biennial Continuing Education Credits - Practice and Competence Development - Standards Related to APRNs, p. 490, 1609

(Board of Nursing Home Administrators)

I Military Training or Experience, p. 20

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Discreditable Acts - Alternatives - Exemptions - Renewals - Peer Review Programs - Statement by Permit Holders - Filing of Reports - Profession Monitoring Program Reviews - Enforcement, p. 763, 1527

(Board of Real Estate Appraisers)

I AMC Audit Rules, p. 580, 1201

I Military Training or Experience, p. 23

(Board of Realty Regulation)

24.210.401 and other rule - Fee Schedule, p. 773, 1533

24.210.426 and other rules - Trust Account Requirements - Internet Advertising Rules - General License Administration Requirements, p. 508, 1621

(Board of Speech-Language Pathologists and Audiologists)

24.222.701 and other rules - Supervisor Responsibility - Schedule of Supervision - Functions of Aides or Assistants - Unprofessional Conduct - Functions of Audiology Aides or Assistants, p. 909, 1833

(Board of Veterinary Medicine)

24.225.401 Fee Schedule, p. 814, 1171, 1443

24.225.410 and other rules - Record-keeping Standards - Inspection and Sanitation - Continuing Education - Unprofessional Conduct, p. 2220

#### LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 917, 1341

32.2.405 and other rules - Miscellaneous Fees - Change in Brand Recording - Recording and Transferring of Brands - Rerecording of Brands, p. 927, 1342, 1845

32.3.138 and other rules - Deputy Veterinarians - Domestic Bison, p. 2384

32.3.201 and other rule - Definitions - Additional Requirements for Cattle, p. 777, 1343

32.3.201 and other rules - Official Trichomoniasis Testing and Certification Requirements - Reporting Trichomoniasis - Movement of Animals From Test-Positive Herds - Epidemiological Investigation - Exposed Herd Notification - Common Grazing and Grazing Associations - Penalties, p. 1008, 1446, 1624

32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Special Requirements for Goats - Rabies - Alternative Livestock, p. 1901, 2308

32.3.214 Special Requirements for Goats, p. 1493, 1846

32.15.601 Brand Mortgages - Renewal Requirements - Placement of Digits - Brand Ownership and Transfer - Sale of Branded Livestock - Change in Brand Recording - Equine Breed Registry Mark - Freeze Branding - Recording and Transferring of Brands - Rerecording of Brands - Brand Inspection - County Line Grazing Permits - Import Transportation Permit - Livestock Market Releases - Sheep Permit - Domestic Bison Permit - Duration of Permits, p. 2268

#### NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Water Right Combined Appropriation, p. 1496, 2145

36.12.101 and other rules - Water Right Combined Appropriation, p. 2389

36.12.102 and other rules - Water Right Permitting, p. 931, 1344

36.25.128 and other rules - Cabinsite Lease Site Sales, p. 1783, 2423

#### PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Supports for Community Working and Living Waiver Program, p. 780, 1697

I-XI	Licensure Requirements for Outpatient Centers for Surgical Services, p. 945, 1626
37.5.304	and other rules - Adoption of Federal Statutes for Guardianship, p. 2278
37.12.401	Laboratory Testing Fees, p. 2227
37.30.111	and other rules - Order of Selection Revision and Catchphrase Change in the Vocational Rehabilitation Program, p. 1663, 2309
37.34.201	and other rules - Eligibility, p. 1574, 2034
37.34.301	and other rules - Placement Determinations, p. 1570
37.34.901	and other rules - Medicaid Home and Community-Based Services Program, p. 1906
37.34.901	and other rules - Medicaid Home and Community-Based Service Program for Individuals With Developmental Disabilities, p. 593, 1347
37.34.2003	Discontinuation of Services, p. 332, 1009
37.34.2101	and other rules - Developmental Disabilities Program Staffing, p. 249, 1173, 1499, 1847
37.34.3001	and other rules - Reimbursement for Services, p. 608, 818, 1212
37.40.307	and other rules - Nursing Facility Reimbursement, p. 616, 820, 1103
37.40.705	and other rules - Revision of Fee Schedules for Medicaid Provider Rates, p. 621, 824, 1111, 1215
37.40.830	Hospice Reimbursement, p. 2394
37.57.102	and other rules - Update of Children's Special Health Services, p. 1050, 1449
37.59.101	and other rules - Update of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), p. 1501, 1852
37.70.107	and other rules - Low Income Energy Assistance Program (LIEAP) for the 2013-2014 Heating Season, p. 2050, 126
37.79.304	and other rule - Healthy Montana Kids, p. 1025, 1698
37.80.101	and other rules - Child Care Assistance, p. 64
37.81.304	and other rule - Maximum Big Sky Rx Premium Change, p. 2036, 2438
37.85.105	and other rule - Medicaid Pharmacy Unit Dose Prescription Fee, p. 1579, 1661, 2151
37.85.105	Revision of Fee Schedules for Medicaid Provider Rates in January 2014, p. 88
37.86.2907	and other rules - ICD CM and PCS Services: Adoption of ICD-10, p. 94
37.86.2925	and other rule - Medicaid Inpatient Hospital Services, p. 1794, 2310
37.86.3607	Case Management Services for Persons With Developmental Disabilities, p. 605, 816, 1210
37.86.5101	and other rules - Passport to Health, p. 1016, 1447
37.86.5111	Passport to Health Program, p. 2047, 125
37.87.701	and other rules - Home Support Services and Medicaid Mental Health Services for Youth Authorization Requirements, p. 1667, 2153
37.87.1202	and other rules - Psychiatric Residential Treatment Facility (PRTF) Services, p. 583, 1988



- 37.87.1202 and other rules - Psychiatric Residential Treatment Facility (PRTF) Services, p. 1948, 2433
- 37.87.1313 1915(i) Home and Community-Based Services (HCBS) State Plan Program for Youth With Serious Emotional Disturbance, p. 1798, 2311
- 37.87.2203 Non-Medicaid Services Program, p. 1677, 2160
- 37.91.102 and other rules - Certification of Mental Health Professional Person, p. 2397
- 37.100.101 and other rules - Adult Foster Care Homes (AFCH), p. 26
- 37.104.101 and other rules - Emergency Medical Services (EMS), p. 2039, 122
- 37.106.301 and other rules - Minimum Standards for All Health Care Facilities, p. 1029, 2146
- 37.108.507 HEDIS Components of Quality Assessment Activities, p. 2286

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VII Simplified Regulatory Options for Small Water and Sewer Utilities, p. 1583
- 38.2.5031 Public Utility Executive Compensation, p. 1680
- 38.5.1902 Qualifying Facilities, p. 827, 2161
- 38.5.2202 and other rule - Pipeline Safety, p. 2230, 128

REVENUE, Department of, Title 42

- I Alternative Office Hours in County Offices, p. 1055, 2168
- I Electronic Submission of Documents Through the Business Licensing Portal, p. 1806, 2315
- I-IX Debt Collection Services Provided on Behalf of Other Agencies, p. 2292
- 42.4.301 Residential Property Tax Credits, p. 959, 1450
- 42.11.245 Liquor Advertising, p. 2060, 2444
- 42.12.101 and other rules - Liquor Licenses, p. 2406
- 42.13.111 and other rules - Distilleries, p. 2298
- 42.13.401 and other rules - Wine Importation and Licensee Reporting Requirements, p. 1801, 2312
- 42.18.124 Clarification of Valuation Periods, p. 2062, 2445
- 42.19.401 and other rules - Property Tax Assistance and Exemptions, p. 98
- 42.19.1401 and other rules - Property Records - Local Government Tax Increment Financing Districts, p. 109
- 42.20.102 Applications for Property Tax Exemptions, p. 2064, 2446
- 42.21.113 and other rules - Trended Depreciation Schedules for Valuing Property, p. 1958, 2316
- 42.21.116 and other rules - Personal Property Valuation, p. 1591, 2440

SECRETARY OF STATE, Office of, Title 44

- 1.2.419 Scheduled Dates for the 2014 Montana Administrative Register, p. 1683, 2179

- 1.3.307 Rulemaking Notice Requirements, p. 1517, 1853
- 1.3.309 Rulemaking Notice Requirements, p. 1077, 1537
- 44.3.1101 and other rules - Elections, p. 1059, 1628, 1699
- 44.3.2405 and other rules - Montana Absent Uniformed Services and Overseas Voter Act, p. 1071, 1700
- 44.5.115 Filing Fees for Limited Liability Companies, p. 1080, 1701
- 44.6.111 and other rules - Fees Charged by the Business Services Division - Output Relating to the Farm Bill Master List, p. 522, 1119
- 44.10.331 Limitations on Receipts From Political Committees to Legislative Candidates, p. 1812, 2320
- 44.10.338 Limitations on Individual and Political Party Contributions, p. 1809, 2318
- 44.14.304 Fees Charged by Records and Information Management, p. 1327, 1631

## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in December 2013 appear. Vacancies scheduled to appear from February 1, 2014 through April 30, 2014, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 1, 2014.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Alternative Health Care</b> (Labor & Industry)			
Ms. Molly Danison	Governor	reappointed	12/20/2013
Missoula			9/1/2017
Qualifications (if required): Midwife			
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry)			
Ms. Jennifer Gross	Governor	Dobbins	12/20/2013
Billings			10/1/2015
Qualifications (if required): Public Representative			
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry)			
Ms. Helen Hallenbeck	Governor	Bukowski	12/20/2013
Missoula			7/1/2016
Qualifications (if required): Dispenser with National Certification and Masters			
<b>Board of Veterinary Medicine</b> (Labor and Industry)			
Mr. Lance Hughes	Governor	Not Listed	12/20/2013
Hobson			7/31/2018
Qualifications (if required): Veterinarian			
<b>Historical Records Advisory Council</b> (Board of Education)			
Ms. Ellen Crain	Governor	reappointed	12/20/2013
Butte			10/10/2015
Qualifications (if required): Public Representative			
Ms. Jodie Foley	Governor	reappointed	12/20/2013
Helena			10/10/2015
Qualifications (if required): State Archivist			

## BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Historical Records Advisory Council</b> (Board of Education) cont.			
Ms. Anne L. Foster Huntley	Governor	reappointed	12/20/2013 10/10/2015
Qualifications (if required):	Public Representative		
Ms. Heather Hultman Bozeman	Governor	Scott	12/20/2013 10/10/2015
Qualifications (if required):	Public Representative		
Mr. Jon Ille Hardin	Governor	Reappointed	12/20/2013 10/10/2015
Qualifications (if required):	Public Representative		
Mr. Samuel Meister Missoula	Governor	Reappointed	12/20/2013 10/10/2015
Qualifications (if required):	Public Representative		
Ms. Kristi Dawn Scott Great Falls	Governor	Ellinghausen	12/20/2013 10/10/2015
Qualifications (if required):	Public Representative		
<b>Montana Alfalfa Seed Committee</b> (Agriculture)			
Mr. Tom Matchett Billings	Governor	reappointed	12/21/2013 12/1/2016
Qualifications (if required):	Alfalfa Seed Grower		

## BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Alfalfa Seed Committee</b> (Agriculture) cont.			
Mr. Tom Neibur	Governor	reappointed	12/21/2013
Malta			12/1/2016
Qualifications (if required): Alfalfa Seed Grower			
<b>Montana Arts Council</b> (Education)			
Ms. Tracy Linder	Governor	Secher	12/20/2013
Molt			2/1/2017
Qualifications (if required): Public Representative			
<b>Private Land Public Wildlife Advisory Council</b> (Fish, Wildlife and Parks)			
Mr. Pat Gunderson	Governor	Not Listed	12/20/2013
Glasgow			10/10/2015
Qualifications (if required): BLM Representative Ex-officio Member			
Mr. Chris King	Governor	Reappointed	12/20/2013
Winnett			10/10/2015
Qualifications (if required): Landowner			
<b>State Emergency Response Commission</b> (Military Affairs)			
Major Shawn Hardy	Governor	Coccoli	12/20/2013
Fort Harrison			10/1/2015
Qualifications (if required): National Guard Representative			
<b>Statewide Interoperability Governing Board</b> (Administration)			
Mr. Mike Doto	Governor	Not Listed	12/20/2013
Butte			10/1/2015
Qualifications (if required): Representative of the Montana State Volunteer Firefighters Association			

## BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Interoperability Governing Board</b> (Administration) cont.			
Colonel Jeff Fisher	Governor	Not Listed	12/20/2013
Fort Harrison			10/1/2015
Qualifications (if required): Department of Military Affairs Representative			
Chief Roger Nasset	Governor	Not Listed	12/20/2013
Kalispell			10/1/2015
Qualifications (if required): Representative of Montana Association of Chiefs of Police			
<b>Tourism Advisory Council</b> (Commerce)			
Mr. Matt Ellis	Governor	Kiehn	12/20/2013
Missoula			7/1/2014
Qualifications (if required): Public Representative			

# **VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Architects and Landscape Architects</b> (Labor and Industry)		
Mr. Bayliss Ward, Bozeman	Governor	3/27/2014
Qualifications (if required): registered architect with three years continuous practice		
<b>Board of Dentistry</b> (Labor and Industry)		
Ms. Jennifer Porter, Bozeman	Governor	3/29/2014
Qualifications (if required): dental hygienist		
Dr. Dale R. Chamberlain, Lewistown	Governor	3/29/2014
Qualifications (if required): dentist		
<b>Board of Hail Insurance</b> (Agriculture)		
Mr. Gary Gollehon, Brady	Governor	4/18/2014
Qualifications (if required): public member		
<b>Board of Public Education</b> (Education)		
Ms. Patty Myers, Great Falls	Governor	2/1/2014
Qualifications (if required): resident of District 1 and she identifies herself as a Democrat		
<b>Board of Regents</b> (Education)		
Mr. Todd Buchanan, Billings	Governor	2/1/2014
Qualifications (if required): resident of District 2 and he identifies himself as an Independent		
<b>Board of Water Well Contractors</b> (Natural Resources and Conservation)		
Mr. Jeffrey Herrick, no city listed	Director	3/19/2014
Qualifications (if required): representative on the Board of Water Well Contractors		



**VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Family Support Services Advisory Council</b> (Public Health and Human Services)		
Ms. Sylvia Danforth, Miles City Qualifications (if required): provider representative	Governor	4/9/2014
Ms. Cristin Volinkaty, Missoula Qualifications (if required): provider representative	Governor	4/9/2014
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): language therapist	Governor	4/9/2014
Ms. Novelene Martin, Miles City Qualifications (if required): parent representative	Governor	4/9/2014
Mr. Ronald Herman, Helena Qualifications (if required): agency representative	Governor	4/9/2014
Mr. Verne Beffert, Livingston Qualifications (if required): special education representative	Governor	4/9/2014
Ms. Dawn Piazzzi, Helena Qualifications (if required): agency representative	Governor	4/9/2014
Ms. Beverly Hertweck, Helena Qualifications (if required): agency representative	Governor	4/9/2014
Ms. Danni McCarthy, Helena Qualifications (if required): agency representative	Governor	4/9/2014

# **VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Family Support Services Advisory Council</b> (Public Health and Human Services) cont. Rep. Jean Price, Great Falls Qualifications (if required): legislator	Governor	4/9/2014
Ms. Laura McKee, Billings Qualifications (if required): parent	Governor	4/9/2014
Ms. Elizabeth Jones, Kalispell Qualifications (if required): parent representative	Governor	4/9/2014
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): provider representative	Governor	4/9/2014
Ms. Laura Copp, Bozeman Qualifications (if required): representative for the School for the Deaf & Blind	Governor	4/9/2014
Ms. Brittany McKenzie, Hamilton Qualifications (if required): Head Start/Early Head Start representative	Governor	4/9/2014
Ms. Norma Zelzer, Great Falls Qualifications (if required): family support specialist	Governor	4/9/2014
<b>MSU Northern Local Executive Board</b> (University System) Rep. John L. Musgrove, Havre Qualifications (if required): public representative	Governor	4/15/2014
<b>Montana Arts Council</b> (Governor) Mr. Rick Johnson, Kalispell Qualifications (if required): nominated by an Adolescent Treatment Program	Governor	4/19/2014

**VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Small Business Development Center Advisory Council</b> (Commerce)		
Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	4/3/2014
Mr. Joe McClure, Billings Qualifications (if required): none specified	Director	4/3/2014
Mr. John Cech, Billings Qualifications (if required): none specified	Director	4/3/2014
Mr. Tony Ennenga, Kalispell Qualifications (if required): none specified	Director	4/3/2014
Mr. Kevin Keeler, Helena Qualifications (if required): none specified	Director	4/3/2014
Ms. Carla Lott, Helena Qualifications (if required): none specified	Director	4/3/2014
Ms. Lisa Ballard, Bozeman Qualifications (if required): none specified	Director	4/3/2014
Mr. Dave Glaser, Missoula Qualifications (if required): none specified	Director	4/3/2014
Ms. Carol Cunningham, Polson Qualifications (if required): none specified	Director	4/3/2014

# **VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Small Business Development Center Advisory Council</b> (Commerce) cont. Mr. Peter Christ, Red Lodge Qualifications (if required): none specified	Director	4/3/2014
<b>Montana State University - Billings</b> (University System) Mr. Jeremy Seidlitz, Billings Qualifications (if required): public representative	Governor	4/15/2014
<b>Montana State University - Bozeman</b> (University System) Mr. Bill Bryan, Bozeman Qualifications (if required): public representative	Governor	4/15/2014
<b>Montana State University - Great Falls College of Technology</b> (University System) Mr. Dave Pierce, Billings Qualifications (if required): public representative	Governor	4/15/2014
<b>Private Alternative Adolescent Residential or Outdoor Programs Board</b> (Governor) Rep. Tim Callahan, Great Falls Qualifications (if required): public member	Governor	4/19/2014
Mr. John Santa, Marion Qualifications (if required): representative of a residential adolescent program (large size)	Governor	4/19/2014
Ms. Darcie Kelly, Helena Qualifications (if required): public member	Governor	4/19/2014
Ms. Penny James, Trout Creek Qualifications (if required): representative of a residential adolescent program (medium size)	Governor	4/19/2014

# **VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Alternative Adolescent Residential or Outdoor Programs Board</b> (Governor) cont. Mr. Michael Chism, Thompson Falls Qualifications (if required): representative of a residential adolescent program (small size)	Governor	4/19/2014
<b>Public Employees Retirement Board</b> (Administration) Mr. Patrick McKittrick, Great Falls Qualifications (if required): having experience in investment management	Governor	4/1/2014
Mr. Terrence Smith, Bozeman Qualifications (if required): public employee in the defined contribution plan	Governor	4/1/2014
Mr. Bob Bugni, East Helena Qualifications (if required): experienced in investment management	Governor	4/1/2014
Mr. Wilbert Lee Smith Jr., Great Falls Qualifications (if required): public employee/active in retirement system	Governor	3/19/2014
<b>University of Montana - Helena College of Technology</b> (University System) Mr. Philip Campbell, Helena Qualifications (if required): public representative	Governor	4/15/2014
<b>University of Montana - Missoula</b> (University System) Mayor John Engen, Missoula Qualifications (if required): public representative	Governor	4/15/2014
<b>University of Montana - Montana Tech</b> (University System) Mr. Doug Peoples, Butte Qualifications (if required): public representative	Governor	4/15/2014

# **VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>University of Montana - Western</b> (University System) Ms. Mary Ann Nicholas, Dillon Qualifications (if required): public representative	Governor	4/15/2014
<b>Youth Justice Council</b> (Justice) Judge Pedro Hernandez, Billings Qualifications (if required): representative of law enforcement	Governor	3/6/2014
Ms. Katie Champion, Bozeman Qualifications (if required): representative of private non-profit agencies	Governor	3/6/2014
Mr. Tim Brurud, Havre Qualifications (if required): representative of private non-profit agencies	Governor	3/6/2014
Mr. Larry Dunham, Condon Qualifications (if required): volunteer who works with delinquents	Governor	3/6/2014
Mr. Adam Stern, Livingston Qualifications (if required): local elected official	Governor	3/6/2014
Mr. Nick Korthais, Townsend Qualifications (if required): representative of law enforcement	Governor	3/6/2014
Mr. Roy Tanniehill, Helena Qualifications (if required): representative of law enforcement	Governor	3/6/2014
Ms. Laura Bomboy Singley, Lewistown Qualifications (if required): representative of law enforcement	Governor	3/6/2014

# **VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2014 THROUGH APRIL 30, 2014**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Youth Justice Council</b> (Justice) cont.		
Ms. Jilyn Oliveira, Helena Qualifications (if required): representative of public agencies	Governor	3/6/2014
Ms. Cindy McKenzie, Helena Qualifications (if required): representative of public agencies	Governor	3/6/2014
Ms. Leah Heffelfinger, East Helena Qualifications (if required): youth representative	Governor	3/6/2014
Mr. Nolan Cavanaugh, East Helena Qualifications (if required): youth representative	Governor	3/6/2014
Mr. Chaz McGurn, Helena Qualifications (if required): youth representative	Governor	3/6/2014
Ms. Elinor Nault, Box Elder Qualifications (if required): competency in addressing problems facing youth	Governor	3/6/2014
Ms. Pamela Carbonari, Kalispell Qualifications (if required): competency in addressing problems facing youth	Governor	3/6/2014
Ms. Erika Lindbloom, Lewistown Qualifications (if required): youth representative	Governor	3/6/2014
Mr. Randy Shipman, Dillon Qualifications (if required): representative of public agencies	Governor	3/6/2014