

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On May 9, 2013 the Department of Agriculture published MAR Notice No. 4-14-212 pertaining to the notice of public hearing on the proposed amendment of the above-stated rule at page 739 of the 2013 Montana Administrative Register, Issue Number 9.

2. A public hearing was held at the Department of Agriculture on May 29, 2013. At the hearing, a comment was received stating the quarantine rule MTQ-2013-01 relating to the ARM 4.12.1308 was not distributed with the notification of the proposed amendment to all interested parties. The department will extend the comment period to allow distribution of the new quarantine rule to the interested parties, and allow a significant period for the public and interested parties to view the quarantine rule and allow more time to provide comment. An electronic copy of the amendment and quarantine rule may be viewed on the department's web site at <http://agr.mt.gov/agr/About/ARMchanges>. Comments already received will be addressed during the adoption process of this rulemaking and, therefore, resubmission of those comments is not necessary.

3. On July 11, 2013 at 2:00 p.m., the department will hold a second public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed amendment and to receive any new comments on the above-stated rule.

4. 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 July 8, 2013, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to : Cort Jensen, Department of Agriculture, 302 N Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., July 22, 2013.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.5.103, 18.5.104, 18.5.105,	)	AMENDMENT AND REPEAL
18.5.112 and repeal of ARM)	
18.5.101, 18.5.102, and 18.5.113	)	NO PUBLIC HEARING
pertaining to highway approaches	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 20, 2013, the Department of Transportation proposes to amend and repeal the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on July 11, 2013, to advise us of the nature of the accommodation that you need. Please contact David L. Ohler, Department of Transportation, P.O. Box 201001, Helena, Montana, 59320; telephone (406) 444-6094; fax (406) 444-7206; TDD (406) 444-7696 or (800) 335-7592; or e-mail dohler@mt.gov.

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

18.5.103 DEFINITIONS ~~(1) "Approach" means that section of the highway right-of-way between the outside edge of shoulder and the right-of-way line which is designed as a highway for the movement of vehicles between the highway and the abutting property.~~

~~(2) "Approach flare or radii" means the angle or curve radius connecting the approach to the outside edge of the highway shoulder.~~

~~(3) "Approach transition" means the area from the edge of an urban approach sloped to match the curb and border area elevations.~~

~~(4) "Approach angle" means the angle between the highway centerline and the extended approach centerline measured in a clockwise direction from the highway centerline.~~

~~(5) "Approach width" means the width of the approach excluding flares or transitions measured at right angles to approach centerline.~~

~~(6) "Border area" means the area between the outside edge of shoulder or curblin and the right-of-way line.~~

~~(7) "Corner clearance" (At an intersecting street or highway) means the distance, measured along the outside edge of shoulder or curb line, between the end of intersecting curb radius, edge of pavement of the intersecting highway, or frontage boundary line and the extension of the nearest approach edge, including flares or radii.~~

~~(8) "Department" means the Montana Department of Highways.~~

(9) "~~Distance between approaches~~" means the distance measured along the curb line or outside edge of shoulder between the extensions of the near edges of adjacent approaches, excluding flares.

(10) "~~Flare tangent distance~~" or "~~transition tangent distance~~" means the distance measured along the curb line or outside edge of shoulder, from the extension of the approach edge to the end of the approach flare or transition.

(11) "~~Frontage~~" means the distance a separate property is contiguous to highway right-of-way measured along the curb line or outside edge of shoulder, between frontage boundary lines of the property.

(12) "~~Frontage boundary line~~" means a line perpendicular to the highway centerline that passes through the point of intersection of the property line and the highway right-of-way line.

(13) "~~Joint use approach~~" means an approach shared by two adjacent property owners for service and connection to both their properties.

(14) "~~Plot plan~~" means a sketch to show the District Engineer the approximate location of the approach. It can show the distance from the nearest milepost or station marker. In the case of an approach in an urban area, city streets would be good ties. It should be on 8 1/2" x 13" paper and show the highway right-of-way.

(15) "~~Private approach~~" means an entrance to and/or from a commercial, industrial or residential property.

(16) "~~Property line clearance~~" means the distance measured along the curb line or outside edge of shoulder between the frontage boundary line and the extension of the nearest edge of the approach, including flares or radii.

(17) "~~Public approach~~" means an entrance to and/or from a highway, street, road, alley or other public right-of-way.

(18) "~~Safety zone~~" means the area between the outside edge of shoulder or curb line and the right-of-way.

(19) "~~Setback distance~~" means the horizontal distance measured at right angles to the highway centerline between the right-of-way line and permanent fixtures such as gas pump islands, signs, display stands, buildings, etc. The setback distance should be adequate to provide designated parking on private property.

(20) "~~Sight distance~~" means the length of highway ahead visible to the driver. The minimum sight distance available on a highway should be sufficiently long to enable a vehicle traveling at or near the likely top speed to stop before reaching an object in its path.

(21) "~~State~~" means State of Montana Department of Highways.

(22) The words "shall," "should" and "may" are used to describe specific conditions and in order to clarify their meanings, the following definitions apply:

(a) "Shall" means a mandatory condition.

(b) "Should" means an advisory condition.

(c) "May" means a permissive condition.

(1) "Approach" means that section of the highway right-of-way between the outside edge of shoulder and the right-of-way line which is designed as a highway for the movement of vehicles between the highway and the abutting property.

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

(3) "Person" means an individual, partnership, corporation, organization, or governmental agency.

(4) "Change in use" includes, but is not limited to, changes from residential to commercial, commercial to industrial, residential to industrial, or vice versa; or a change in the volume of traffic or use of an approach.

AUTH: 60-2-201, MCA

IMP: 60-2-201, 60-5-101, 60-5-105, 60-5-107, MCA

18.5.104 INSTRUCTIONS FOR SECURING AN APPROACH PERMIT

(1) Any person wishing to construct a new approach or to modify an existing approach must obtain an approach permit from the department.

(2) Any person proposing a change in use of property served by an existing approach must obtain a new approach permit from the department.

~~(1)~~(3) A request An application for a an approach permit to construct or reconstruct any residential, commercial, industrial, public street or road an approach should shall be made to the appropriate District Engineer district having jurisdiction over the area office. The form can be found on the department's web site at www.mdt.mt.gov.

~~(2)~~(4) The proper applicant for an approach permit is the owner of the property, being served, the contract purchaser or the owner of a long-term lease with the remaining life greater than five years, or their authorized agents. (A real estate sales agent, contractor constructing a building or improvement on the property or a short-term leasee does not ordinarily have authority to agree to the conditions on an approach permit in behalf of the owner of the land.) The application must be signed by the owner of the property.

~~(3)~~(5) A brief description of the proposed work shall be included in the request together with a plot plan and A site plan drawing with sufficient detail shall be provided to the department to show the location of the work; preferably tied to the nearest highway milepost or station marker. The name, address and telephone number of the applicant shall also be included.

~~(4)~~(a) Upon receipt of this request, the District Engineer will arrange for a meeting with the applicant, at which time details of the proposed work will be discussed and the "Driveway Approach Application and Permit" (MTGE 112-A) completed and signed by the applicant. In cases where the District Engineer determines that the approach will have a significant effect, the applicant may be required to include either an Environmental Impact Statement or traffic study with the approach application.

~~(b) The District Engineer shall also confirm that the requested approach will not be constructed within an existing or proposed limited access area.~~

~~(5) The District Engineer, in conjunction with the District Traffic Engineer, is delegated authority to approve curb cuts, public and private approaches serving businesses, residences, and agricultural uses in rural and urban areas without further consultation if the traffic conditions are not congested. In congested areas, usually urban situations, the District Engineer and District Traffic Engineer can request the Manager, Traffic Unit, Helena, for further technical aid. If this is the~~

~~case, the approach should be scaled onto existing plan and profile sheets showing the highway right-of-way and sent to Helena.~~

~~(6) When the appropriate approvals as outlined above have been secured, the District Engineer will distribute approved copies of the permit as follows: original to District Engineer to file; one copy to the applicant.~~

(6) The applicant shall submit an Environmental Checklist Form with the approach permit application. The form can be found on the department's web site at www.mdt.mt.gov.

(7) The department will not review or approve a permit application until all necessary information has been provided to the department.

~~(7)(8) The District Engineer department may, at his discretion, set a time limit for building the requested approach. Failure to construct the approach within the specified time limit shall require the property owner applicant to obtain a new approach permit.~~

~~(8)(9) Construction work on the public right-of-way will not be allowed to commence until an approved permit has been issued as prescribed above.~~

(10) An approach permit will only be granted for property that has legal access to the highway right-of-way.

(11) A decision to grant, deny, or cancel an approach permit is solely within the discretion of the department.

AUTH: 60-2-201, MCA

IMP: 60-2-201, 60-5-101, 60-5-104, 60-5-105, MCA

~~18.5.105 GENERAL REQUIREMENTS (1) Applications. Application for an approach permit shall be made by the owner or contract purchaser, who shall represent all of the parties interests, and such permits shall be only for the bona fide purpose of securing or changing access to his property, but not for the purpose of parking or servicing vehicles on the Department of Highways right-of-way.~~

~~(2) Private approach.~~

~~(a) Private approaches do not necessarily warrant state installed traffic control devices.~~

~~(b) The permittee shall do all construction work and pay all costs in connection with the construction of approaches and their appurtenances on the right-of-way. In areas outside the corporate limits of municipalities, the department may assist in establishing the flow-line grade for drainage structures and finished grades for driveway surfaces or may provide other assistance which the District Engineer agrees to perform, provided that materials are furnished at the site as required.~~

~~(3) Public approach. The permittee shall do all work and pay all costs in connection with construction of approaches and their appurtenances on the right-of-way. In areas outside the corporate limits of municipalities, the department may assist in establishing flow-line grades for drainage structures and finished grades for driveway surfaces or may provide other assistance which the District Engineer agrees to perform.~~

~~(4) Number and arrangements of driveways. The number of approaches should be the minimum number required to adequately serve the needs of the~~

~~adjacent property. Frontage of 100' or less will be limited to one approach. No more than 2 approaches will be granted to any single property tract or business establishment. Exception may be made where the frontage exceeds 500 feet or special conditions exist which may benefit the traveling public. In the case of shopping centers or large traffic generators which have 2 or more approaches, it is desirable to have only one approach on the mainline and the other approach onto the side streets.~~

~~(5) Consolidation. Where the probability exists that several adjacent approaches serving limited frontage of one or more property owners will be needed, provisions should be made to provide a frontage road on the private properties and connected to the highway only at well spaced locations. If the department approved such a system, an approach permit shall be issued to all property owners concerned and shall state that there is an agreement that all properties shall have access to the highway via the frontage road or a joint use driveway system.~~

~~(6) Use. For other than private residential approach applications, buildings both proposed and existing and appurtenances and dimensions thereof shall be indicated on the plans, including a notation as to present use of the buildings and details of internal traffic circulation, parking and traffic signs.~~

~~(7) Construction and reconstruction.~~

~~(a)(1) All The construction of new or modified approaches not installed as part of a construction or reconstruction project shall be the responsibility of the permittee and shall be constructed in conformance with the applicable regulations ~~or~~ and as approved by the department.~~

~~(b) If it is determined by the department that an existing approach which has been destroyed, removed or relocated by the construction, reconstruction or the limiting of access on a section of highway is to be replaced, the approach shall be replaced or reconstructed by the department to a design compatible with these regulations.~~

~~(c) Provisions for the safe and efficient passage and protection of vehicles and pedestrians during the construction of the approach is very important.~~

~~(2) During the progress of the work, the permittee shall erect and maintain such barricades, signs, and other traffic control devices ~~shall be erected and maintained by the permittee~~, as may be deemed necessary by the department.~~

~~(d) No driveway, approach or other improvement constructed on the right-of-way may be relocated or its dimensions altered without a duly executed permit from the department.~~

~~(8) Inspection - The department shall inspect permittee installed approaches at the time of construction and occasionally thereafter.~~

~~(9) Maintenance.~~

~~(a) With regard to permittee installed approaches,~~

~~(3) The permittee shall be responsible for any changes, maintenance, and/or repairs to existing approaches deemed necessary by the department ~~shall be the responsibility of the permittee.~~~~

~~(b)(4) The department reserves the right to may make any changes, additions, repairs, or relocations to any approach or its appurtenances within the highway right-of-way.~~

~~(10) Indemnification.~~

(5) The permittee shall hold harmless the department and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of exercise of his permit.

(11) Limitation. These regulations shall apply on all highways under jurisdiction of the department as defined by law.

(12) Signs. The permittee shall not be permitted to erect any private sign, either fixed or movable, on or extending over any portion of the highway right-of-way. If a marker is considered necessary to delineate an approach, it will be of the standard size, color and mounting height. See page 18-92.

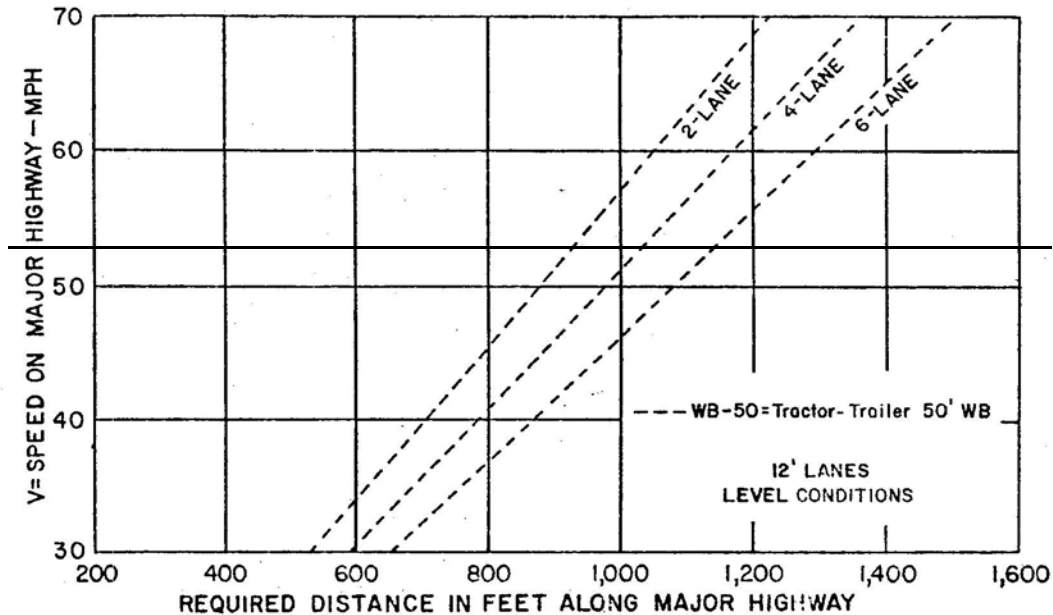
AUTH: 60-2-201, MCA

IMP: 60-2-201 60-5-101, 60-5-104, 60-5-105, MCA

18.5.112 DESIGN REQUIREMENTS

(1) Design Details

(a) The department may authorize or require certain changes in the design limits herein when such changes are necessary to preserve the normal and safe movement of traffic or to permit reasonable access. When physical factors make it impractical to obtain reasonable access within these requirements, appropriate variations may be authorized after review of the proposed approach design by the Chief, Preconstruction Bureau. Sight distance, as controlled by the design speed of the highway, must be maintained in all cases. The following diagram illustrates required sight distances along major highways:



SIGHT DISTANCE AT INTERJECTIONS

(b) Design details should conform to the "Standard" charts or be within the "Range" charts for public approaches, right turn lanes and tapers or private

approaches. These charts are available from the Department of Highways upon request.

~~(2) Location~~

~~(a) Location of approaches shall be selected to first provide maximum safety for highway traffic and secondly, to provide convenience for users of the driveway.~~

~~(b) All parts of entrances and exits, including the radii but not including right-turn lanes and tapers on highway right-of-way, shall be confined entirely within the permittee's property frontage.~~

~~(3)(1) Materials~~— The permittee shall furnish all materials necessary for the construction of the approaches and appurtenances authorized by the permit. This shall include drainage pipe, curb and gutter, concrete sidewalks, topsoil or sod, etc., as required. All materials, including base and surfacing, shall be of satisfactory quality and shall be subject to inspection and approval by the department.

~~(4)(2) Base and Surfacing~~— It shall be the responsibility of the permittee to supply, place, and properly compact the approach fill and base material in accordance with department requirements. All base material shall consist of sand, sand-gravel or sand and rock mixtures containing the sufficient granular fines to fill the voids between the larger gravel and stone, and to permit compaction. In areas without curb and gutter, the approach base and surfacing shall consist of an adequate depth of granular material. When deemed necessary by the department for maintenance or operational purposes, the property owner shall furnish and place bituminous surfacing. This surfacing should normally extend a minimum distance of 12 feet from the outside shoulder line or to the right-of-way line, whichever is less. Any distance to the right-of-way line beyond 12 feet should be gravel surfaced. Infrequently used field approaches may extend a lesser distance. A 5-foot minimum is recommended. Commercial approaches are normally required to be surfaced.

~~(5) Corner Clearance~~ — Corner clearance at the intersection of a state highway with another highway or street approach shall provide for a sufficient distance from the intersection to preserve the normal and safe movement of traffic through it. If the driveway is to be located adjacent to a highway or street intersection, the following requirements shall apply:

~~(a) Curbed~~ — If the intersecting highway is curbed, the end point of curvature of the driveway radius shall be a minimum distance of 20 feet from the end point of curvature of the intersecting highway radius, or a minimum distance of 10 feet inside the abutting property frontage, whichever will provide the greater distance.

~~(b) Uncurbed~~ — If the intersecting highway is uncurbed, the end point of curvature of the driveway radius shall be a minimum distance of 50 feet from the edge of pavement of the intersecting highway, or a minimum distance of 10 feet inside the abutting property frontage, whichever will provide the greater distance.

~~(c) Signalized~~ — At signalized intersections or those determined by the department to have potential for signalization, the near side corner clearance shall be a minimum distance of 30 feet (curbed section) and 40 feet (uncurbed section) from the end point of the driveway radius or inside the abutting property frontage. Far side clearance should be a minimum of 20 feet.

~~(6) Drainage~~

~~(a)(3)~~ Drainage in highway ditches shall not be altered or impeded except as noted under subsection 7 authorized and approved by the department. When

drainage structures are required, size of opening, length of pipe and other design features must be approved by the District Engineer.

(b) All approaches shall either drain away from the traveled way or have sufficient crown to cause all drainage to run to the sides of the approach rather than drain onto the high way. Approaches shall also be constructed so as not to impair drainage within the highway right-of-way, to alter the stability of the roadway subgrade or materially to alter the drainage of the areas adjacent to the highway right-of-way. Culverts and drop inlets shall be installed where required and shall be the type and size specified by the department. Where the border area is regraded and/or landscaped, it shall have sufficient slope, culverts and drop inlets for adequate drainage.

(7) ~~Safety or Buffer Zone~~ - The safety or buffer zone shall include all parts of the highway right-of-way between the curb or shoulder line and the right-of-way line along the permittee's property frontage except the areas contained in the approaches. The safety zones adjacent to an approach may be filled in provided the requirements for drainage and the following requirements are fully complied with:

(a) The filled-in area shall be sufficiently delineated with curbs, guardrails or delineators to prevent use of the area for parking or travel. Reflectorized delineators in rural areas are desirable.

(b) The filled-in area should extend from behind the sidewalks, or where no sidewalk exists, as provided in the permit. Provisions will be made by the department to provide conformance with proposed future improvements to the existing highway section.

(c) When physical barriers are installed within the safety zone, they shall be installed according to the appropriate Department Standard Drawing. The barrier line nearest the highway shall be on line with existing curbs, or established curb line, provided the District Engineer or his authorized representative does not require a greater distance when needed to preserve the safety and utility of the highway or provided conformance with proposed highway improvements.

(d) An attempt should be made to provide an aesthetically pleasing safety zone by grading and seeding where possible. The placing of ground cover and use of other beautification principles is desirable; however, planting trees and shrubs that may in the future restrict sight distance will not be allowed.

(8) ~~Approach Grade~~

(a) The approach grade or slope of the approach shall be constructed to conform to the slope of the roadway shoulder from the edge of the traffic lane to the shoulder line and thence shall be sloped downward within the range of .02 ft./ft. to .08 ft./ft. for a distance necessary to place the low point of the driveway approximately 8 inches below the shoulder elevation.

(b) On curbed sections of the highway, if the maximum allowable slope shown is not great enough to bring the approach to the level of the sidewalk, a depressed sidewalk may be constructed. The connection between the original sidewalk and the depressed sidewalk shall be made through a warped section, the slope of which shall not vary more than 6 percent from the longitudinal grade of the original sidewalk. All new curbs and sidewalks should be constructed to the line and grade of the existing curb or sidewalk with every effort to construct a sidewalk that is

level and free of dips. The maximum gradient limits beyond the outer edge of the sidewalk shall be the same as for uncurbed approaches.

~~(c) Where approaches have side slopes, these slopes should be constructed at a 6:1 ratio or flatter.~~

~~(9) Setback Distance~~

~~(a) The setback distance from the right-of-way line to the nearest edge of gas pump islands, vendor stands, tanks, water hydrants and other improvements should be at least 15 feet. A greater distance is recommended in rural areas where free movement of large vehicles is anticipated.~~

~~(b) Sufficient storage area off the highway right-of-way shall be provided by the landowner to prevent the servicing, stopping and storing of vehicles on the approach and to prevent a vehicle from backing out of an approach onto the traveled way. This requirement is especially applicable to parking lots, gas stations, garages, drive-in cafes, drive-in theatres, truck terminals and other roadside businesses' where a large number of vehicles enter and leave the property in a short period of time. Where necessary to prevent vehicle encroachment on the highway right-of-way, physical barriers may be installed on the right-of-way line. Such barriers are to be installed so as not to constitute a hazard to pedestrian or vehicle traffic.~~

~~(c) Poles, signs, displays, etc., which may restrict the sight distance of a vehicle entering or leaving the establishment, may not be installed between the right-of-way line and the setback line.~~

~~(10) Dedicated Streets~~

~~(a) A dedicated street or roadway is considered to be a public approach and shall comply with all applicable regulations. The only exception is that the width of the approach can be widened to match the street; however, the width of the street surface should be governed by the expected traffic volumes and not the street right-of-way width.~~

~~(b) Developers of subdivisions or housing tracts shall obtain approval from the local unit of government having jurisdiction over the dedicated street or road. The governmental unit shall then submit the approach application to the department.~~

~~(11) High Volume Rural Access - Those access approaches which will generate 25 or more left turning vehicle movements per peak hour entering the facility, or have the obvious potential for expansion to this level, should be designed to the shape and dimensions of department standards for high volume approaches.~~

~~(12) Mail Box Locations - Mail boxes placed along non-controlled access highways are a potential hazard to out-of-control vehicles. This hazard should be minimized by utilizing the following guidelines:~~

~~(a) Mail boxes should be similar in size, weight, and material to boxes approved by the United States Postal Service.~~

~~(b) The supports should not be larger than 4" x 4" timber, 2" pipe or equivalent strength material.~~

~~(c) Unusual post design is discouraged. The weight of any support should not exceed 30 pounds, including the portion in the ground.~~

~~(d) If a concrete foundation is used, the top of the foundation should not project more than 4 inches above ground.~~

~~(e) No more than 3 mail boxes may be mounted on one post.~~

~~(f) Mail boxes should be mounted 38 inches vertically from edge of shoulder to bottom of the box. The lateral clearance should be a minimum of 18 inches and a maximum of 24 inches.~~

AUTH: 60-2-201, MCA

IMP: 60-2-201, 60-5-101, 60-5-104, 60-5-105, MCA

REASON: The Department of Transportation is proposing amendments to Title 18, chapter 5, subchapter 1, Highway Approaches. This is necessary to reflect changes made to design standards since the rules were last amended in 1983. In addition, most of the design standards are being eliminated from the administrative rules, and the standards will be addressed during the permitting process itself rather than by administrative rule. In addition, the rules are being simplified. Finally, the changes reflect the change of the name of the Department of Highways to the Department of Transportation.

4. The department proposes to repeal the following rules:

18.5.101 PREFACE

AUTH: 60-2-201, MCA

IMP: 60-2-201 MCA

18.5.102 GENERAL POLICY

AUTH: 60-2-201, MCA

IMP: 60-2-201, MCA

18.5.113 TYPICAL LAYOUTS

AUTH: 60-2-201, MCA

IMP: 60-2-201, MCA

REASON: The proposed repeal of ARM 18.5.101, 18.5.102, and 18.5.113 is necessary because the rules contain outdated and archaic information that is no longer used by the department in consideration or grant of approach permits. Any language in the rules that is still used by the department has been moved to other rules being amended.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: David L. Ohler, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-6094; fax (406) 444-7206; or e-mail dohler@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

6. If persons who are directly affected by the proposed actions 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 David L. Ohler at the above address no later than 5:00 p.m., July 18, 2013.

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 25 persons based on the number of existing highway approaches.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 23.3.129, 23.3.131, and 23.3.147,)
pertaining to collection and verification)
of social security numbers for drivers')
licenses and identification cards)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 24, 2013, at 11:00 a.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice 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 Justice no later than 5:00 p.m. on July 10, 2013, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.3.129 COLLECTION AND VERIFICATION OF SOCIAL SECURITY NUMBER ON DRIVER'S LICENSE AND IDENTIFICATION CARD APPLICATIONS; PROCESSING OF AN APPLICANT WHO DOES NOT HAVE A SOCIAL SECURITY NUMBER (1) An applicant who has been issued a social security number will be required to provide it to the department upon application for an original driver's license, ~~or~~ upon renewal of a driver's license, or upon application for an identification card if the applicant has not supplied, and the department has not verified, the number in a prior application process.

(2) The social security number supplied by the applicant will be electronically submitted by the department to the Social Security Administration for verification. If the social security number supplied by the applicant to the department is not verified by the Social Security Administration, the applicant must contact the Social Security Administration and correct the problem prior to completion of the application process. ~~provide proof of the social security number by presenting a document listed in (3) that shows the applicant's name and social security number.~~

~~(3) The following are acceptable documents for confirming an applicant's social security number:~~

~~(a) an original social security card issued by the Social Security Administration;~~

~~(b) a U.S. Internal Revenue Service wage and tax statement (W-2 form);~~

- ~~(c) a U.S. or state income tax return from a previous year;~~
- ~~(d) a payroll check or payroll check stub;~~
- ~~(e) a document prepared by a bank, an insurance company, or a brokerage firm;~~
- ~~(f) a letter from the Social Security Administration or computer printout from the Social Security Administration;~~
- ~~(g) an unexpired U.S. military identification card;~~
- ~~(h) a pilot's license;~~
- ~~(i) a medicare or medicaid card;~~
- ~~(j) a health insurance benefits card, if the member number represents the applicant's social security number; or~~
- ~~(k) a Veterans' Administration card with social security number preprinted on the card.~~

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

~~(5) (4)~~ The application process will be terminated and a license or identification card will be denied for incomplete information if an applicant:

(a) and (b) remain the same.

~~(6) (5)~~ An applicant's social security number may not be used as the applicant's driver's license or identification card number or be included as part of the applicant's driver's license or identification card number ~~on a driver's license issued or renewed on or after October 1, 2000, unless the applicant submits a written request for the social security number to be used, in part, as the applicant's driver's license number.~~

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

AUTH: 61-5-125, 61-12-502, MCA

IMP: 61-5-107, 61-5-111, MCA

23.3.131 DOCUMENTING PROOF OF NAME, IDENTITY, AND DATE OF BIRTH FOR ORIGINAL DRIVER'S LICENSE APPLICATIONS

(1) Upon original application for a driver's license or identification card, the applicant must provide proof of identity, including full legal name and date of birth, by presenting one primary document and one or more secondary documents from the lists specified in (2) and (3). An applicant who has a social security number must provide this number and it must verify with the Social Security Administration.

(2) through (5) remain the same.

AUTH: 61-5-125, 61-12-502, MCA

IMP: 61-5-107, 61-5-111, MCA

23.3.147 IDENTIFICATION CARDS (1) remains the same.

(2) An identification card applicant must appear in person at a Montana driver's examination station, submit a completed application, on a form prescribed by the department, and provide proof of his or her identity and date of birth in accordance with ARM 23.3.131 and proof of Montana residence in accordance with ARM 23.3.130. ~~Only a Montana mailing address may be used on an identification~~

card, and if the applicant has separate mailing and residence addresses, both addresses must be included on the application.

(3) through (8) remain the same.

AUTH: 61-12-502, MCA
IMP: 61-12-501, 61-12-502, 61-12-504, MCA

REASON: Section 61-12-502, MCA, requires the department to adopt rules for the issuance of identification cards that comport with the standards for the issuance of a driver's license in the areas of proof of identity, residence, and authorized presence standards. The changes proposed to 23.3.129(1), (5), and (6), 23.3.131(1) ("or identification card") and 23.3.147(2) are suggested to comply with that mandate. In addition, 61-5-107(2), MCA, requires every applicant for a driver's license to provide the department with that applicant's social security number. The changes proposed to 23.3.129(2) and 23.3.131(1) ("An applicant who has a social security number must provide this number and it must verify with the Social Security Administration.") are proposed to ensure the highest potential accuracy of the social security number information. Such verified information protects Montana citizens, deters identity theft and fraud, and authenticates the integrity of these state-issued documents.

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: Peter Funk, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail pfunk@mt.gov, and must be received no later than August 1, 2013.

5. Peter Funk, Department of Justice, 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 department's web site at <https://doj.mt.gov/agooffice/administrative-rules>. 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. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. On June 5, 2013, Rep. David Howard, primary bill sponsor of HB 178, was sent a draft to the e-mail address found in the 2013-2014 Montana Legislative Guide.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State June 10, 2013.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING
Rules I through IV, pertaining to) ON PROPOSED ADOPTION
Chrome for Kids Motorcycle License)
Plates)

TO: All Concerned Persons

1. On July 24, 2013, at 10:00 a.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice 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 Justice no later than 5:00 p.m. on July 10, 2013, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

NEW RULE I GENERAL PROVISIONS (1) There is a state special revenue fund established pursuant to 61-3-415(3), MCA, which shall be known as the Chrome for Kids Wish Fund.

(2) There is a Chrome for Kids Wish Fund Review Committee made up of the administrator of the Motor Vehicle Division, bureau chief of the Driver's Licensing Bureau, and bureau chief of the Records and Driver Control Bureau.

(a) The committee will meet each August to review the amount of funds available for grants in the current fiscal year.

(b) The committee shall notify the public of the amount of grant funds available for that fiscal year by August 30.

(c) Grant applications shall be accepted by the Motor Vehicle Division at any time after the public announcement of funds availability. The deadline for grant submission to the department shall be 60 days after the grant announcement.

(d) The committee will meet within 30 days after the final date of grant submissions to review grant proposals and to award grants for that fiscal year.

(e) Any grant funds awarded must be disbursed and used within two years of the grant award.

AUTH: 61-3-415, MCA
IMP: 61-3-415, MCA

NEW RULE II WISH FUND GRANT CRITERIA (1) Montana-based nonprofit public or private corporations, which have received the IRS 501(c)(3) tax-exempt designation and whose purpose includes assistance to chronically or critically ill Montana children may apply for a Chrome for Kids Wish Fund grant.

(2) Funds must be used to provide a chronically or critically ill Montana child a special wish. No more than 10% of awarded grant funds can be used for program administration by the applicant.

(3) Children's wishes shall be determined by the parents or legal guardians of minor children in consultation with the child and an attending healthcare provider and may be of the following type:

(a) a visit to a special place such as a children's theme park or a city or metropolitan area to experience unique or different food, arts, education, entertainment, and culture;

(b) a trip to participate in or observe a special activity such as a rodeo, baseball game, surfing, or other physical/sports activity;

(c) financial assistance to provide improvement in the quality of life for the critically or chronically ill child as determined by the attending physician and parents/legal guardian; or

(d) a special activity such as a birthday party or celebration of the child's life as determined by parents/legal guardian.

AUTH: 61-3-415, MCA

IMP: 61-3-415, MCA

NEW RULE III APPLICATION REQUIREMENTS (1) Grant applicants must submit the following materials with each grant application:

(a) the legal title of the nonprofit organization and the address of its principal office;

(b) a list of the organization's board members and their occupations;

(c) a copy of the organization's IRS tax-exempt designation;

(d) a name of the proposed grant, the amount of funding requested, the general purpose of the proposed grant, and a specific description of how any awarded grant funds would be used; and

(e) any evidence of public support for the proposed grant.

AUTH: 61-3-415, MCA

IMP: 61-3-415, MCA

NEW RULE IV GRANT REVIEW AND EVALUATION (1) Eligibility of the requesting organization will be evaluated to determine whether it meets the criteria established in statute and these rules.

(2) All applications shall be reviewed and evaluated for project type, funding requested, need for the project, and whether the funding will be used and completed within the two-year period.

(3) Successful grant applicants will be required to provide the Motor Vehicle Division with a report, once grant funds are exhausted, that details specifically how the grant funds were used.

AUTH: 61-3-415, MCA
IMP: 61-3-415, MCA

REASON: Section 61-3-415, MCA, creates a special motorcycle license plate that is used to fund efforts by Montana-based nonprofit corporations that grant wishes to chronically or critically ill Montana children. The Montana Department of Justice is identified as the entity to administer these funds. The statute also grants to the department the authority to adopt rules to identify the entity or entities that may qualify for grants and to establish the criteria that an entity must meet to receive grant funds. These rules are proposed to address those issues.

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: Peter Funk, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail pfunk@mt.gov, and must be received no later than August 1, 2013.

5. Peter Funk, Department of Justice, 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 department's web site at <https://doj.mt.gov/agooffice/administrative-rules>. 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. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. On June 5, 2013, John Brueggeman, primary bill sponsor of HB 767, was sent a draft by e-mail.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State June 10, 2013.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.351.215 license fee) PROPOSED AMENDMENT AND
schedule and the adoption of NEW) ADOPTION
RULE I split weighing allowed)

TO: All Concerned Persons

1. On July 12, 2013, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Weights and Measures Bureau (bureau) of 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 bureau no later than 5:00 p.m., on July 5, 2013, to advise us of the nature of the accommodation that you need. Please contact Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; telephone (406) 443-3289; facsimile (406) 443-8163; TTD (406) 444-2978; Montana Relay 1 (800) 253-4091; or e-mail tlloyd@mt.gov.

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

24.351.215 LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES (1) remains the same.

- (a) each gasoline meter, diesel meter, compressed natural gas dispenser, or fuel oil meter with a listed maximum delivery rate of 20 or less gallons per minute (gpm) \$~~24~~ 27
 - (b) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery rate of between 130 gpm and 20 gpm ~~70~~ 88
 - (c) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery of over 130 gpm ~~83~~ 104
 - (d) each liquefied petroleum gas (LPG) meter ~~102~~ 128
- (2) remains the same.

AUTH: 30-12-202, 82-15-102, 82-15-105, MCA
IMP: 30-12-203, 82-15-105, MCA

REASON: The department determined it is reasonably necessary to amend this rule to increase meter license fees and maintain fees commensurate with associated inspection costs. The 2013 Montana Legislature enacted House Bill 591, which

granted a statutory fee increase for scale license fees to be effective July 1, 2013. Because these license fees only pay for about half of the bureau's costs, it is reasonably necessary for the department to also increase meter license fees in this rule as proposed.

Due to funding shortages, the bureau has not been able to fill vacant positions, replace old outdated equipment, or test meters each year as required by 30-12-203(2), MCA. The department is proposing to increase meter license fees an average of 26 percent, or about the same as scale license fees. This proposed fee increase will affect approximately 550 businesses or meter owners and provide about \$127,000 in additional revenue each year.

4. The proposed new rule provides as follows:

NEW RULE I SPLIT WEIGHING ALLOWED (1) The net weight of any commodity, including raw logs, grain, and quarried rock, transported by any combination of truck, truck tractor, trailer, or semi-trailer, may be determined by split weighing on a scale licensed by the bureau.

(2) There must be a written agreement for loads that are split weighed and it must contain the following information:

- (a) names of both the vendor and purchaser;
- (b) agreement by the vendor and purchaser that the net weights of the loads covered by the agreement will be determined by split weighing;
- (c) scale owner's name and the location of the scale;
- (d) name(s) of the scale operator(s);
- (e) commodity covered by the agreement;
- (f) time period covered by the written agreement; and
- (g) acknowledgement that the weigh tickets clearly indicate the loads were split weighed.

(3) A copy of the agreement must accompany each load that is split weighed.

(4) A copy of the agreement must be submitted to the bureau before any loads are split weighed.

(5) For purposes of this rule, the weigh ticket must also include the following information:

- (a) name of the scale operator;
- (b) date;
- (c) location and address of the scale; and
- (d) clear indication the load was split weighed.

(6) The following information must be on the weigh ticket or on a separate signed supplemental document that must be attached to the weigh ticket and accompany the product while being delivered. The scale operator must certify for each load:

(a) each axle of the vehicle or combination of vehicles rests on a straight surface that is level with the deck of the vehicle scale; or, if not level, the amount by which the deck of the scale is not level does not exceed 1/3 inch per foot of distance between the deck of the vehicle scale and the axle;

(b) the brakes of the vehicle or combination of vehicles were not used while the vehicle was being weighed; and

(c) the transmission of the vehicle or combination of vehicles was in neutral.

AUTH: Chap. 296, section 1, L. of 2013

IMP: 37-12-306, 37-12-406, MCA; Chap. 296, section 1, L. of 2013

REASON: The 2013 Montana Legislature enacted Chapter 296, Laws of 2013 (House Bill 157), an act allowing split weighing of commodities and requiring the department to adopt rules to implement and administer split weighing. The bill was signed by the Governor on April 25, 2013, and will become effective July 1, 2013. The department is now proposing New Rule I to coincide with the new legislative changes and further implement the bill.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; facsimile (406) 443-8163; or e-mail tlloyd@mt.gov, and must be received no later than 5:00 p.m., July 22, 2013.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this bureau. 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 the person who 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 Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; faxed to the office at (406) 443-8163; e-mailed to tlloyd@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 23, 2013, by telephone.

9. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY

/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 June 10, 2013

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.201, 32.3.501, 32.3.502,	)	AMENDMENT
32.3.503, 32.3.505, 32.3.506,)	
32.3.507, and 32.3.508 pertaining to	)	NO PUBLIC HEARING
definitions, official trichomoniasis	)	CONTEMPLATED
testing and certification requirements,)	
reporting trichomoniasis, movement of)	
animals from test-positive herds,)	
epidemiological investigation and)	
exposed herd notification, common)	
grazing and grazing associations, and)	
penalties)	

TO: All Concerned Persons

1. On July 29, 2013, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on July 10, 2013, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.201 DEFINITIONS (1) through (1)(l) remain the same.

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

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

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

32.3.501 DEFINITIONS In this subchapter:

~~(1) "Acceptable specimen" means a specimen determined to be satisfactory for diagnostic testing by an approved laboratory, which was collected by a trichomoniasis-certified veterinarian and submitted with a completed and signed lab form.~~

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

~~(3)~~ (2) "Approved laboratory" means a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) ~~or~~ and a laboratory approved by the state veterinarian to identify T. foetus.

(4) through (6) remain the same but are renumbered (3) through (5).

~~(7)~~ (6) "Commingle" means animals of opposite sex ~~and belonging to the same or different owners~~ in the same enclosure or pasture with a reasonable opportunity for sexual contact.

~~(8)~~ "Complete herd trichomoniasis test" means an official T. foetus test from each nonvirgin bull in the herd.

~~(9)~~ "Direct to a licensed slaughterhouse" means transporting an animal to a state or federally licensed slaughterhouse without unloading prior to arrival at the slaughterhouse.

(7) "Deputy state veterinarian" is defined in ARM 32.3.138(2).

(10) remains the same but is renumbered (8).

~~(11)~~ "Exposed herd notification" means owners or managers of exposed herds have been notified by the Department of Livestock or its agent that the owner's herd may have been exposed to a test positive animal or test positive herd.

~~(12)~~ (9) "Exposed herds" means cattle herds that have, within the previous twelve months, commingled or had cross-fence contact with a test-positive animal or a test-positive herd during the time of potential breeding activity.

~~(13)~~ (10) "Herd" means a group or groups of sexually intact bovines 12 months of age or older under common ownership or supervision that have commingled during the previous 12 months.

(11) "Herd management plan" is a document listing best management practices that will be agreed upon by the producer and approved by the state veterinarian.

~~(14)~~ "Individual trichomoniasis identification" means a Montana Official trichomoniasis tag or other official individual identification as determined by the state veterinarian that must be placed in the ear at the time of the first test.

~~(15)~~ (12) "Licensed trichomoniasis approved feedlot" means any facility which is licensed, annually, by the state veterinarian's office where:

(a) through (d) remain the same.

(e) all feedlots facilities are subject to inspection;

(f) animals may be castrated or spayed at any time ~~and~~ if verified by an accredited deputy state veterinarian.

~~(16)~~ (13) "Negative T. foetus bull" is a bull that T. foetus has not been detected by an official trichomoniasis test, which has not commingled with female cattle since that test, and which qualifies by one of the following:

(a) negative to an official trichomoniasis test and originates from a herd not known to be infected and has had a negative official T. foetus bull test within the last 60 days; or

(b) originates from a test-positive herd, and has tested negative to three consecutive PCR tests at least one week apart with no breeding activity during the intervals between the tests; or

~~(c)~~ has a negative official T. foetus import bull test; or

(d) (c) virgin bull; or

(d) negative on a T. foetus import bull test as determined by the state veterinarian.

(14) "Official trichomoniasis identification" means a Montana official trichomoniasis tag or other official individual identification as determined by the state veterinarian.

~~(17)~~ (15) "Official trichomoniasis test" means the sampling procedure conducted by a deputy state trichomoniasis certified veterinarian of the preputial content of a sexually intact male bovine test-eligible bull and submitted to an approved laboratory to identify T. foetus by three weekly cultures, an individual PCR test, or other test approved by the state veterinarian. Bulls must be sexually rested for at least two weeks prior to the first test sample date. Official trichomoniasis identification must be placed at the time of the first test. Tests expire after 60 days or immediately upon commingling. For the culture tests:

(a) remains the same.

(b) there must be no breeding activity during the intervals between the three tests or between the final of the three negative tests and the time of import, sale, loan, or lease.

~~(18) "Official Trichomoniasis retest" means an official trichomoniasis test conducted at least seven days, but not more than twenty one days apart, after any previous official trichomoniasis test.~~

(19) remains the same but is renumbered (16).

~~(20) (17) "Quarantine" means movement restriction issued by a deputy state veterinarian or an agent of the department that shall be placed on one or more cattle in a positive T. foetus herd. Such restriction shall specify the identity of the animals and the premises where the animals shall be confined per ARM 32.3.108.~~

~~(21) "Quarantine release" means that all quarantined animals have completed all regulatory requirements to eliminate T. foetus infection.~~

~~(22) "Ranch Tag" is a dangle ear tag which is readable without restraint of the animal.~~

~~(23) "Seasonal grazing permit" means a permit issued by the Montana State Veterinarian's office to Montana livestock producers who utilize pasture lands and other livestock operations in one or multiple states that are contiguous with Montana as outlined in ARM 32.3.212(2)(g).~~

(18) "Slaughter channels" mean animals are consigned:

(a) directly to a licensed slaughterhouse; or

(b) directly to a licensed livestock market and then directly to a licensed slaughterhouse; or

(c) directly to a licensed trichomoniasis approved feedlot and then directly to a licensed slaughterhouse.

~~(24) (19) "Test-eligible bull" is any nonvirgin bull 12 months of age or older; or any bull over 24 months of age.~~

~~(25) (20) "Test-positive animal" means an animal in which an approved trichomoniasis laboratory has identified T. foetus by an official trichomoniasis test.~~

~~(26) (21) "Test-positive herd" means a herd of cattle in which an approved trichomoniasis laboratory has identified T. foetus in one or more animals by an official trichomoniasis test, and has not completed a post breeding negative whole herd bull test.~~

(27) remains the same but is renumbered (22).

~~(28) "Trichomoniasis certified veterinarian" means a deputy state veterinarian who has attended a Montana trichomoniasis training and has been certified by the Montana State Veterinarian.~~

~~(29)~~ (23) "Trichomoniasis epizootic area" is an area as defined in ARM 32.3.111 determined to have a higher risk of trichomoniasis and includes ~~the~~ the entirety of:

- (a) Glacier County;
- (b) Pondera County;
- (c) Yellowstone County; and
- (d) Big Horn County.

~~(30) "Unacceptable sample" means a sample that is deemed not diagnostic due to compromised sample quality by an approved laboratory.~~

(31) and (32) remain the same but are renumbered (24) and (25).

(26) "Virgin heifer" means a female bovine less than 12 months of age that has had no potential breeding contact with sexually intact male cattle.

(27) "Whole herd trichomoniasis test" means an official T. foetus test from all test-eligible bulls in the herd.

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

IMP: 81-2-102, MCA

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) Except as provided in ARM 32.2.212, the following ~~±~~ test-eligible bovines must be negative T. foetus bulls, except as provided in ARM 32.3.212. Test-eligible bovines include those:

- (a) imported into Montana; or
- (b) sold, loaned, leased, or otherwise acquired in trichomoniasis epizootic areas in Montana; or
- (c) originating from trichomoniasis epizootic areas in Montana; or
- (d) from exposed herds within 45 days of notification unless otherwise agreed upon by the state veterinarian.

(2) For bovines that require a certificate of veterinary inspection, ~~±~~ the following statement must be on the certificate of veterinary inspection included: "The bull(s) identified on this certificate were are all negative to T. foetus bulls in accordance with ARM 32.3.502(13)." ~~There was no breeding activity between the final test and time of import, sale, loan, lease, or other acquisition in Montana."~~

~~(3) Tests expire within 60 days or immediately upon commingling with female cattle.~~

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

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

32.3.503 REPORTING TRICHOMONIASIS (1) Trichomoniasis is reportable to the state veterinarian's office per ARM 32.3.104. Reports shall include the names of the ~~trichomoniasis certified~~ veterinarian and owner, date tested, animal identification, type of test, and the name of the approved laboratory. All approved

laboratories and ~~trichomoniasis-certified Montana~~ veterinarians conducting trichomoniasis testing of cattle in Montana shall report:

(a) all positive tests to the department within one working day of such test or diagnosis; and

(b) all negative official trichomoniasis tests to the department within one week of such test or diagnosis.

~~(2) All Montana veterinarians conducting trichomoniasis testing must be certified by the state veterinarian's office in accordance with ARM 32.3.502.~~

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

IMP: 81-2-102, 81-2-107, MCA

32.3.505 MOVEMENT OF ANIMALS FROM TEST-POSITIVE HERDS AND EPIZOOTIC AREAS (1) Test-positive animals shall remain quarantined until they are:

are:

~~(a) consigned directly to a licensed slaughterhouse; or~~

~~(b) consigned directly to a licensed livestock market and then directly to a licensed slaughterhouse; or~~

~~(c) consigned directly to a licensed trichomoniasis approved feedlot and then directly to a licensed slaughterhouse~~ consigned to slaughter channels.

(2) Test-positive herds shall be subject to an immediate quarantine and all animals shall remain on the current premises, the owner's premises, or another premises approved by the state veterinarian except:

(a) any individually identified animal consigned ~~directly to a licensed livestock market, slaughterhouse, or licensed trichomoniasis approved feedlot~~ to slaughter channels;

(b) remains the same.

(c) bulls that have been individually tested negative to three consecutive PCR tests ~~at least one week apart~~ as per ARM 32.3.501(14)(b);

(d) remains the same.

~~(e) nonvirgin females over 12 months of age if:~~

~~(i) exposed to only negative T. fetus bulls;~~

~~(ii) documented to be greater than 120 days pregnant by an accredited deputy state veterinarian; or~~

~~(iii) documented to have been isolated from all bulls for greater than 120 days.~~

(3) The owner of test-positive herds shall complete a herd management plan in consultation with a deputy state veterinarian.

~~(3)~~ (4) Release of herd quarantine for male cattle will be when:

(a) All test-positive animals have been removed from the premises and consigned to slaughter channels.

~~(a)~~ (b) All remaining bulls 12 months of age and older, shall individually test negative to three consecutive PCR tests at least one week apart as per ARM 32.3.501(14)(b). Testing must be completed within 45 days of first positive test, unless otherwise approved by the state veterinarian.

(c) An approved individual herd management plan is on file with the department.

(5) Release of quarantine for female cattle will be when:

(a) All nonvirgin female cattle have been:

(i) consigned to slaughter channels; or

(ii) documented to be greater than 120 days pregnant by a deputy state veterinarian; or

(iii) documented to be isolated from all bulls for 120 days, following the removal of a test-positive animals from the premises.

(b) An approved individual herd management plan is on file with the department and all male cattle have been released from quarantine as per ARM 32.3.505(3) and (4).

(c) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on an individual herd management plan.

(4) (6) Release of trichomoniasis test-positive herd status will be when a negative whole herd bull trichomoniasis test is completed following the next breeding season prior to the next breeding season. The test must be completed prior to December 31st or as determined by an individual herd management plan.

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

IMP: 81-2-102, 81-2-108, MCA

32.3.506 EPIDEMIOLOGICAL INVESTIGATION AND EXPOSED HERD

NOTIFICATION (1) Upon receipt of a report of a test-positive animal or a test-positive herd, the department shall conduct an epidemiological investigation and shall ~~issue an exposed herd notification~~ notify all exposed herds.

(2) remains the same.

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

IMP: 81-2-102, 81-2-108, MCA

32.3.507 COMMON GRAZING AND GRAZING ASSOCIATIONS

(1) All herds from multiple sources commingling in common pasture(s) that include male and female cattle shall have all nonvirgin bulls tested with the official T. foetus test as in ~~ARM 32.3.502(1)(a)~~ conducted after the last breeding season prior to next season's turn out. This test is valid for the next year's breeding season unless bulls are commingled with female cattle.

(a) If any bull in the common grazing association is found to be ~~positive a~~ test-positive animal, all test-eligible bulls, will be subject to the requirements set forth in ~~ARM 32.3.505~~ 32.3.502.

(b) Any stray ~~nonvirgin~~ test-eligible bull from an untested group that enters the grazing area of tested animals may be held under quarantine until the bull has one or more official T. foetus test(s) conducted.

(c) remains the same.

(2) Commingled grazing herds may be exempt from annual testing provided that a signed, written health plan including best management practices for all of the individual herds grazing in common exists. This health plan must be approved and signed by both a ~~local~~ deputy state veterinarian and the state veterinarian.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-108, MCA

32.3.508 PENALTIES (1) and (1)(a) remain the same.

(b) up to a \$500 fine to the Department of Livestock ~~for failure to comply with~~
~~ARM 32.3.502~~ (REF 81-2-102(c), MCA);

(c) through (3) remain the same.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-108, MCA

REASON: At the March 2013 meeting, the Montana Board of Livestock directed the animal health division to draft an administrative rule proposal that improves the management of trichomoniasis affected and exposed herds. This proposal makes corrections to language utilized and recognized and defined terms, removes definitions that are no longer in use; clarifies testing, quarantine, and reporting requirements. It also provides clarification of penalties as they apply to all trichomoniasis requirements not just to ARM 32.3.502.

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., July 18, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. July 18, 2013.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected 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 number 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

DEPARTMENT OF LIVESTOCK

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

BY: /s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State June 10, 2013.

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

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

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 12, 2013, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.5101 PASSPORT TO HEALTH PROGRAM: AUTHORITY (1) The department has been granted by the United States Department of Health and Human Services (HHS), as provided in 42 U.S.C. 1396n(b), the authority to establish a primary care case management program for Medicaid ~~recipients~~ members.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-116, MCA

37.86.5102 PASSPORT TO HEALTH PROGRAM: DEFINITIONS

~~(1) "Authorization" means the approval by a primary care provider for the delivery to an enrollee by another provider of a service defined in ARM 37.86.5110. Authorization includes the provision of the primary care provider's Medicaid number, unique physician identifying number (UPIN), or the provider's Passport number to the other treating provider. The primary care provider shall establish parameters of the authorization.~~

(2) through (6) remain the same, but are renumbered (1) through (5).

~~(7)~~ (6) "Enrollee" means a Medicaid recipient member participating in the program and who is enrolled with a primary care provider under the program.

~~(8)~~ (7) "Exempt" means a Medicaid recipients member who are is: eligible for (a) eligible for managed care but are able to establish # that participating would be a hardship to participate in a managed care program.; The department has the discretion to determine hardship and to place time limits on all exemptions on a case by case basis.

(b) enrolled in a health maintenance organization that provides case management services;

(c) unable to find a primary care provider willing to provide case management; or

(d) residing in a county in which there are not enough primary care providers to serve the Medicaid population required to participate in the program. The department has the discretion to determine hardship and to place time limits on all exemptions described in (a) through (d) on a case-by-case basis.

~~(9)~~ (8) "Ineligible" means a Medicaid recipient member who is not allowed eligible to participate in a managed care program, such as the Passport Program, but is eligible for regular Medicaid. The following categories of recipients members are ineligible for the Passport Program:

(a) recipients eligible for Medicaid with a spend down (medically needy) requirement;

(b) recipients living in a nursing home or institutional setting;

(c) recipients receiving Medicaid for less than three months;

(d) recipients who have eligible for Medicare;

~~(e) recipients who live in an area without Medicaid managed care;~~

~~(f)~~ (e) recipients in the Medicaid eligibility subgroup of eligible for Medicaid subsidized adoption assistance or guardianship;

(f) eligible for Medicaid foster care;

~~(g) recipients whose eligibility period is only retroactive Medicaid eligibility;~~

~~(h) recipients who cannot find a primary care provider who is willing to provide case management;~~

~~(i)~~ (h) recipients who are receiving Medicaid home and community-based services for persons who are aged or disabled; and

(i) eligible for Plan First; and

~~(j) recipients who reside in a county in which there are not enough primary care providers to serve the Medicaid population required to participate in the program~~ receiving Medicaid under a presumptive eligibility program.

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

~~(12)~~ (11) "Passport to Health Program" or "the program" means the primary care case management (PCCM) program for Medicaid recipients members.

(13) and (14) remain the same, but are renumbered (12) and (13).

(14) "Primary care provider" means a physician, clinic, or midlevel practitioner other than a certified registered nurse anesthetist that is responsible by agreement with the department for providing primary care case management to enrollees in the Passport to Health Program.

(15) "Referral" means the approval by the Passport enrollee's primary care provider for the delivery by another provider of a service(s) that requires Passport

referral. Referral is the provision of the primary care provider's Passport referral number to the other provider. The primary care provider shall establish the parameters of the referral.

~~(15) (16) "Team eCare" means a program for recipients members identified as excessive or inappropriate utilizers of the Medicaid program as set forth in ARM 37.86.5303. A Medicaid recipient living in a nursing home or institutional setting and a recipient whose eligibility period is limited to a retroactive period only are ineligible for the team care program.~~

~~(16) "Primary care provider" means a physician, clinic, or mid-level practitioner other than a certified registered nurse anesthetist that is responsible by agreement with the department for providing primary care case management to enrollees in the passport to health program.~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-113, 53-6-116, MCA

37.86.5103 PASSPORT TO HEALTH PROGRAM: ELIGIBILITY (1) The department may require a Medicaid recipient member in any of the following Medicaid eligibility groups to enroll and participate in the Passport to Health Program, unless exempted from or ineligible for participation as defined by ARM 37.86.5102(8)(7) or (9)(8):

~~(a) families achieving independence in Montana (FAIM);~~

~~(b) supplemental security income (SSI); or~~

~~(c) SSI-related.~~

~~(2) A Medicaid recipient is exempt from or is not allowed to participate in pPassport to health if the recipient:~~

~~(a) is exempted by the department from participation because of hardship; or~~

~~(b) is enrolled in a health maintenance organization (HMO).~~

~~(3) A nonpregnant, Medicaid recipient 21 years of age or older and eligible for Medicaid as a participant in the TANF welfare demonstration project as required at ARM 37.78.101, et seq., must enroll in an HMO unless an HMO is not available or the available HMOs are at capacity.~~

~~(4) (2) At the department's discretion, Medicaid recipients members who are exempted from participation, as defined in ARM 37.86.5102(8)(7), may elect to enroll in a the Passport to Health Program by choosing a primary care provider from a county that the program serves, unless the recipient member is ineligible.~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-113, 53-6-116, 53-6-117, MCA

37.86.5104 PASSPORT TO HEALTH PROGRAM: ENROLLMENT IN THE PROGRAM (1) The department will notify a Medicaid recipient member required by ARM 37.86.5103 to enroll in the program that the recipient member must enroll in the program.

(2) The recipient member required to enroll in the program must select a primary care provider within 45 days of being notified of the enrollment requirement.

For ~~t~~Team e~~Care p~~Program recipients members, enrollment with a provider will be as required at ARM 37.86.5303.

(3) If the ~~recipient~~ member does not choose a provider within 45 days of the notification, the department ~~may~~ will designate a primary care provider for the ~~recipient~~ member. For ~~t~~Team e~~Care p~~Program recipients members, enrollment with a provider will be as required in ARM 37.86.5303.

~~(4) An enrolling recipient must choose a primary care provider from the list of primary care providers.~~

~~(5) (4)~~ An enrollee may choose a new primary care provider up to once per month. For ~~t~~Team e~~Care p~~Program recipients members, a change of provider may be made in accordance with ARM 37.86.5303. The frequency of a ~~recipient's~~ member's request to change providers will be monitored by the department.

~~(6) (5)~~ Each enrollee in a household may choose a different primary care provider.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-113, 53-6-116, MCA

37.86.5110 PASSPORT TO HEALTH PROGRAM: SERVICES (1) ~~An enrollee must obtain the services in (1)(a), except as provided in (1)(b), directly from or through authorization by the enrollee's primary care provider: An enrollee must obtain services directly from, or through a Passport referral by the enrollee's primary care provider except for:~~

~~(a) Medicaid services requiring authorization:~~

~~(i) inpatient hospital services as defined in ARM 37.86.2901;~~

~~(ii) surgery, physical therapy, occupational therapy, speech therapy, and home health services delivered as outpatient hospital services as defined in ARM 37.86.3001;~~

~~(iii) ambulatory surgical center services as defined in ARM 37.86.1401;~~

~~(iv) physician services as defined in ARM 37.86.101;~~

~~(v) federally qualified health center services as defined in ARM 37.86.4401;~~

~~(vi) rural health clinic services as defined in ARM 37.86.4401;~~

~~(vii) mid-level practitioner services as defined in ARM 37.86.202;~~

~~(viii) the following EPSDT services for enrollees under 21 years of age:~~

~~(A) screening services for children as defined in ARM 37.86.2005;~~

~~(B) chiropractic services as defined in ARM 37.86.2206;~~

~~(C) respiratory therapy as defined in ARM 37.86.2206;~~

~~(D) private duty nursing as defined in ARM 37.86.2206; and~~

~~(E) nutrition services as defined in ARM 37.86.2206.~~

~~(ix) physician services provided through a developmental diagnostic center as defined in ARM 37.86.1401;~~

~~(x) public health departments as defined in ARM 37.86.1401;~~

~~(xi) organ transplantation services as defined in ARM 37.86.4701;~~

~~(xii) physical therapy services as defined in ARM 37.86.601;~~

~~(xiii) occupational therapy services as defined in ARM 37.86.601;~~

~~(xiv) speech therapy services as defined in ARM 37.86.601;~~

~~(xv) home health services as defined in ARM 37.40.701;~~

~~(xvi) podiatry services as defined in ARM 37.86.501; and
(xvii) emergency room services for emergent conditions as defined in ARM 37.82.102(5).~~

~~(b) aspects of services listed in (1)(a) that do not require prior authorization by the enrollee's primary care provider:~~

~~(i) (a) obstetrical services, both inpatient and outpatient;
(ii) inpatient and outpatient services for which the primary diagnosis is one of the following ICD-9 codes: 290 through 302, 306 through 314, or 316;
(iii) (b) family planning services as defined in Social Security Act 1905(a)(4)(c) and ARM 37.86.1701;~~

~~(iv) (c) anesthesiology services;
(v) radiology services;
(vi) (d) pathology services;
(vii) (e) ophthalmology services for medical conditions of the eye;
(viii) (f) immunization;
(ix) (g) testing and treatment for sexually transmitted diseases as defined in ARM 37.114.101;~~

~~(x) (h) testing for lead blood levels;
(xi) (i) dental, vision, and hearing services portion of the screening services for children; and~~

~~(xii) (j) school-based health services;
(2) The primary care provider's authorization is not required for any of the following Medicaid services:~~

~~(a) (k) swing-bed hospital services as defined in ARM 37.40.401;
(b) podiatry services as defined in ARM 37.86.501;
(c) (l) audiology services as defined in ARM 37.86.702;
(d) (m) hearing aid services as defined in ARM 37.86.801;
(e) (n) personal care services as defined in ARM 37.40.1101, except for personal care services as provided pursuant to ARM 37.86.2232;
(f) (o) home dialysis services for end-stage renal disease as defined in ARM 37.40.901;
(p) home infusion therapy services as defined in ARM 37.86.1501;
(g) (q) mental health center services as provided in ARM 37.88.901 and 37.88.905 through 37.88.907;
(h) family planning services provided by a local delegate agency of the Department of Public Health and Human Services as defined in ARM 37.86.1701;
(i) (r) licensed psychologists services provided in ARM 37.88.601, 37.88.605, and 37.88.606;~~

~~(s) substance use disorder services as provided in ARM 37.27.102;
(j) (t) licensed clinical social work services provided in ARM 37.88.201, 37.88.205, and 37.88.206;~~

~~(k) (u) dental services as defined in ARM 37.86.1001;
(l) (v) licensed professional counselor services provided in ARM 37.88.301, 37.88.305, and 37.88.306;~~

~~(m) (w) outpatient drugs services as defined in ARM 37.86.4402 1101;
(n) (x) prosthetic devices, durable medical equipment, and medical supplies as defined in ARM 37.86.1801;~~

- ~~(o)~~ (y) optometric services as defined in ARM 37.86.2001;
- ~~(p)~~ (z) eyeglasses as defined in ARM 37.86.2101;
- ~~(q)~~ (aa) transportation and per diem as defined in ARM 37.86.2401;
- ~~(r)~~ (ab) specialized nonemergency medical transportation as defined in ARM 37.86.2501;
- ~~(s)~~ (ac) ambulance services as defined in ARM 37.86.2601;
- (ad) emergency services as defined in ARM 37.82.102;
- ~~(t)~~ (ae) skilled care facility services as defined in ARM 37.50.105;
- ~~(u)~~ (af) intermediate care facility services as defined in ARM 37.40.106;
- ~~(v)~~ (ag) institution for mental disease services as provided in ARM 37.88.1401, 37.88.1402, 37.88.1405, 37.88.1406, 37.88.1410, 37.88.1411, and 37.88.1420;
- ~~(w)~~ (ah) home and community-based services as defined in ARM 37.40.1406;
- ~~(x)~~ (ai) freestanding dialysis clinic for end-stage renal disease services as defined in ARM 37.86.4201;
- ~~(y)~~ (aj) case management services as defined in ARM Title 37, chapter 86, subchapter 33 37.86.3301;
- ~~(z)~~ nonhospital laboratory and radiology (x-ray) as defined in ARM 37.86.3201;
- (ak) hospital inpatient laboratory and radiology (x-ray);
- ~~(aa)~~ (al) admission for inpatient psychiatric services as provided in ARM 37.88.1101, 37.88.1105 through 37.88.1107, 37.88.1115 and 37.88.1116 37.86.2901, 37.86.2902, 37.87.1201, and 37.87.1203;
- ~~(ab)~~ (am) therapeutic youth group home or therapeutic youth family care services under the EPSDT program; and
- ~~(ac)~~ (an) hospice as defined in ARM 37.40.801 and 37.40.806.
- ~~(ad)~~ dietician as provided in ARM 37.40.1475; and
- ~~(ae)~~ respiratory therapy as provided in ARM 37.40.1463.
- ~~(3)~~ (2) The requirement that specific services not listed in (1)~~(a)~~ be authorized referred by the primary care provider does not replace or eliminate other regulatory or statutory requirements for or limits on obtaining and being reimbursed for Medicaid services.
- ~~(4)~~ (3) Nothing in this rule reduces or otherwise affects the requirements that must be met under ARM 37.88.101, to obtain or access adult mental health services as provided in this chapter.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-116, MCA

37.86.5111 PASSPORT TO HEALTH PROGRAM: PRIMARY CARE PROVIDERS REQUIREMENTS (1) A primary care provider must meet the following requirements:

- (a) enroll as a Medicaid provider;
- (b) provide primary care; and
- (c) sign a ~~p~~Passport contract agreement for primary care case management; and

(d) keep a paper or electronic log, spreadsheet, or other record of all Passport referrals given and received.

(2) remains the same.

(3) Passport providers who reach their specified caseloads of Passport patients, per their provider agreements with the department, will not be assigned additional members. Providers who have reached their capacity will be provided the opportunity to increase their caseloads.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-116, MCA

37.86.5112 PASSPORT TO HEALTH PROGRAM: REIMBURSEMENT

(1) through (3) remain the same.

(4) ~~Services listed in ARM 37.86.5110(1) provided to enrollees are not reimbursable unless provided or authorized by an enrollee's primary care provider in accordance with these rules. Services requiring Passport referral are not~~ reimbursable unless referral is provided by a Passport enrollee's primary care provider.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-116, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to the rules governing the Medicaid Passport to Health program. Rule changes are needed to make the rules consistent with the 1915(b) Waiver, state plan amendments, updates administrative rules and current practices. Substantive updates are needed to enumerate the services exempt from Passport referral necessity; groups of members ineligible for the Passport Program; and provider assignment requirements as well as updates to make the rules easier to use and to revise terminology throughout rules.

ARM 37.86.5101

The term "recipient" has been changed to "member" in this rule and throughout all Passport administrative rules. "Member" will be used in the new Medicaid Management Information System (MMIS) and in all associated references.

ARM 37.86.5102

The proposed change substitutes the term "authorization" with "referral". The term Passport "referral", rather than "authorization" is used to avoid confusion with the "prior authorization" requirement of medical necessity. The proposed amendment updates and more clearly defines exempt and ineligible groups.

ARM 37.86.5103

The proposed amendment eliminates TANF members from the list of members exempted from participation in the Passport Program. TANF members are no longer required to enroll in a Medicaid HMO since none currently exist in Montana. The proposed change updates and more clearly defines who is not eligible for the Passport Program.

ARM 37.86.5104

The term "recipient" has been changed to "member" in this rule. The other proposed change more clearly specifies how a member may choose a primary care provider.

ARM 37.86.5110

The proposed amendment eliminates the list of services that require Passport referral. It is impossible to provide an exhaustive list of services that require referral under Passport. The focus of this rule change is to have a well-defined, specific list of services that do not require Passport referral.

ARM 37.86.5111

The department is proposing to add a requirement for providers to keep a record of all referrals given and received. The department is also proposing a change to prohibit providers from adding members if they have reached their caseload capacity. This provision eliminates pending lists of members from which providers may accept or reject members.

ARM 37.86.5112

The department is proposing changes to specify when a Passport referral is required.

Fiscal Impact

No fiscal impact is anticipated.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

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

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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John Koch
John Koch
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.79.304 and 37.79.501) PROPOSED AMENDMENT
pertaining to healthy Montana kids)

TO: All Concerned Persons

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

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.79.304 SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated ~~July 1, 2013~~ October 1, 2013, which is available on the department's web site at www.hmk.mt.gov.

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

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

IMP: 53-4-1005, 53-4-1109, MCA

37.79.501 COST SHARING PROVISIONS (1) Except as provided in (2) and (3), the parent or guardian of each HMK coverage group enrollee whose family income is greater than 100% of the federal poverty level must pay to the provider of service the following copayments not to exceed the cost of service:

(a) \$25 per admission for inpatient hospital services including hospitalization for physical, mental, and substance abuse reasons;

(b) \$5 per visit for emergency room services;

(c) \$5 per visit for outpatient hospital visits including outpatient treatment for physical, mental, and substance abuse reasons; and

(d) \$3 per visit for physician, APRN, PA, optometrist, audiologist, mental health professional, substance abuse counselor, or other covered health care provider services;

~~(e) \$3 per prescription or refill of an outpatient generic drug;~~

~~(f) \$5 per prescription or refill for an outpatient brand-name drug;~~

~~(g) \$6 per mail order prescription or refill of an outpatient generic drug (90 day supply); and~~

~~(h) \$10 per mail order prescription or refill of an outpatient brand-name drug (90 day supply).~~

(2) No copayment will apply to:

(a) well baby or well child care, including age-appropriate immunizations;

(b) outpatient hospital visits for x-ray and laboratory services;

(c) dental, pathology, radiology, or anesthesiology services;

(d) families with at least one enrollee who is a Native American Indian or Native Alaskan; ~~or~~

(e) extended mental health services for children with a serious emotional disturbance; ~~or~~

(f) pharmacy services.

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

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.79.304 and 37.76.501. These proposed amendments will align the Health Montana Kids (MHK) pharmacy benefits with the Montana Medicaid pharmacy benefits. The rule amendments are required when the pharmacy benefit for HMK is managed by the department instead of a third party administrator.

ARM 37.79.304

The effective date of the HMK Evidence of Coverage document is being updated to October 1, 2013 to reflect the revisions that will be made to the HMK Evidence of Coverage.

ARM 37.79.501

The department is proposing to delete language from the cost sharing provisions of this rule. The proposed deleted language effectively eliminates cost sharing for prescription drugs.

The department is also proposing to add language in order to more clearly describe cost sharing for prescriptions.

Fiscal Impact

There is no anticipated fiscal impact to the HMK program. These changes are expected to be budget neutral.

The proposed rules are estimated to effect 273 in-state pharmacies, 122 out-of-state pharmacies and 23,149 HMK persons.

5. The department intends to adopt these rule amendments effective October 1, 2013.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

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

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

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

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

/s/ John Koch
John Koch
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II, the amendment of) PROPOSED ADOPTION,
ARM 37.106.301, 37.106.302,) AMENDMENT, AND
37.106.306, 37.106.310, 37.106.313,) REPEAL
37.106.314, 37.106.320, 37.106.321,)
37.106.322, 37.106.330, and)
37.106.331, and the repeal of)
37.106.311 pertaining to minimum)
standards for all health care facilities)

TO: All Concerned Persons

1. On July 10, 2013, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: EMPLOYEE FILES (1) The facility is responsible for maintaining a file on each employee and substitute personnel. Employee files may be inspected by the department at any time. If the file is not maintained at the facility it must be available to the department within 24 hours of request.

(2) At a minimum, the employee file must contain:

(a) the employee's name;

(b) a job description signed by the employee;

(c) documentation of employee orientation, signed by the employee; and

(d) a copy of current credentials, certification, or professional licenses required to perform the duties described in the job description.

(3) Volunteers may be utilized at a health care facility, but may not be included in the facility staffing plan in lieu of employees. All volunteers must have a file which is maintained at the facility and documents the following:

- (a) orientation to the facility and its residents; and
- (b) orientation to and training of the duties to be performed.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-106, 50-5-204, MCA

NEW RULE II MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: SECURED CARE UNIT WITHIN A LICENSED LONG-TERM HEALTH CARE FACILITY (1) All rules in this subchapter apply to secured care units.

(2) Special locking arrangements as specified in the 2012 Edition of the NFPA Life Safety Code must be utilized, or an acceptable alternative is based on an equivalency for the automatically releasing, panic hardware required by section 7.2.1.6.1 of the Life Safety Code. Where local authorities having jurisdiction allow, the following conditions apply to this alternative:

(a) All locks must be electromagnetic. The use of mechanical locks, such as a deadbolt is not permitted;

(b) All of the secured doors must have a manual electronic keypad release. The keypad must release the lock(s) on the door(s) after entry of the proper code sequence;

(c) The code sequence must be posted in the vicinity of each keypad and may be inconspicuous;

(d) Provisions must be made for the rapid removal of occupants by such reliable means as the remote control of the locks. Typically this is done by placing a staff-accessible switch at the nurse's station which is capable of releasing all doors; and

(e) All the locks on all secured doors must automatically release upon any of the following conditions:

- (i) the actuation of the approved supervised automatic fire alarm system;
- (ii) the actuation of an approved supervised automatic sprinkler system; and
- (iii) upon the loss of power controlling the lock(s) or locking mechanism.

(3) A secured care unit is considered a separate nursing unit and must have a nurse station located within the secured care unit. At a minimum, the nurse station must provide the following:

- (a) provisions for charting;
- (b) provisions for hand washing;
- (c) provisions for medication storage and preparation;
- (d) telephone access; and

(e) a nurse call system in compliance with table 2.1-4 as found in the 2010 Edition of the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities.

(4) The nurse call system for the secured care unit must report to the secured care unit nurse station, but may also annunciate the call at another location, such as a main nurse station.

(5) Space within the secured care unit used for dining, activities, and day space must be provided at a ratio of 35 square feet per resident, with at least 20 square feet per resident dedicated to the dining space.

(6) No more than two secured care unit residents can reside in a single room.

(7) Each secured care unit resident must have access to a toilet without entering the corridor.

(a) Doors to bathrooms may be removed in private rooms.

(8) A secured care unit must provide for a nourishment station. The minimum standards for a nourishment station as indicated in section 2.5-2.2.6.7 of the 2010 Edition of the AIA Guidelines for Design and Construction of Hospital and Healthcare facilities include:

(a) a work counter;

(b) a refrigerator;

(c) storage cabinets;

(d) space for trays and dishes used for nonscheduled meal service;

(e) an icemaker dispenser unit for patient ice consumption within or in close proximity to the secured care unit;

(f) a sink for preparing nourishments between meals; and

(g) hand washing facilities that are in or immediately accessible from the nourishment station.

(9) A secured care unit must provide secured care unit residents access to large group activities when provided for the general population, such as holiday activities and special events as determined appropriate.

AUTH: 50-5-103, MCA

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

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

37.106.301 DEFINITIONS The following definitions apply in this subchapter:

(1) "Administrator" means the individual responsible for the day-to-day operation of a ~~hospital, skilled or intermediate~~ health care facility. ~~This individual may also be known as, but not limited to, "chief executive officer", "executive director", or "president".~~

(2) ~~"Adult day care center" means a facility as defined in 50-5-101(2), MCA, but does not include day habilitation programs for the developmentally disabled and handicapped or a program offered by a church or senior citizens organization for purposes other than provision of custodial care necessary to meet daily living needs.~~

(3) (2) "Communicable disease" means an illness due or suspected to be due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host directly or indirectly, and includes a dangerous communicable disease. a disease that may be transmitted directly or indirectly from one individual to another.

(4) ~~"Coronary care unit" means an area within the hospital where there is a concentration of physicians, nurses, and other staff who have special skills and experience in providing care for critically ill cardiac patients.~~

~~(5) "Diagnostic" means the art, science or method of distinguishing signs or symptoms of a diseased condition.~~

~~(6) "Hospitalization" means being hospitalized or admitted to a hospital.~~

~~(7) "Hospital record" means written records of admissions, discharges, total patient days, register of operations performed and outpatients treated.~~

~~(8) (3) "Inpatient" means a patient lodged and fed in a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services facility while receiving treatment.~~

~~(9) "Intensive care unit" means an area within the hospital where there is a concentration of physicians, nurses, and other staff who have specialized skills and experience in providing care for critically ill medical and surgical patients.~~

~~(10) "Manager" means the individual responsible for the day-to-day operation of a health care facility, excluding a hospital, skilled or intermediate care facility.~~

~~(11) (4) "Medical record" means a written document which is complete, current, and contains sufficient information for planning a patient's, or resident's, or client's care, reviewing and evaluating care rendered, evaluating a patient's, or resident's, or client's condition, and for providing a means of communication among all persons providing care.~~

~~(12) "Obstetrical service" means an area within the hospital which provides care for a maternity patient including but not limited to labor, delivery and postpartum care.~~

~~(5) "Observation bed or unit" means a bed or unit within a hospital, critical access hospital, specialty hospital, or medical assistance facility that includes ongoing short-term treatment, assessment and reassessment, and is not considered an inpatient bed.~~

~~(a) Patient stays in observation beds are limited to 48 hours during which time a decision must be made whether a patient requires further treatment as an inpatient.~~

~~(b) Observation beds cannot be located in secured care units.~~

~~(13) (6) "Outpatient" means a person receiving health care services and treatment at a facility for a period of less than 24 hours without being admitted as an inpatient to the facility.~~

~~(7) "Secured care unit" means a licensed facility or unit of a facility that provides care in an environment where the doors are secured by delayed egress locks 24 hours a day.~~

~~(14) "Supervise" means to oversee and direct staff by being present in the health care facility.~~

AUTH: 50-5-103, MCA

IMP: 50-5-101, 50-5-103, 50-5-104, 50-5-105, 50-5-106, 50-5-107, 50-5-108, 50-5-109, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-208, 50-5-210, 50-5-211, 50-5-212, 50-5-221, 50-5-225, 50-5-226, 50-5-227, 50-5-228, 50-5-229, 50-5-230 and 50-5-231, MCA

37.106.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY: ADDITION, ALTERATION, OR NEW CONSTRUCTION: GENERAL REQUIREMENTS (1) The provisions of this

subchapter apply to all health care facilities licensed or to be licensed by the department. To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of facility-specific rules, the specific facility rules will apply.

~~(1) (2) Except as may otherwise be provided in (2) of this rule, a health care facility and the construction of, alteration, or addition to a health care facility shall comply with:~~

~~(a) all standards set forth in:~~

~~(i) (a) the 2004 2010 edition of the AIA Guidelines for Design and Construction of Hospitals and Health Care Facilities which the department adopts and incorporates by reference, which sets forth the minimum construction equipment requirements deemed necessary by the state Department of Public Health and Human Services to ensure health care facilities can be efficiently maintained and operated to furnish adequate care. and NFPA 101, "Life Safety Code", 2000 edition, except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953; and at the following web site <http://www.fgiguilines.org/guidelines2010.php>;~~

~~(b) NFPA 101, "Life Safety Code", 2012 edition published by the national fire protection association, which the department adopts and incorporates by reference, which sets forth construction and operation requirements designed to protect against fire hazards. Copies of the cited edition are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953; and at the following web site <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=101&cookie%5Ftest=1>;~~

~~(ii) (c) the 1992 2009 "American National Standards Institute A117.1" which the department adopts and incorporates by reference, which sets forth standards for buildings and facilities providing accessibility and usability for physically handicapped individuals. Copies of the cited edition are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953; and at the following web site <http://webstore.ansi.org/RecordDetail.aspx?sku=ICC+A117.1-2009>;~~

~~(b) (d) the water supply system requirements of ARM 37.111.115; and~~

~~(c) (e) the sewage system requirements of ARM 37.111.116.~~

~~(2) A personal care facility, chemical dependency treatment center, or a free-standing adult day care center:~~

~~(a) must meet all applicable building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his designee;~~

~~(b) meet the water and sewer system requirements in (1)(b) and (c) above.~~

~~(3) A patient or resident may not be admitted, housed, treated, or cared for in an addition or altered area until inspected and approved, or in new construction until licensed.~~

~~(4) The department hereby adopts and incorporates by reference:~~

~~(a) The 2001 Guidelines for Design and Construction of Hospital and Health Care Facilities which set forth minimum construction and equipment requirements deemed necessary by the state department of public health and human services to ensure health care facilities can be efficiently maintained and operated to furnish adequate care.~~

~~(b) NFPA 101, "Life Safety Code 2000 edition", published by the national fire protection association, which sets forth construction and operation requirements designed to protect against fire hazards.~~

~~(c) ARM 37.111.115, which sets forth requirements for construction and maintenance of water supply systems, including supplies of ice.~~

~~(d) ARM 37.111.116, which sets forth requirements for construction and maintenance of sewage systems.~~

~~(e) The 1992 "American National Standards Institute A117.1", which sets forth standards for buildings and facilities, providing accessibility and usability for physically handicapped individuals.~~

~~(f) Copies of the materials cited above are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-201, 50-5-204, MCA

37.106.306 SUBMISSION OF PLANS AND SPECIFICATIONS: A NEW INSTITUTIONAL HEALTH CARE SERVICE FACILITY NEW CONSTRUCTION, ; ALTERATION OR ADDITION TO A HEALTH CARE FACILITY (1) ~~A person who contemplates construction of a new institutional health service and has been issued a certificate of need pursuant to Title 50, chapter 5, part 3, MCA, and ARM Title 37, chapter 106, subchapter 1 shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures.~~

~~(a) At least nine months prior to the time a person commences construction, he shall submit a program and schematic plans to the department. This is a maximum time limit. A person may submit a program and schematic plans as soon as he desires after he receives a certificate of need.~~

~~(i) The program must include the following:~~

~~(A) a narrative description of the rooms or spaces to be included in each department, explaining the functions or services to be provided in each, indicating the size, the number of personnel and the kind of equipment or furniture it will contain;~~

~~(B) for inpatient facilities, a schedule showing total number of beds and number of bedrooms.~~

~~(ii) The schematic plans must include the following:~~

~~(A) single line drawings of each floor which must show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room must be noted;~~

~~(B) the proposed roads and walks, service and entrance courts, and parking must be shown on the plot plan;~~

~~(C) total floor area and number of beds must be noted on the plans.~~

~~(b) At least three months prior to the time a person commences construction, he shall submit working drawings and specifications to the department. This is a maximum time limit. A person may submit working drawings and specifications as soon as he desires after the department has approved his program and schematic plans.~~

~~(i) The working drawings must be complete and adequate for bid, contract and construction purposes and must be prepared for each of the following branches of the work: architectural, structural, mechanical and electrical.~~

~~(A) Architectural drawings must include a plot plan showing all new topography, newly established levels and grades, any existing structures on the site, new buildings and structures, roadways, walks and the extent of the areas to be seeded. Any structures and improvements which are to be removed as part of the work must be shown. A print of the site survey drawing must be included with the working drawings. The architectural drawings must also include the following:~~

~~(I) plan of each basement, floor and roof;~~

~~(II) elevations of each facade;~~

~~(III) sections through building;~~

~~(IV) required scale and full-size details;~~

~~(V) schedule of doors and finishes;~~

~~(VI) location of all fixed equipment;~~

~~(VII) adequate details of any conveying system.~~

~~(B) Structural drawings must include plans for foundations, floors, roofs and all intermediate levels with sizes, sections and the relative location of the various structural members.~~

~~(C) Mechanical drawings must include plans for plumbing, heating, ventilation, air conditioning, and refrigeration.~~

~~(D) Electrical drawings must include the complete power and lighting layout of all electrical systems to be included in the construction and must include telephone layouts, nurse call system, fire alarm system and the emergency electrical system.~~

~~(c) Specifications must supplement the working drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment.~~

~~(d) All plans and specifications must be certified by an engineer or architect licensed to practice in Montana and the certification must state that the plans and specifications are prepared in accordance with the requirements of this subchapter.~~

~~(2) A person who contemplates an alteration or addition to a health care facility which does not qualify as a new institutional health service shall submit plans to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures.~~

~~(a) A person who contemplates an addition to an existing health care facility shall comply with the requirements set forth in (1) of this rule.~~

~~(b) If an alteration to a health care facility is contemplated, a program and schematic plans shall be submitted to the department at least six months prior to commencing construction of the alteration. Within 30 days after this submittal, the~~

department may request a person to comply with the requirements set forth in ARM 37.106.306(1)(b).

~~(c) The department's approval of an alteration or addition shall terminate one year after issuance.~~

(1) Prior to beginning construction of a new health care facility or before construction of an addition or alteration to a health care facility, the following plans and specifications must be submitted to the department for approval:

(a) schematic plans which include but are not limited to:

(i) single line drawings of each floor;

(ii) the name of each room and the relationship of the various departments or services to each other and the room arrangement in each department must be noted;

(iii) total floor area and number of beds must be noted on the plans;

(iv) the proposed roads and walks, service and entrance courts, and parking must be shown on the site plan; and

(v) if requested by the department, submission of a narrative regarding a specific schematic function to clarify and provide additional information.

(b) the plans must be complete and adequate for bid, contract, and construction purposes, and include but are not limited to a complete set of the following:

(i) civil;

(ii) landscape;

(iii) architectural;

(iv) structural;

(v) mechanical;

(vi) plumbing;

(vii) electrical; and

(viii) special systems which include, but are not limited to, nurse call systems, fire alarms systems, and secured units.

(c) specifications supplementing the working drawings to fully describe types, sizes, capacities, workmanship, finishes, and other characteristics of all materials and equipment.

(2) All submitted plans and specifications must be stamped by an engineer or architect licensed to practice in Montana.

(3) The department's approval of an alteration or addition to a health care facility shall terminate one year after issuance or upon completion and acceptance of the project.

(a) A six-month extension is permitted upon request. The request must verify that plans are still the same and no changes have been made to the specifications.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-201, 50-5-204, MCA

37.106.310 LICENSING: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE ~~(1) A person shall comply with the following procedures when applying to the department for a license:~~

~~(a) A person shall submit a completed license application form to the department, at least 30 days prior to the opening of a facility and annually thereafter. A person can obtain a license application form from the department.~~

~~(b) A completed license application form must contain the following information:~~

~~(i) the name and address of the applicant if an individual; the name and address of each member of a firm, partnership, or association; or the name and address of each officer if a corporation;~~

~~(ii) the location of the facility;~~

~~(iii) the name of the person or persons who will administer, manage or supervise the facility;~~

~~(iv) the number and type of patients or residents for which care is provided;~~

~~(v) the number of employees in all job classifications;~~

~~(vi) a copy of the contract, lease agreement or other document indicating the person legally responsible for the operation of the health care facility if the health care facility is operated by a person other than the owner; and~~

~~(vii) designated name of health care facility to be licensed.~~

~~(A) The designated name of the health care facility may not be changed without first notifying the department in writing.~~

(1) A completed license application form must be submitted to the department.

(a) The application must be obtained from the department.

(b) The administrator or designee of the health care facility must sign the completed license application form.

~~(c) Each application form must be accompanied by the applicable license fee:~~

~~(i) \$20 license fee for a health care facility with 20 beds or less;~~

~~(ii) \$1 per bed for a health care facility with 21 beds or more.~~

~~(d) The owner or operator of a health care facility shall sign the completed license application form.~~

~~(2) On receipt of a new or renewal license application, the department or its authorized agent shall will inspect the health care facility to determine if ~~the proposed staff is qualified and~~ the facility meets the minimum regulatory standards set forth in this subchapter and other rules specific to the facility type as applicable. If minimum standards are met and the proposed staff is qualified, the department shall ~~issue a license for one year.~~~~

(3) If minimum regulatory standards are met and the proposed staff is qualified, the department may issue a license for periods of up to three years.

(a) A three-year license may be offered to any facility:

(i) that has received a deficiency-free survey;

(ii) that has achieved accreditation by a recognized accrediting organization;

or

(iii) that has received a survey from another recognized department entity and the results of that survey determine that the facility meets the minimum requirements for issuance of a license.

(b) A two-year license may be offered to any facility:

(i) that has received minor deficiencies, but those deficiencies do not significantly affect or threaten the health, safety, and welfare of any facility patient or resident.

(c) A one-year license may be offered to any facility:

(i) that has been in operation for less than one year;

(ii) upon a change in ownership; or

(iii) that has received deficiencies within the preceding 12 months that threaten the health, safety, and welfare of residents or staff.

~~(a) A patient or resident may not be admitted or cared for in a health care facility unless the facility is licensed.~~

~~(b) (4) Licensed premises must be open to inspection by the department or its authorized agent and access to all records must be granted to the department at all reasonable times.~~

~~(c) The department may issue a provisional license for a period less than one year if continued operation of the health care facility will not result in undue hazard to patients or residents or if demand for the accommodations offered is not met in the community.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-202, 50-5-203, 50-5-204, MCA

37.106.313 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES:

COMMUNICABLE DISEASE CONTROL (1) All health care facilities shall develop and implement an infection prevention and control program. At a minimum, the facility shall must develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control which must include, but are not be limited to; ~~procedures to identify high risk individuals and what methods are used to protect, contain or minimize the risk to patients, residents, staff and visitors.~~

(a) procedures to identify high risk individuals; and

(b) the identification of methods used to protect, contain, or minimize the risk to patients, residents, staff, and visitors.

~~(2) The administrator, or designee or infection control officer, shall will be responsible for the direction, provision, and quality of infection prevention and control services.~~

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.314 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES:

MEDICAL RECORDS (1) A health care facility shall must initiate and maintain by ~~storing in a safe manner and in a safe location~~ a safe, secure, and confidential medical record for each patient, and resident, or client.

(2) A health care facility, excluding a hospital, shall retain a patient's, or resident's, or client's medical records for no less than five six years following the date of the patient's, or resident's, or client's discharge or death, or upon the closure of the facility.

~~(3) A medical record may be microfilmed or preserved via any other electronic medium that yields a true copy of the record if the health care facility has the equipment to reproduce records on the premises.~~

~~(4) A signature of a physician may not be stamped on a medical record unless there is a statement in the facility administrator's or manager's file signed by the physician stating that the physician is responsible for the content of any document signed with his rubber stamp.~~

AUTH: 50-5-103, ~~50-5-404~~, MCA

IMP: 50-5-103, 50-5-106, 50-5-204, ~~50-5-404~~, MCA

37.106.320 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: PHYSICAL PLANT AND EQUIPMENT MAINTENANCE (1) Each facility ~~shall~~ must have a written maintenance program describing the procedures ~~that must be utilized by maintenance personnel~~ to keep the building, grounds, and equipment in good repair and free from hazards.

(2) A health care facility ~~shall~~ must provide housekeeping services on a daily basis.

(3) All electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition.

(4) Floors must be ~~covered with an easily cleanable covering; e.g., resilient flooring or ceramic tile~~ kept clean and in good repair at all times. ~~This covering must be cleaned daily.~~

~~(5) Carpets are prohibited in bathrooms, kitchens, laundries, or janitor closets.~~

~~(6)~~ (5) Walls and ceilings must be kept in good repair and be of a finish that can be easily cleaned.

~~(7)~~ (6) Every facility must be kept clean and free of odors. Deodorants may not be used for odor control in lieu of proper ventilation.

~~(8)~~ (7) The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F.

AUTH: 50-5-103, ~~50-5-404~~, MCA

IMP: 50-5-103, 50-5-204, ~~50-5-404~~, MCA

37.106.321 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: ENVIRONMENTAL CONTROL (1) and (2) remain the same.

~~(3) A health care facility shall develop and follow a written infection control surveillance program describing the procedures that must be utilized by the entire facility staff in the identification, investigation, and mitigation of infections acquired in the facility.~~

~~(4)~~ (3) Cleaners used in to cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides with current EPA registration for that purpose.

~~(5)~~ (4) Cleaning devices used for lavatories, toilet bowls, showers, or bathtubs may not be used for other purposes. Those ~~utensils~~ tools used to clean toilets or urinals must not be allowed to contact other cleaning devices.

~~(6) Dry dust mops and dry dust cloths may not be used for dusting or other cleaning purposes. Treated mops, wet mops, treated cloths, moist cloths or other means approved by the department which will not spread soil from one place to another must be used for dusting and cleaning and must be stored separately from the cleaning devices described in (5) above.~~

~~(7)~~ (5) A minimum of 10 foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) general lighting in food preparation areas must be a minimum of 50 foot-candles of light; and

(d) hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.322 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES:

DISASTER PLAN (1) A All health care facility's facilities shall must develop a written disaster plan in conjunction with other emergency services in the community which must include a procedure that will be followed in the event of a natural or man-caused disaster. as follows:

(a) skilled nursing facilities (long-term care), outpatient centers for primary care, outpatient centers for surgical services, critical access hospitals, hospitals, residential hospice facilities, inpatient hospice facilities, and infirmaries must develop a written disaster plan in conjunction with other emergency services in the community;

(b) these procedures must be developed such that they can be followed in the event of a natural or man-caused disaster.

(2) A The health care facility facilities identified in (1) must shall conduct a drill review or physical exercise of such procedures at least once a year. After a drill, review or exercise a health care facility shall prepare and retain on file for a minimum of three years a written report including, but not limited to, the following:

(a) date and time of the drill review or exercise;

(b) the names of staff involved in the drill review or exercise;

(c) the names of other health care facilities, if any, which were involved in the drill review or exercise;

(d) the names of other persons involved in the drill review or exercise;

(e) a description of all phases of the drill procedure and suggestions for improvement; and

(f) the signature of the person conducting the drill review or exercise.

(3) Adult day care facilities, adult foster care homes, assisted living facilities, chemical dependency treatment centers, end-stage renal dialysis facilities, intermediate care facilities for the developmentally disabled, mental health centers, outdoor behavioral facilities, residential treatment facilities, retirement homes, and

specialty mental health facilities must develop a written disaster plan for their facility, and conduct a documented review of the disaster plan with all facility staff annually. This documentation must be maintained at the facility for a minimum of three years. The disaster plan must include:

(a) plans for remaining at the facility during and subsequent to the disaster. Plans must include such elements as acquisition of additional blankets, water, food, etc.; and

(b) plans for resident evacuation and identification of at least one off-site evacuation point. A written agreement must be maintained in the facility record and updated annually.

(4) Fire drills must be conducted at all health care facilities.

(a) health care facilities that house patients or residents must conduct at least four fire drills annually, no closer than two months apart, with at least one drill occurring on each shift. Drill observations must be documented and maintained at the facility for at least two years. The documentation must include:

(i) location of the drill;

(ii) documentation that identifies participating staff;

(iii) problems identified during the drill;

(iv) steps taken to correct such problems; and

(v) signature of the individual responsible for the day-to-day operation of the health care facility.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.330 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: WRITTEN POLICY AND PROCEDURE (1) A current written policy and procedure manual that describes for all services provided in a the health care facility must be developed, implemented, and maintained at the facility. The manual must be available to staff, residents and visitors and followed by all must be complied with by all facility personnel and its agents. Policies and procedures must be reviewed at least annually by either the administrator or the medical director with written documentation of the review.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.331 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: LAUNDRY AND BEDDING (1) If a health care facility processes its laundry on the facility site, it must:

(a) set aside and utilize use a room solely for laundry purposes;

(b) equip the laundry room with a at least one mechanical washer and hot air tumble dryer, (or additional machines if necessary to handle the laundry load), handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160°F (71°C) during each use;. If the laundry water temperature is less than 160°F,

chemicals and detergent suitable to the water temperature and the manufacturer's recommended product time of exposure must be utilized.

(c) and (d) remain the same.

(e) dry all bed linen, towels, and washcloths ~~in the dryer, or, in the case of bed linen, by use of a flatwork ironer~~ in a manner that protects against contamination;

(f) protect clean laundry from contamination; and

(g) ensure that facility staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(2) If laundry is cleaned off-site, the health care facility must utilize a commercial laundry ~~(not self-service)~~ which satisfies the requirements stated in (1)(a) through (g) ~~above~~.

(3) A health care facility with beds must:

(a) keep each resident bed dressed in clean bed linen in good condition;

(b) keep a supply of clean bed linen on hand sufficient to change beds often enough to keep them clean, dry, and free from odors;

(c) supply each resident at all times with clean towels and washcloths;

(d) provide each resident bed with a moisture-proof mattress or a moisture-proof mattress cover and mattress pad; and

(e) provide each resident with enough blankets to maintain warmth while sleeping.

AUTH: 50-5-103, ~~50-5-404~~, MCA

IMP: 50-5-103, 50-5-204, ~~50-5-404~~, MCA

5. The department proposes to repeal the following rule:

37.106.311 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: FOOD SERVICE ESTABLISHMENTS, found on page 37-25991 of the Administrative Rules of Montana.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing new rules and amendments to rules pertaining to minimum standards for all health care facilities.

The Construction and Minimum Standards for All Health Care Facilities subchapter establishes minimum standards for all health care facility types regulated and licensed by the Licensure Bureau. Whereas each of the health care facility types have specialized rules governing them, this subchapter acts as an umbrella over

them all, and as such deals with issues that all health care facilities encounter, such as physical environments, medical records, policies and procedures.

Most changes concern updating incorporated guidelines, removing outdated language, and making this subchapter consistent with the other rules regulating other specific types of health care facilities.

Many of the changes are being made to implement better organization, proper rule numbering and to correct grammatical and spelling errors. Punctuation is amended to comply with ARM rule formatting requirements. In an effort to align our rules with the recommendations from the Federal Plain Language.gov organization, as well as guidance from our own Office of Legal Affairs, the department has reviewed the document and changed references of "shall" to "must" or to another more appropriate term.

As part of a periodic review, the department is amending its rules throughout to eliminate outdated and unnecessary provisions, clarify language as a result of definitional changes, and align terminology with language currently being used in the industry. For example, the definition of "communicable disease" has been changed to the definition stated by Taber's Cyclopedic Medical Dictionary 20th Edition. Taber's is widely used in the medical community and its definition is more universal than the one currently stated in this rule.

A rule that is proposed to change significantly is the rule dealing with disaster drills and requiring fire drills for all health care facilities. It is extremely difficult for some facilities to comply with the current rule. Additionally, rules have been added to establish minimum standards for employee files and secured care units.

NEW RULE I

New Rule I is necessary as currently no such requirements are made concerning employee files. The requirement to make the files available within 24 hours is necessary as many facilities keep employee files in a central location (home office, headquarters, etc.), making it impossible for surveyors to ascertain if an employee is appropriately trained for the specific facility. However, in light of the fact that many facility types do maintain employee files at a site other than the actual facility, it was determined that a 24-hour timeframe in which a facility could make the requested files available would be appropriate.

NEW RULE II

New Rule II is based on department policy and the NFPA 101 "Life Safety Code 2012 Edition", both of which have been used by the department to address the locking mechanisms in secured care units.

The policy is an equivalent of requirements for door locks found in the Life Safety Code. The use of this policy has allowed the department to offer alternatives for

secured care units that must protect the safety of residents by locking their doors. Under current rules, locking is simply prohibited in secured care units, and as such, strict enforcement of the rule would jeopardize those facilities that serve cognitively impaired residents. The policy requires that if doors of a secured unit are to be locked for the safety of the residents (i.e., Alzheimer's and dementia care units) the door must have magnetic locks which are opened with a key-code/key-pad, or a bar lock which opens after 15 seconds of pressure. It is a policy that has worked well, both for the department and the providers, and has protected the safety of a resident population that does need a restricted environment. This proposed rule seeks to make the policy rule to more effectively monitor the requirements. Additionally, the Centers for Medicaid and Medicare Services (CMS) has approved this policy.

ARM 37.106.301

Several definitions have been struck from ARM 37.106.301. The rationale behind this action is that either the definition exists in the Montana Code Annotated (MCA), or the word defined does not occur anywhere else in the subchapter.

ARM 37.106.302

The heading of the rule has been amended to more accurately, and simply, identify the substance of this rule. The rule has been proposed to be amended to simplify and clarify construction standards, and to make the standards clearly applicable to all health care facilities. The clarifying language of which rules apply in the case of rule conflict is necessary as the "Minimum Standards for all Health Care Facilities" are general rules covering a wide range of facility types. Each facility type needs rules more specific to them than these general rules can be to protect those in the facility. Changes also include updating references to utilize more current construction and life safety standards currently available.

ARM 37.106.302(2)(b) has been added to isolate NFPA 101, "Life Safety Code, 2012 edition" as a distinct rule. The changes made in this subsection reflect the adoption of the most current edition of the Life Safety Code. Language is proposed to be stricken in (2)(a)(i) because under the 2012 edition of the Life Safety Code, exceptions such as that listed are no longer granted.

The web sites added to this rule may be accessed through the link within the rule itself or may be found at the department's Quality Assurance Division web site at <http://www.dphhs.mt.gov/qad/index.shtml>

ARM 37.106.306

The rule has been struck in its entirety and replaced with substantively similar language. The heading has also been changed to more clearly state the specifications relating to this rule in order to aide in clarity of understanding.

Previously this rule listed 31 separate items that comprised "architectural drawing". The department proposes replacing these with eight: 1) civil; 2) landscape; 3) architectural; 4) structural; 5) mechanical; 6) plumbing; 7) electrical; and 8) special systems. This is necessary to reduce unnecessary language from the rule. These eight categories contain all of the information currently stated in the thirty-one. There is no increase or decrease in requirements of the rule; it is simply being more accurately and concisely stated.

ARM 37.106.310

Much of this rule is being struck and replaced with substantively similar language that is more reflective of the current practice. There are no new requirements being added by this change. There are a wide variety of health care facility types, and the applications used for each vary depending on the needs of the specific type of facility. The changes are being proposed to clarify the process, and make it easier for providers to understand.

The language concerning qualified staff is struck and added to new (4). The word "regulatory" has been added to the 'standards' reference. This is necessary as there are requirements outside of those in this subchapter that must be met in order for a facility to be licensed. An example of this would be local building codes, which the department requires documented compliance with prior to licensing a facility.

The rule is further amended to accurately reflect that the department issues licenses for one to three year time periods and addresses the criteria providers must fulfill in order to be issued a one, two, or three year license. The changes are being made to clarify the process, and make it easier for providers to understand.

ARM 37.106.311

The department is proposing to repeal this rule. After a thorough review of the food services act and corresponding administrative rules, the department has chosen to repeal the rule reference from the minimum rule set as many of the food service establishment rules are truly not applicable to the specific health care facilities and the services provided by these facilities that are contained within this rule package.

ARM 37.106.313

The department is proposing reformatted language to comply with rule requirements and include the infection control officer as also being responsible for the infection control program. The infection control officer is now more prevalent in health care facilities and should be utilized effectively to the benefit of those in the facility.

ARM 37.106.314

The department is proposing to amend this rule to update the language. The word "client" has been added to reflect current terminology in use in health care facilities.

Sections (3) and (4) have been struck as being outdated and have no practical application.

ARM 37.106.320

The department is proposing these amendments to recognize that many employees outside of maintenance personnel have duties described in policy pertaining to the maintenance of the physical plant and equipment.

The changes in (4) are necessary in order to recognize that there are floors in many health care facilities that do not require daily cleaning to be kept clean. This change places the responsibility to determine how frequently a floor needs to be cleaned upon the facility itself. This change also recognizes that there are many types of flooring utilized in health care facilities, and that the concern of the department is that these floors be kept clean and in good repair.

The carpet prohibition has been struck. Upon research by the department, which looked at several studies where carpet was investigated as an infection control issue, there is no evidence that carpet in a health care facility is an infection control issue, a concern which created this provision. Without such evidence, a prohibitory rule is not justified.

ARM 37.106.321

The department is proposing to strike (3) as this requirement is already stated in ARM 37.106.313. Section (6) has also been entirely struck. The department cannot think of any other alternate ways of cleaning that are not addressed in this rule, and there has never been a facility that has approached the department with an alternative cleaning system.

ARM 37.106.322

The requirements of the current rule in relation to disaster drills have been found to place unreasonable expectations on some health care facility types. For the most part, many types of facilities, such as Adult Day Cares, Assisted Living, Home Infusion, etc., have been legitimately unable to meet the current requirements of this rule.

This finding has been well established during the course of numerous surveys throughout the State. In response to this, the department has proposed dividing licensed health care facilities into three types: 1) those that can be reasonably expected to accept/treat patients on-site 2) those that cannot, and 3) those that care for their patients/resident off-site. In order to make this distinction, it is proposed that facilities that employ multiple full-time licensed health care professionals on-site can be reasonably expected to receive patients/residents in the event of a disaster. Health care facility types are proposed to be broken down into three categories for the purposes of disaster drill rules and are reflected as (1)(a) and (3). Where the

service provider goes to the patient, the facility disaster plan where the care is being provided must be followed.

Skilled Nursing Facilities (Long-Term Care Facilities), Outpatient Centers for Surgical Services, Critical Access Hospitals, Hospitals, Residential Hospices, Inpatient Hospices, Infirmaries, and Outpatient Centers for Primary Care are specific types of facilities which under this proposed rule, will be required to continue to follow the current requirements, i.e., develop a disaster plan in conjunction with other emergency services in the community. It is necessary to have the procedures in place for an alternative setting to accept and treat patients from other facilities to maintain an appropriate continuum of care. The words "for a minimum of three years" have been added. This is necessary as currently there is no time requirements pertaining to how long the facility must maintain the documentation of disaster drills. This time frame is consistent with the requirements for maintaining fire marshal inspection reports.

Proposed section (3) set regulations for those health care facilities that, in the case of a disaster, would be evacuating residents/patients rather than accepting them. Again, it is proposed that this be differentiated by these types of facilities not having multiple full-time licensed health care professionals on-site. These facilities are identified as Adult Day Cares, Adult Foster Homes, Assisted Living Facilities, Chemical Dependency Treatment Centers, End-Stage Renal Dialysis Facilities, and Intermediate Care Facilities for the Developmentally Disabled, Mental Health Centers, Outdoor Behavioral Facilities, Residential Treatment Facilities, Retirement Homes, and Specialty Mental Health Facilities.

In regards to these facilities, it was found that the current requirement that they develop disaster plans and conduct drills with emergency services was an unreasonable burden, one that could not be met as emergency services do not have the time or resources to accommodate these facilities in complying with this requirement. The proposed rule would instead require these facilities to develop a detailed disaster plan that describes the actions a facility would take in 1) a disaster in which the residents/clients would remain in the facility, and 2) a disaster in which the residents/clients would need to be evacuated. This is necessary to actually require of a facility a disaster policy that is appropriate to the facility type.

This proposed requirement of (4) is being added as currently there is a minimum standard requirement for disaster planning/drills, but there is no minimum requirement for fire drills. This is a necessary requirement for the safety of residents, patients, and staff. This is a requirement for certain individual facility types, but making it a minimum standard for all health care facilities would allow for more consistent regulation of health care facilities. The requirement of four drill annually is consistent with rules pertaining to long-term care nursing facilities, and the requirements of the drills is consistent with requirements of other health care facilities licensed.

ARM 37.106.330

The department is proposing to amend this rule so that a policy manual is retained at the facility itself. Also, it is added that the manual must be available to staff and any requestor. This is necessary to clarify the expectation of this rule, that the policies and procedures established by a facility are those currently enacted, that the manual be available to all, and that it be followed by all staff. Providing clear direction through formal policies and procedures that are to be followed protects and benefits those in the facility.

ARM 37.106.331

The rule has been amended for clarity of language and to eliminate outdated requirements.

The words "hot air tumble" have been added to clarify the type of dryer that is required to be used. This does not change the rule, but only clarifies it.

Current language in the rule requires a hot water supply to the washer to be 160 degrees and equip the laundry room with handwashing facilities. The department is not amending this temperature as this standard is prudent for facilities with this capability. In reviewing temperature regulations among other facility types that provide laundry services, there is no consistent temperature required (values between 110 degrees to 170 degrees were found). However, contingency language has been added for facilities unable to obtain a 160 degree water temperature.

This is necessary as the vast majority of facilities surveyed by the department operate with standard water heaters, which are incapable of reaching water temperatures of 160 degrees. It is currently a requirement in many of the facility specific rules that the hot water supply to bath/washing areas not exceed 120 degrees to prevent scalding. Many smaller facilities do not have the capability to maintain two different hot water systems.

As such, there is no compelling reason to require two hot water temperatures be maintained within each facility regulated. Additionally, the Centers for Disease Control (CDC) has revealed the risk of infection/cross-contamination from laundered clothing/linens is "negligible".

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

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

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

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

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

/s/ Kurt R. Moser
Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.57.102, 37.57.106,) AMENDMENT
37.57.111, and 37.57.118 pertaining)
to the update of children's special) NO PUBLIC HEARING
health services) CONTEMPLATED

TO: All Concerned Persons

1. On July 20, 2013, the Department of Public Health and Human Services proposes to amend the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.57.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this subchapter:

(1) through (16) remain the same.

(17) "Poverty income guidelines" means the poverty income guidelines published in ~~2012~~ 2013 in the Federal Register by the U.S. Department of Health and Human Services. The department adopts and incorporates by reference the federal poverty guidelines that establish income thresholds according to family unit size for purposes of determining eligibility for government assistance or services and that are published in the February ~~2012~~ 2013, Federal Register. A copy of the ~~2012~~ 2013 poverty guidelines may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Children's Special Health Services Program, 1400 Broadway Rm A-116, Helena, MT 59620, telephone (406) 444-3617.

(18) through (23) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.106 ELIGIBILITY FOR CSHS FINANCIAL ASSISTANCE (1) remains the same.

(2) Family income must be verified to determine eligibility. The department will request documentation of income from the applicant.

(a) Family income may include one or more of the following:

(i) and (ii) remain the same.

(iii) if the parent with whom the child resides the majority of the year has remarried, the stepparent's income is imputed to the parent's income with whom the child resides the majority of the year;

(iv) through (5) remain the same.

(6) CSHS financial eligibility will be determined in accordance with the financial eligibility guidelines contained in HMK's ARM 37.79.201, with the following exceptions:

(a) children may have health ~~insurance~~ care coverage and the out-of-pocket expenses for health insurance premiums are deducted from household income; and

(b) through (7) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.111 PAYMENT LIMITS AND REQUIREMENTS (1) The department will provide financial assistance for a CSHS-eligible CYSHCN with a covered condition:

(a) through (d) remain the same.

(e) after all third parties, if any, have paid the provider, in which case the department pays any balance remaining for services to the lower of the ~~insurance~~ health care coverage allowed amount or the CSHS allowed amount for the services in question.

(2) through (5) remain the same.

(6) The department will pay up to the following limits for orthodontia care:

(a) remains the same.

(b) Payment will be based on a treatment plan submitted by the provider that meets the requirements of the department's orthodontic coverage and reimbursement guidelines and that includes, at a minimum, a description of the plan of treatment, the provider's estimated usual and customary charge, and a time line for treatment. The maximum payable amount for any one phase of treatment is 85%. The department will reimburse 40% of the CSHS allowed amount upon initial billing for each phase of treatment, the remainder being paid in monthly installments as determined by the time line established in the provider's treatment plan for completing orthodontic care. Payment is also subject to any ~~insurance~~ health care coverage a client may have.

(7) For services to a CSHS client, a provider will be paid 85% of the actual submitted charge. If the CSHS client has third-party coverage, the department will pay the remaining balance for services to the lower of the ~~insurance~~ health care coverage allowed amount or the CSHS allowed amount of the approved services.

(8) Hospitals and surgicenters will be paid 85% of the actual submitted charge, or after all third-party payers, if any, have paid the provider, in which case

the department pays any balance remaining for services to the lower of the ~~insurance~~ health care coverage allowed amount or the CSHS allowed amount for the services ~~in question for~~ on the date of occurrence for inpatient and outpatient services.

(9) Dentists will be paid 85% of billed charges, or after all third-party payers, if any, have paid the provider, in which case the department pays any balance remaining for services to the lower of the ~~insurance~~ health care coverage allowed amount or the CSHS allowed amount for an annual dental exam and dental extractions related to active or anticipated orthodontic treatment.

(10) and (11) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.118 PROGRAM RECORDS (1) through (5) remain the same.

~~(6) The department will retain all electronic data as set forth in the Montana Secretary of State records retention schedule, records series title "CHRIS Files."~~
The department will retain CSHS clinic billing files for five calendar years as set forth in the Montana Secretary of State records retention schedule, record series title "Clinic Billing Reimbursement Records."

(7) Clinic billing files will be destroyed after the program receives approval from the state records committee required under 2-6-212, MCA.

(8) The department will retain all electronic data as set forth in the Montana Secretary of State records retention schedule, records series title "CHRIS Files."

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.57.102, 37.57.106, 37.57.111, and 37.57.118 pertaining to Children's Special Health Services (CSHS). CSHS is located in the Family and Community Health Bureau of the Montana Department of Public Health and Human Services. The program is charged by the Federal Maternal Child Health Block Grant (MHBG) to: "Support development and implementation of comprehensive, culturally competent, coordinated systems of care for children and youth who have or are at risk for chronic physical, developmental, behavioral or emotional condition and who require health and related services of a type or amount beyond that required by children generally."

The purpose of the proposed rule amendments is to update the administrative rules governing the CSHS program.

ARM 37.57.102

The department is proposing to update this rule to reflect current poverty income guidelines published in 2013 in the Federal Register by the U.S. Department of Health and Human Services. Each year the U.S. Department of Health and Human Services revises and publishes the new poverty income guidelines. The Federal poverty income guidelines are the resource used to confirm that the family income falls within the CSHS rules.

ARM 37.57.106

The department is proposing to amend this rule to specify that income from the stepparent is imputed to the "parent's income" and not to the "parent," as previously stated.

ARM 37.57.111

This proposed amendment is necessary to specify that all health care coverage is not from insurance programs. For example, Healthy Montana Kids (HMK) and Healthy Montanan Kids Plus/Medicaid are public assistance. This statement previously read "insurance coverage" and will now read as "health care coverage" in (1)e, (5)b, (7), (8), and (9). Not all health coverage is insurance, by removing insurance coverage and naming it "health care coverage" this enables encompassing all payment resources.

ARM 37.57.118

This proposed amendment will correlate current record retention schedules as recorded with the Montana Secretary of State Records and Information Bureau of four types of records created in the CSHS program. Records destruction are processed as required by 2-6-212, MCA. The CSHS program has retention schedules for four types of records produced within the program; per the Montana Secretary of State Records and Information Bureau the proposed change will give continuity of information recorded on their required forms.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 18, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to dphslegal@mt.gov.

6. If persons who are directly affected by the proposed actions 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 Kenneth Mordan at the above address no later than 5:00 p.m., July 18, 2013.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the

proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 4 persons based on an anticipated enrollment of 40 clients.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

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

Certified to the Secretary of State June 10, 2013.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I relating to alternative office) NOTICE OF PUBLIC HEARING ON
hours in county offices) PROPOSED ADOPTION
)

TO: All Concerned Persons

1. On the following dates, at the time and location identified, a public hearing will be held to consider the adoption of the above-stated rule and the proposed hours for each county office, by hearing location:

July 12, 2013, at 10 a.m., in the Granite County Courthouse, located at 220 North Sansome Street, Philipsburg, Montana;

July 15, 2013, at 10:30 a.m., in the Pondera County Commissioner's Office, located at 20 - 4th Street SW, Conrad, Montana;

July 15, 2013, at 1:30 p.m., in the Musselshell County Ambulance Barn, located at 701 - 1st Street East, Roundup, Montana;

July 15, 2013, at 3:30 p.m., in the Liberty County Commissioner's Office, located at 111 First Street East, Chester, Montana;

July 16, 2013, at 9 a.m., in the Blaine County Commissioner's Office, located at 410 Ohio Street, Chinook, Montana;

July 16, 2013, at 9 a.m., in the Petroleum County Courthouse, located at 302 East Main Street, Winnett, Montana;

July 16, 2013, at 2 p.m., in the Garfield County Courthouse, located at 200 West Kramer Street, Jordan, Montana;

July 16, 2013, at 3:30 p.m., in the Judith Basin County Courthouse, located at 91 - 3rd Street North, Stanford, Montana;

July 17, 2013, at 8:30 a.m., in the Daniels County Courthouse, located at 213 Main Street, Scobey, Montana;

July 17, 2013, at 10 a.m., in Golden Valley County at the Fire Hall, located at 105 Kemp Street, Ryegate, Montana;

July 17, 2013, at 1 p.m., in the McCone County Courthouse, located at 1004 C Avenue, Circle, Montana;

July 17, 2013, at 2 p.m., in the Wheatland County Courthouse, located at 201 A Avenue, NW, Harlowton, Montana;

July 18, 2013, at 9 a.m., in the Meagher County Courthouse, located at 15 West Main Street, White Sulphur Springs, Montana;

July 18, 2013, at 9 a.m., in the Prairie County Courthouse, located at 217 West Park Street, Terry, Montana;

July 18, 2013, at 1:30 p.m., in the Broadwater County Courthouse, located at 515 Broadway Street, Townsend, Montana;

July 18, 2013, at 2:30 p.m., in the Carter County Courthouse, located at 214 Park Street, Ekalaka, Montana;

July 19, 2013, at 10 a.m., in the Powder River County Courthouse, located at 119 North Park Avenue, Broadus, Montana; and

July 19, 2013, at 3 p.m., in the Treasure County Courthouse, located at 307

Rapelje Avenue, Hysham, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., July 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I ALTERNATIVE COUNTY OFFICE HOURS (1) Section 2-16-117, MCA, requires the department to adopt office hours which are outside of the regular 8 a.m. to 5 p.m. business day and 40-hour business week, as necessary, in county offices where the office is fully staffed with four or fewer employees, and is not available to conduct both office and field work at the same time.

(2) The alternative hours may also include times when a department employee is out of the office for the purposes of providing assistance in another similarly situated county office. Should the office need to temporarily close during the hours described in (3) for an emergency or personal employee leave, the department will provide advance notice to the public of such closures as appropriate.

(3) Counties that meet the conditions provided for in statute are listed below, along with their established alternative hours of operation:

(a) Blaine County Office, open 8 a.m. to 5 p.m. Monday, Wednesday, and Thursday; 8 a.m. to noon Friday; closed Tuesday;

(b) Broadwater County Office, open 8 a.m. to 5 p.m. Monday through Thursday; closed Friday;

(c) Carter County Office, open 8 a.m. to 5 p.m. Monday through Wednesday; closed Thursday and Friday;

(d) Daniels County Office, open 8 a.m. to noon Monday through Wednesday; closed Thursday and Friday;

(e) Garfield County Office, open 8 a.m. to 5 p.m., Monday through Wednesday; closed Thursday and Friday;

(f) Golden Valley County Office, open 8 a.m. to 5 p.m. Monday, Tuesday, and Friday; closed Wednesday and Thursday;

(g) Granite County Office, open 8 a.m. to 5 p.m. Monday, Tuesday, and Thursday; closed Wednesday and Friday;

(h) Judith Basin County Office, open 8 a.m. to 5 p.m. Monday and Wednesday; 8 a.m. to noon Friday, closed Tuesday and Thursday;

(i) Liberty County Office, open 8 a.m. to noon Monday through Friday;

(j) McCone County Office, open 8 a.m. to 5 p.m. Monday through Wednesday; closed Thursday and Friday;

(k) Meagher County Office, open 8 a.m. to 5 p.m. Wednesday; closed Monday, Tuesday, Thursday, and Friday;

- (l) Musselshell County Office, open 8 a.m. to 5 p.m. Monday through Wednesday; closed Thursday and Friday;
 - (m) Petroleum County Office, open 8 a.m. to 5 p.m. Monday, Thursday, and Friday; closed Tuesday and Wednesday;
 - (n) Pondera County Office, open 8 a.m. to noon Monday through Thursday; 8 a.m. to 5 p.m. Friday;
 - (o) Powder River County Office, open 8 a.m. to 5 p.m. Monday, Wednesday, and Thursday; closed Tuesday and Friday;
 - (p) Prairie County Office, open 8 a.m. to 5 p.m. Monday through Wednesday; closed Thursday and Friday;
 - (q) Treasure County Office, open 8 a.m. to 5 p.m. Monday, Wednesday, and Friday; closed Tuesday and Thursday; and
 - (r) Wheatland County Office, open 8 a.m. to 5 p.m. Monday, Tuesday, and Friday; closed Wednesday and Thursday.
- (4) During the months of January and July of each year, the department will publish, in the local newspaper, the office hours for each location stated in (3).

AUTH: 2-16-117, 15-1-201, MCA

IMP: 2-16-117, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to provide the public with the alternate office schedules for certain county offices where four or fewer full-time employees work. Section 2-16-117, MCA, allows the department to establish alternative office hours for these offices, as needed, in order to provide for a more efficient and balanced means of serving the public. The reason for proposing alternative hours varies by location. A few of the reasons are: (a) the frequent inability in offices with limited staff resources to simultaneously conduct that county's necessary field work in a timely manner while fulfilling the previous statutory requirement to be present in the office between 8 a.m. and 5 p.m. Monday through Friday; (b) providing coverage for another similarly situated office when staff in that office needs to be out or requires additional help due to a workload circumstance; (c) coverage during an employee's use of earned personal leave; and (d) other emergency circumstances.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than July 29, 2013.

5. Cleo Anderson and Laurie Logan, Department of Revenue, Director's Office, have been designated to preside over and conduct the hearings.

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the

electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The small business impact study requirements of 2-4-111, MCA, do not apply.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 75, L. 2011, Senator Jon Sonju, was notified by regular mail on September 15, 2011, and subsequently notified on June 5, 2013.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Alan B. Peura
MIKE KADAS
Director of Revenue

Certified to the Secretary of State June 10, 2013

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I, amendment of ARM	)	PROPOSED ADOPTION,
44.3.1101, 44.3.2004, 44.3.2005,	)	AMENDMENT, AMENDMENT AND
44.3.2014, 44.3.2015, 44.3.2110,	)	TRANSFER, AND TRANSFER
44.3.2111, 44.3.2114, 44.3.2203, and)	
44.3.2304, the amendment and)	
transfer of 44.3.1403, 44.3.1716, and)	
44.3.2016, and the transfer of)	
44.3.1715 pertaining to elections)	

TO: All Concerned Persons

1. On July 11, 2013, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption, amendment, amendment and transfer, and transfer of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 27, 2013, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I BALLOT FORM AND UNIFORMITY (1) Guidelines that prescribe the ballot form for each type of ballot used in this state are provided to each election administrator in the prescribed forms and election judge handbook, as applicable.

(2) The guidelines conform to the requirements of 13-12-202, MCA.

AUTH: 13-12-202, MCA

IMP: 13-12-202, MCA

REASON: The Secretary of State is adopting this rule as required by 13-12-202, MCA. Detailed guidelines regarding ballot form and uniformity are provided to election administrators in either the prescribed forms or election judge handbook as referenced in the rule and are available on the Secretary of State's web site.

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

44.3.1101 SCHEDULE OF FEES FOR STATEWIDE VOTER DATABASE REGISTRATION LISTS AND EXTRACTS (1) Upon written request, the secretary of state through its vendor shall furnish, for noncommercial use to private individuals or entities, a list of registered electors as compiled and maintained in its statewide voter ~~database~~ registration system. For the statewide list or available extracts from the statewide list the charge is \$1,000.00. For a legislative representative district list the charge is \$100.00, for a legislative senate district list the charge is \$150.00, for a county list the charge is \$200.00, and for the petition signers report the charge is \$200.00. For a subscription for ongoing access to the ~~database~~ statewide voter registration system and all other available extracts or lists the charge is \$5,000.00 for one year.

AUTH: 2-15-404, MCA
IMP: 13-2-122, MCA

REASON: These amendments are reasonably necessary to conform the terminology to statutory language.

44.3.2004 VOTER REGISTRATION CARD APPLICATION (1) Election administrators shall use the voter registration ~~card~~ application substantially in the most updated form prescribed by the secretary of state.
(2) Only registration ~~cards~~ applications substantially in the form prescribed by the secretary of state after June 1, 2003, shall be used by election administrators.
(3) Election administrators may print registration ~~cards~~ applications for their county use as long as the ~~cards~~ applications are substantially in the most updated form prescribed by the secretary of state.
(4) If an applicant submits an outdated registration ~~card~~ application that does not contain all of the required information, the election administrator may obtain that information and process the registration according to ARM 44.3.2005.

AUTH: 13-2-109, MCA
IMP: 13-2-110, MCA

REASON: These amendments are necessary to conform the terminology to statutory language.

44.3.2005 VOTER REGISTRATION CARD APPLICATION INFORMATION REQUIREMENTS (1) An applicant for voter registration must provide all required information on the voter registration ~~card~~ application.
(2) An election official shall:
(a) enter the driver's license number, or the last four digits of the social security number provided by the applicant on the voter registration ~~card~~ application into the voter registration ~~database~~ system maintained by the election administrator in a field provided for the number;
(b) and (c) remain the same.

(3) An applicant for voter registration who does not provide the applicant's driver's license number, the last four digits of the applicant's social security number, or a form of identification required in ARM 44.3.2002(6), shall be registered as a provisionally registered elector pending receipt and verification, at any time up to and including on election day, of one of the required numbers or, if the applicant has not been issued either number, receipt of a form of identification required.

(4) If an applicant does not provide all required information and the election administrator is unable to obtain that information, except for the information in (2) on the form prescribed by the secretary of state, the applicant ~~shall be registered~~ may be entered as "pending - incomplete" status in the statewide voter registration database system until the required information is provided.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendments to (1) and (2) are necessary to conform the terminology to statutory language. The amendment eliminating the citation earmark in (3) is to conform to the Secretary of State's guidelines advising agencies to avoid using citation earmarks in rule text. The amendments to (4) are to clarify that applicants are not "registered," but can be entered in pending status in the system if the county chooses to do so and to conform terminology to statutory language.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall, in every odd-numbered year ~~do at least one of the following:~~ follow the procedures in 13-2-220, MCA.

~~(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;~~

~~(b) mail a nonforwardable, first-class notice to all registered electors of each jurisdiction using current U.S. Postal Service language to ensure the mailing if undeliverable is returned with a corrected address, if available, to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;~~

~~(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration cards, and provisionally registered electors by:~~

~~(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;~~

~~(ii) comparing the nonvoters and applicants described in (3) against the national change of address files, followed within 30 days by the appropriate confirmation notices as described in (2) to those electors who appear to have moved from their addresses of record;~~

~~(iii) sending forwardable confirmation notices; or~~

~~(iv) making a door-to-door canvass.~~

~~(2) Any notices not returned or returned as undeliverable to the election administrator after using a procedure provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.~~

~~(3) A procedure used by an election administrator pursuant to this rule must be completed at least 90 days before a primary or general election for federal office.~~

~~(4) The election administrator shall cancel the registration of an elector if the elector fails to respond to certain confirmation mailings, is placed on the inactive list, and fails to vote in two consecutive federal general elections after being placed on the inactive list.~~

~~(5) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and meets the requirements provided in 13-2-222, MCA, for reactivation in any election.~~

~~(6) An elector reactivated pursuant to (5) is a legally registered elector for purposes of the election in which the elector voted.~~

AUTH: 13-2-108, MCA

IMP: 13-2-220, MCA

REASON: Sections (1)(a) through (5) are deleted because they repeat statutory language of 13-2-220, 13-2-222, and 13-2-402, MCA. Section (6) is deleted because a person is legally registered whether active or inactive.

44.3.2015 LATE REGISTRATION PROCEDURES

~~(1) through (3) remain the same.~~

~~(4) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election, and may not receive another ballot from the county in which the voter is newly registered. This voter registration shall become effective on the day following the day of the election for which the elector has already been sent an absentee ballot.~~

~~(5) and (6) remain the same but are renumbered (4) and (5).~~

~~(7) To correct administrative error, an election official may register a late registration applicant in the statewide voter database as a duplicate voter:~~

~~(a) issue the applicant a provisional ballot; and~~

~~(b) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.~~

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-514, MCA

REASON: Section (4) is eliminated because it conflicts with current statutory language. Section (7) is eliminated because it is no longer necessary.

44.3.2110 PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION - PRIOR TO CASTING A BALLOT

(1) through (3)(b) remain the same.

(c) consistent with 13-13-114, MCA, if the identification provided differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's identity to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a ~~transfer form~~ or new registration form to update or correct the elector's voter registration information, and vote. An election judge shall write "~~transfer form~~" or "registration form" in the register beside the name of any elector submitting a form.

(4) remains the same.

AUTH: 13-13-603, MCA

IMP: 13-1-116, 13-13-114, MCA

REASON: The amendments to (3)(c) are necessary to specify that the elector may be updating or correcting information and to eliminate the outdated reference to "transfer form."

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT

(1) remains the same.

(2) Consistent with 13-13-114, MCA, if the information provided by the elector differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's eligibility to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a ~~transfer form~~ or new registration form to update or correct the elector's voter registration information, and vote. An election judge shall write "~~transfer form~~" or "registration form" beside the name of any elector submitting a form.

(3) remains the same.

AUTH: 13-13-603, MCA

IMP: 13-13-114, MCA

REASON: The amendments to (2) are necessary to specify that the elector may be updating or correcting information and to eliminate the outdated reference to "transfer form."

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) Provisional ballots must be handled consistent with 13-15-107, MCA.

~~(4)~~ (2) The election administrator shall direct election officials in each precinct, after the close of polls on election day, to tally the number of electors who have chosen to cast provisional ballots, but whose voter information is not verified at

the polls by the end of election day, in a location specified by the election administrator in the records maintained by election officials.

(3) For verified provisional ballots, an election official shall mark the provisional ballot outer envelope with the reason(s) why it was verified and removed and place the provisional ballot outer envelope in the verified provisional ballot container.

~~(2) (4)~~ All information regarding electors who have chosen to cast provisional ballots shall remain private at all times prior to and during the counting of provisional ballots and shall not be released prior to, during, or after the counting period without a court order.

~~(3) (5)~~ Election officials shall seal the unverified and verified provisional ballot containers and ensure delivery according to the election administrator's instructions.

~~(4)~~ The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

~~(5)~~ The election administrator shall, until 5:00 p.m. on the day after election day, allow electors who cast provisional ballots to verify eligibility to vote, in person, or by sending by facsimile or electronic mail a copy or scanned document.

~~(6)~~ The election administrator shall allow electors who cast provisional ballots to verify eligibility to vote, by mail postmarked on election day or the day after election day.

~~(7)~~ If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), MCA, the election administrator or designee shall compare the elector's signature or the signature of an elector's agent designated pursuant to 13-13-116, MCA, on the affirmation required under 13-13-601, MCA, to the elector's or elector's agent's signature on the elector's voter registration card.

~~(a)~~ If the signatures match, the election administrator shall handle the ballot as provided in 13-15-107(6), MCA.

~~(b)~~ If the signatures do not match, and the elector or the elector's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108, MCA, and this section.

~~(8)~~ Provisional ballots must be handled consistent with 13-15-107(5), MCA.

~~(9)~~ After the process in (8) is completed, an election official shall mark the provisional ballot outer envelope with the reason(s) why it was verified and removed and place the provisional ballot outer envelope in the verified provisional ballot container.

~~(10)~~ Provisional ballots that are not resolved by the end of election day may not be counted until after 3:00 p.m. on the sixth day after the election.

~~(11)~~ Election officials must not count any provisional ballots cast by electors whose voter information is not verified by 3:00 p.m. on the sixth day following the election.

~~(12)~~ After the completion of the count of provisional ballots, election officials must assure the secrecy of the ballots. An election administrator shall not release any information regarding any ballot, including provisionally cast ballots, if that information will result in any person being able to determine how an elector voted on any race or issue on the ballot.

AUTH: 13-13-603, MCA
IMP: 13-15-107, 13-15-301, MCA

REASON: The addition of new (1) and new (3) are necessary to move the rule language in current (8) and (9) to a more appropriate placement within the rule. Language is added to (3) to clarify that the ballots referred to are "verified" provisional ballots. Sections (5), (6), (7), (10), and (11) are deleted because they repeat statutory language in 13-15-107, MCA. As indicated, current (8) and (9) are deleted because the language has been placed in new (1) and new (3). Section (12) is deleted because it duplicates (2).

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) ~~Consistent with 13-13-212, MCA, an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state, or by making a written request which must include the applicant's birth date and must be signed by the applicant or by~~ An elector or an agent designated pursuant to 13-1-116, MCA, may apply for an absentee ballot following the procedure in 13-13-212, MCA, except that ~~if~~ If the election administrator can independently obtain the applicant's birth date, the application shall not be rejected for lack of the applicant's birth date. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211, MCA.

(2) The minimum acceptable prescribed form for an application for an absentee ballot must include a written request for the absentee ballot, the elector's birth date, and the elector's or the elector's agent's signature. Additional recommended statements include the election for which the elector is requesting an absentee ballot and the address to which the elector wants the ballot mailed. Electors are strongly encouraged to use the form available from ~~election administrators, which appears in the forms booklet that is provided by~~ at the county election office or on the secretary of state's web site to each election administrator.

~~(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213(4), MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator, deliver the application in person to the election administrator, or transmit it by facsimile pursuant to ARM 44.3.1403. An agent designated pursuant to 13-1-116, MCA, or a third party, may collect the elector's application and forward it to the election administrator.~~

~~(4) When applying for an absentee ballot under 13-13-212, MCA, or at any other time by written request of the elector, an elector may also request to be mailed an absentee ballot, subject to the procedures in (5) and (6), as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.~~

~~(5)~~ (3) An election administrator who receives a request under ~~(4)~~ pursuant to 13-13-212, MCA, shall determine whether the elector's or the elector's agent's signature on the request matches the elector's or the elector's agent's signature on

the elector's voter registration card application, prior to placing the elector on a list of individuals who wish to receive absentee ballots in subsequent elections.

~~(6) The election administrator shall mail a forwardable address confirmation form, prescribed by the secretary of state in January of each year to each elector who has requested an absentee ballot for subsequent elections. The annual address confirmation form is for elections to be held between February 1 following the mailing through January of the next year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the annual absentee list.~~

~~(7) (4) In order for an elector to be sent an absentee ballot for an election under the procedures and during the period specified under (4) through (6) 13-13-212, MCA, the elector shall return the confirmation form specified under (6) to the election administrator within the time period specified for receipt of absentee ballot applications under 13-13-211, MCA.~~

~~(8) An elector who has been removed from the annual absentee list may later request to be mailed an absentee ballot for subsequent elections.~~

AUTH: 13-1-202, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

REASON: Section (1) is amended to delete language that repeats statutory language found in 13-13-212, MCA. Section (2) is amended to specify that the application form is available from the county election office or from the Secretary of State's web site. Section (3) is deleted because it repeats statutory language found in 13-13-212 and 13-13-213, MCA. Section (4) is deleted because it repeats statutory language found in 13-13-212, MCA. New (3) is amended to substitute a statutory reference and to conform rule terminology to statutory terminology. Section (6) is deleted because it repeats statutory language found in 13-13-212, MCA. New (4) is amended to provide a statutory reference. Section (8) is deleted because it repeats statutory language found in 13-13-212, MCA.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable, the election administrator shall determine prior to an election whether a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(6) or eligibility information to allow a ballot to be counted:

(a) If the identification or eligibility information is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow a provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the ~~outer return~~ signature envelope to verify eligibility to vote:

(i) a ballot cast by an elector whose eligibility or voter identification information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107, MCA;

~~(ii) an absentee or mail ballot elector whose ballot is determined to be provisional has until 5:00 p.m. on the day after the election to provide sufficient identification or eligibility information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election;~~

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

~~(iv) (iii) if the elector is notified by mail, an election official or election worker shall provide a self-addressed return signature envelope along with a description in the form prescribed by the secretary of state of the information necessary for the absentee or mail ballot elector to reclassify the provisional ballot as a regular ballot; and~~

(v) remains the same but is renumbered (iv).

(b) Upon receipt of eligibility information or of one of the forms of required identification defined in ARM 44.3.2302~~(6)~~, if the identification form is verified through a voter verification process or another form of identification provided in ARM 44.3.2302~~(6)~~ is sufficient:

(i) an election official or election worker shall mark on the absentee or mail ballot ~~outer return~~ signature envelope that sufficient eligibility information or identification was provided by the elector; and

(ii) and (c) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, MCA

REASON: The amendments eliminating the citation earmarks in (1) and (1)(b) are necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. Subsections (1)(a), (1)(a)(i), new (1)(a)(iii), and (1)(b)(i) are amended to conform the terminology used to statutory language. Subsection (1)(a)(ii) is deleted because it repeats statutory language in 13-15-107, MCA.

5. The Secretary of State proposes the amendment and transfer of the following rules, new matter underlined, deleted matter interlined:

44.3.1403 (44.3.2205) FACSIMILE REQUESTS FOR ABSENTEE BALLOTS

(1) remains the same.

(2) A facsimile copy may be accepted under (1) if it:

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible.~~

AUTH: 13-1-202, MCA

IMP: 13-13-212, MCA

REASON: Subsection (2)(a) is deleted because it is outdated technical information that is no longer necessary. The rule is being transferred to Subchapter 22 because that subchapter contains other current rules pertaining to absentee procedures.

44.3.1716 (44.3.2206) REJECTED BALLOTS--HANDLING PROVIDED BY RULE (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return signature envelopes must be enclosed in an envelope or container marked "REJECTED BALLOT(S) OF ABSENTEE ELECTORS".

~~(2) After being handled and marked as provided in this rule, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked. After a package or container is sealed pursuant to this section, a package or container may not be opened without a court order.~~

AUTH: 13-15-108, MCA
IMP: 13-15-108, MCA

REASON: This amendment to (1) is necessary to conform the terminology to statutory language. Section (2) is deleted because it repeats statutory language of 13-15-108, MCA. The rule is being transferred to Subchapter 22 because that subchapter contains other current rules pertaining to absentee procedures.

44.3.2016 (44.3.1102) STATEWIDE VOTER REGISTRATION DATABASE SYSTEM (1) In addition to the procedures specified under (2); and (3); and (4) and ARM 44.3.2001, election officials authorized to use the statewide voter registration database system must, as applicable, comply with the following procedures specified in the instruction manuals, user guides, and technical manuals as provided by the manufacturer and distributor of the database system vendor and the secretary of state; (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply):

(a) through (c) remain the same.

(d) technical security of the statewide voter registration database system;

(e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA, and Section 22, Chapter 139, Laws of 2013, effective January 1, 2014; and

(f) remains the same.

(2) Consistent with (1)(d), as soon as a county election administrator enters voter registration information into the statewide voter registration database system, the database system will automatically make that information available to the secretary of state.

(3) Consistent with (1)(~~f~~)(e):

(a) the driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA, and Section 22, Chapter 139, Laws of 2013, effective January 1, 2014, may not be provided unless required by a court order; and

(b) remains the same.

AUTH: 13-2-108, MCA

IMP: 13-2-108, MCA, Sec. 22, Ch. 139, L. 2013

REASON: The amendments changing the word "database" to "system" are necessary to conform rule terminology to statutory terminology. The reference to (4) in (1) is deleted because it refers to a nonexistent subsection. The third amendment in (1) is to clarify that both the vendor and the Secretary of State provide manuals and guides. The amendment to (3) is to correct an error in the subsection reference. The amendments to (1)(e) and (3)(a) are to comply with statutory changes made in 2013 specifying that the e-mail addresses of absent military and overseas electors be kept confidential. The rule is being transferred to Subchapter 11 in order to place it with the other voter registration system rule.

6. The Secretary of State proposes the transfer of the following rule:

44.3.1715 (44.3.2407) METHOD OF CORRECTION OF BALLOT

AUTH: 13-12-204, MCA

IMP: 13-12-204, MCA

REASON: The rule is being transferred to Subchapter 24 because it belongs with other rules regarding ballot forms.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 19, 2013.

8. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 10th day of June, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 44.3.2405, 44.3.2501, and	)	PROPOSED AMENDMENT AND
44.3.2511, and repeal of ARM	)	REPEAL
44.3.2502, 44.3.2503, 44.3.2504,)	
44.3.2505, 44.3.2506, 44.3.2507,)	
44.3.2508, 44.3.2509, and 44.3.2510)	
pertaining to the Montana Absent)	
Uniformed Services and Overseas)	
Voter Act)	

TO: All Concerned Persons

1. On July 11, 2013, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 27, 2013, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.3.2405 DETERMINING A VALID VOTE ON A FEDERAL WRITE-IN ABSENTEE BALLOT (1) A ~~United States elector~~ covered voter voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) Except as provided in (2)(a), a ~~United States elector~~ covered voter may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot ~~and writing in the title of the office and the name of the candidate for whom the elector is voting.~~

(a) remains the same.

AUTH: ~~43-21-103~~ 13-21-104, MCA

IMP: ~~43-21-205~~, MCA Sec. 19, Ch. 139, L. 2013

REASON: The amendments are reasonably necessary to conform rule terminology to statutory changes made by the passage of Senate Bill 57 by the 2013 Montana Legislature. The authority and implementation statutes were reviewed and updated pursuant to the passage of Senate Bill 57 by the 2013 Montana Legislature.

44.3.2501 UNITED STATES ELECTORS COVERED VOTERS (1) The following rules shall be followed, consistent with the Montana Absent Uniformed Services and Overseas Elector Voting Voter Act, Title 13, chapter 21, MCA, in regard to ~~United States electors~~ covered voters:

~~(a) an individual must notify the county election official that the individual is a United States elector in order to come under the provisions of the Montana Absent Uniformed Services and Overseas Elector Voting Act;~~

~~(b) (a)~~ pursuant to ~~43-21-201~~, MCA Section 17, Chapter 139, Laws of 2013, there is no limit on the earliest date that a ~~United States elector~~ covered voter may request an absentee ballot;

~~(c) (b)~~ in receiving absentee ballots, ~~United States electors~~ covered voters must be given priority to ~~receive~~ be sent ballots as soon as they are available, if possible before the deadline for making them available;

~~(d) (c)~~ in elections for which a voter information pamphlet is required, election administrators must notify ~~United States electors~~ covered voters that the voter information pamphlet is available online, which can be accomplished through either:

- (i) the absentee ~~elector~~ instructions; or
- (ii) remains the same.

AUTH: ~~43-21-103~~ 13-21-104, MCA

IMP: ~~43-13-205, 13-21-103, 13-21-201~~ 13-21-104, MCA, Sec. 17, Ch. 139, L. 2013

REASON: The amendments are reasonably necessary to conform rule terminology to statutory changes made by the passage of Senate Bill 57 by the 2013 Montana Legislature. The authority and implementation statutes were reviewed and updated pursuant to the passage of Senate Bill 57 by the 2013 Montana Legislature.

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow ~~United States electors~~ covered voters to receive and transmit election materials electronically, as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The procedures in this subchapter shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically:

(a) A county election administrator ~~desiring to offer electronic transmission of voting materials~~ must use a the secretary of state's electronic absentee system or the election administrator's own system that is secure from unauthorized access. ~~Access to the system must be limited by the following means: it has the technological ability to store the ballots that are sent and received by electronic~~

~~transmission, and ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies.~~

(b) Upon request for electronic transmission of a ballot, an election administrator who has received a valid application from a ~~United States elector covered voter~~ shall, subject to (1), send by electronic mail instructions on how to access the electronic absentee system established by the secretary of state, if the system is available for the election, or send by electronic transmission electronically a ballot, instructions to the elector, a transmittal cover sheet that includes an elector affirmation, and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot, if applicable, by a panel of no less than two election judges officials. The original ~~instructions~~ affirmation and original ballot, as applicable, shall be retained together in a secure absentee envelope or container for that purpose.

(c) remains the same.

(d) If the ~~returned electronically transmitted~~ received ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot, if applicable, and with the original affidavit until the ballots are ready to be transcribed.

(e) The receipt of electronically submitted ballots must be entered into the statewide voter registration system and a ballot shall be issued from the statewide voter registration system, if applicable, within three business days of receipt so that the covered voter may track the receipt of their ballot as required by federal law on the system designed for that purpose.

~~(e) (f)~~ On or before election day, the election administrator shall have the ~~electronically transmitted~~ returned ballots transcribed, as applicable, using the procedure prescribed ~~for assistance to voters with disabilities below~~.

~~(f) (g)~~ No less than two election judges officials shall participate in the transcription process to transfer the elector's vote from an ~~electronically transmitted~~ a received ballot, as applicable, to the standard ballot used in the precinct.

~~(g)~~ There may be noted next to the elector's name in the precinct register "Electronically Transmitted Ballot".

(h) remains the same.

(i) The election judges officials who transcribed the electronically transmitted ballot shall sign in the log next to the name of the elector.

(j) remains the same.

(2) Nothing in this rule shall prohibit a county election official from participating in any secure program for facilitating voting by ~~United States electors covered voters~~ which is sponsored by an agency of the federal government.

AUTH: 13-21-104, MCA

IMP: ~~43-21-207~~ 13-21-104, MCA

REASON: The amendments changing "United States elector(s)" to "covered voter(s)" are necessary to conform rule terminology to statutory changes made by the passage of Senate Bill 57 by the 2013 Montana Legislature. The amendment to (1)(a) is to specify that an election administrator must either use the Secretary of State's electronic system, or must use a system of their own. The amendments in

(1)(b), new (g), and (i) changing election "judges" to election "officials" is to clarify that it is most often election officials who will be authorized by the county election administrators to conduct these duties. Subsection (1)(b) is amended to specify that electronic transmission can be accomplished by sending the covered voter to a link to the electronic absentee system if the system is available for the election, or, if the electronic absentee system is not used in an election, to specify that a transmittal sheet must be included that includes an affirmation, and to specify that the materials can be secured in an envelope or a container if the county uses another method of storage. Subsection (1)(d) is amended to clarify that it is a returned ballot since electronically transmitted ballots can be returned via regular mail, electronic mail, or facsimile and to recognize that there may not always be an original ballot and to specify that the affirmation sheet must be retained with the returned ballot. Subsection (1)(e) is added to specify that received ballots must be transcribed if applicable according to subsections (1)(f) through (i). Subsection (1)(f) is amended to clarify that a returned ballot may need to be transcribed whether it is returned electronically or not. Former subsection (1)(g) is stricken to remove the reference to writing in the precinct register since the Statewide Voter Registration System will note that the individual voted absentee and the log shows that they voted electronically. The implementation statute was reviewed and updated pursuant to the passage of Senate Bill 57 by the 2013 Montana Legislature.

4. The Secretary of State proposes to repeal the following rules:

44.3.2502 FACSIMILE MACHINE ACCESS

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2503 HANDLING OF FACSIMILE BALLOTS

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2504 BALLOT TRANSMISSION

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2505 RECEIVING BALLOTS

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2506 BALLOT LOG

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2507 ELECTOR AFFIRMATION

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2508 BALLOT ACCEPTANCE

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2509 TRANSCRIPTION OF BALLOTS

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2510 ELECTION JUDGES AND BALLOT SECRECY

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

REASON: These rules are being repealed because they are no longer necessary because the information has been added to ARM 44.3.2511.

5. These rule amendments and rule repeals are effective January 1, 2014, to coincide with the effective date of Chapter 139, Laws of 2013.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 19, 2013.

7. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 10th day of June, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 1.3.309 pertaining to rulemaking) PROPOSED AMENDMENT
notice requirements)

TO: All Concerned Persons

1. On July 10, 2013, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 28, 2013, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

1.3.309 RULEMAKING, PROPOSAL NOTICE

(1) and (a) remain the same.

(i) When the bill sponsor contact requirements apply, the proposal notice must state the date on which and the manner in which contact was made with the primary sponsor, per 2-4-302(1)(b), MCA.

(b) An agency shall publish notice of intent to adopt, amend, or repeal a rule in accordance with 2-4-302(2) and (3), MCA.

(c) through (f) remain the same.

(g) Whenever practicable and appropriate, the agency may send written notice to licensees of the agency, per 2-4-631(3), MCA.

(2) Notice of agency action must be published within six months of the date on which notice of the proposed action was published, per 2-4-305(7), MCA.

(3) The contents of the notice shall include the following:

(a) The notice of public hearing, as illustrated by template 309a (<http://armtemplates.com>), must include all notice items required by Chapter 318, Section 1, Laws of 2013, 2-4-302, and 2-4-305, MCA, summarized as follows:

(i) and (ii) remain the same.

(iii) If an agency is proposing to adopt a new rule that it determines will significantly and directly impact small businesses, the agency shall include a statement of that determination in its notice. This requirement begins on July 1, 2013, and expires on July 1, 2015.

~~(iii)~~ (iv) The agency shall include in its notice an easily understood statement of reasonable necessity which contains the principal reasons and the rationale for each proposed rule. One statement may cover several proposed rules if appropriate, and if the language of the statement clearly indicates which rules it covers. An inadequate statement of reasonable necessity cannot be corrected in an adoption notice. The corrected statement of reasonable necessity must be included in a new notice or supplemental notice of proposed action. If an agency uses an amended proposal notice to amend a statement of reasonable necessity, the agency shall allow additional response time as required in 2-4-305~~(8)(e)~~, MCA.

(A) and (B) remain the same.

(iv) and (v) remain the same but are renumbered (v) and (vi).

~~(vi)~~ (vii) The agency shall include, at the end of each rule noticed, a citation to the authority for the proposed rule, and citation to the MCA section(s) or ~~sections~~ session laws being implemented. When an amendment to a rule is proposed, any new citations ~~the section(s) of the MCA~~ that constitute authority or implementation for the amendment must be underlined and any stricken citations must be interlined ~~sections implemented by the amendment must be underlined~~. If a proposed action implements a policy of a governing board or commission, the notice must include a citation to and description of the policy implemented.

(vii) remains the same but is renumbered (viii).

(b) remains the same.

(i) all notice items required by Chapter 318, Section 1, Laws of 2013, 2-4-302, and 2-4-305, MCA, as summarized above;

(ii) through (iv) remain the same.

(4) When a hearing has been properly requested per 2-4-302, MCA, the agency shall send notice of the hearing to persons who have requested a public hearing. Also, notice must be published in the register, per 2-4-302~~(2)~~, MCA.

(a) As illustrated by template 309c (<http://armtemplates.com>), the notice shall state that the hearing is being held upon request of the requisite number of persons designated in the original notice, per 2-4-302~~(4)~~, MCA, or the appropriate administrative rule review committee of the Legislature, 2-4-402~~(2)(e)~~, MCA, or a governmental agency or subdivision, or an association.

AUTH: 2-4-202, 2-15-401, MCA

IMP: Ch. 318, Sec. 1, L. 2013, 2-4-202, 2-4-302, 2-4-305, 2-4-307, MCA

REASON: The amendments eliminating the citation earmarks are reasonably necessary to conform to Secretary of State's guidelines advising against the use of citation earmarks in rule text. The amendments to (3)(a) are reasonably necessary to implement the requirements imposed on state agencies by the 2013 Legislature to include a determination of a proposed rule's impact on small businesses in the Montana Administrative Register. The amendment of new (3)(a)(vii) is reasonably necessary to clarify that only new authority and implementation citations need to be underlined.

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

submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on May 28, 2013.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 10th day of June, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.5.115 pertaining to filing fees) PROPOSED AMENDMENT
for Limited Liability Companies)

TO: All Concerned Persons

1. On July 10, 2013, at 10 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 28, 2013, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.5.115 LIMITED LIABILITY COMPANY FEES

(1) Domestic filings:	
(a) articles of organization	\$ 70.00
<u>plus \$50.00 for each series member named in the series LLC</u>	
(b) articles of correction	15.00
(c) articles of amendment	15.00
<u>plus \$50.00 for each series member named in the series LLC</u>	
(d) restated articles	15.00
(e) articles of merger	20.00
(f) application for reviver	15.00
(g) articles of termination	15.00
(h) reinstatement of involuntarily dissolved limited liability company	35.00
plus an additional fee of \$30.00 per year for each year of delinquent annual reports	
(2) Foreign filings:	
(a) certificate of authority	70.00
<u>plus \$50.00 for each series member named in the series LLC</u>	
(b) amended certificate of authority	15.00
<u>plus \$50.00 for each series member named in the series LLC</u>	
(c) withdrawal	15.00
(d) registration of name (per year)	10.00

(e) renewal of name registration (per year)	10.00
(3) Both domestic and foreign filings:	
(a) name reservation	10.00
(b) transfer/cancellation of name reservation	no charge
(c) statement of change of:	
(i) registered office, no charge	
(ii) registered agent, no charge	
(d) annual report filed prior to April 15th	15.00
(e) annual report filed after April 15th	30.00
(f) any other statement or report	15.00
(g) certificate of existence (domestic)	5.00
(h) certificate of authority (foreign)	5.00

AUTH: 2-15-405, 35-1-1307, 35-8-211, MCA
IMP: ~~35-8-207~~, 35-8-208, 35-8-211, 35-8-212, MCA

REASON: The amendments establishing a fee for the filing of documents relating to a Series Limited Liability Company are reasonably necessary due to the passage of House Bill 362 by the 2013 Legislature which authorized the creation of a series of members within a Limited Liability Company. Per 2-15-405, MCA, the fees are commensurate with the overall costs of the office of the Secretary of State and reasonably reflect the prevailing rates charged in the public and private sectors for similar services. The authority and implementation statutes were reviewed and updated.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 10th day of June, 2013.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
2.21.1931, 2.21.1932, 2.21.1933,) REPEAL
2.21.1934, 2.21.1937, 2.21.1938,)
2.21.1939, 2.21.1940, and 2.21.1941)
and the repeal of ARM 2.21.1930)
pertaining to the VEBA plan)

TO: All Concerned Persons

1. On March 14, 2013, the Department of Administration published MAR Notice No. 2-21-473 regarding a public hearing on the proposed amendment and repeal of the above-stated rules at page 296 of the 2013 Montana Administrative Register, Issue No. 5. The public hearing was held April 9, 2013.

2. The department has amended ARM 2.21.1931, 2.21.1933, 2.21.1934, 2.21.1937, and 2.21.1939 as proposed, and repealed ARM 2.21.1930 as proposed.

3. The department has amended ARM 2.21.1932, 2.21.1938, 2.21.1940, and 2.21.1941 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

2.21.1932 DEFINITIONS In addition to the definitions found in 2-18-1303, MCA, the following definitions apply to this subchapter:

(1) though (5) remain as proposed.

(6) "Separation from service" or "Separate from service" means the employee retires or otherwise has a termination of employment. The separation from service must be a separation from the employer. If ~~it~~ the separation is a transfer to another agency or public entity, VEBA eligibility is based on the new group and its VEBA criteria. If the separation is a transfer to another agency or public entity without a VEBA plan, the employee would receive any remaining leave as provided by the employer's leave policy.

(7) remains as proposed.

AUTH: 2-18-1305, MCA

IMP: 2-18-1302, MCA

2.21.1938 ELECTIONS (1) through (3) remain as proposed.

(4) The contribution source(s) of contribution must be agreed upon before a vote is conducted. The group may be polled in a manner acceptable to the group. Once a majority agrees upon the contribution source(s), the contribution source(s) must be listed on the ballot.

(5) through (9) remain as proposed.

AUTH: 2-18-1305, MCA

IMP: 2-18-1310, MCA

2.21.1940 CONTRIBUTIONS (1) and (2) remain as proposed.

(3) Each participating employer shall provide for a member to annually designate how many hours (if any) of the member's ~~sick leave and/or~~ annual vacation leave balance in excess of 240 hours and/or sick leave will be automatically converted to an employer contribution to the member's account each pay period, as provided in 2-18-1311, MCA. ~~The current state's VEBA plan policy designates 0 hours~~ does not allow contributions of leave prior to separation from service.

(4) and (5) remain as proposed.

(6) Annual vacation leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of annual vacation leave is 100% of the employee's balance at the time of separation ~~of~~ from service.

(7) remains as proposed.

AUTH: 2-18-1305, MCA

IMP: 2-18-1311, MCA

2.21.1941 BENEFITS IN THE EVENT OF DEATH (1) remains as proposed.

(2) ~~Upon proof of~~ a VEBA participant's death, if the deceased VEBA participant's account has a positive account balance, the VEBA participant's surviving spouse and/or qualified dependent(s) are eligible to use the account for qualified health care expenses.

(3) through (6) remain as proposed.

AUTH: 2-18-1305, MCA

IMP: 2-18-1313, MCA

4. The department has thoroughly considered the comments and testimony received. The department thanks those individuals who provided comments and testimony. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Regarding ARM 2.21.1931, a person requested clarification regarding eligibility of domestic partners and dependents over age 26.

RESPONSE #1: The department must adhere to the Internal Revenue Code rules regarding dependents in order to maintain the VEBA plan's tax free status. Therefore, if a person is considered a dependent under the Internal Revenue Code, then they are considered eligible dependents under the VEBA plan.

COMMENT #2: A person asked for clarification about the definition of employer in ARM 2.21.1932.

RESPONSE #2: "Employer" is defined in VEBA statute 2-18-1303(5), MCA. ("Employer" means a legally constituted department, board, commission, or any

other administrative unit of state government, a county, an incorporated city or town, or any other political subdivision of the state, including a school district, or a unit of the university system.") The Montana Administrative Procedure Act precludes unnecessarily repeating statute in rules. The department has added language to the rule to clarify that all definitions in 2-18-1303, MCA, apply to these rules.

COMMENT #3: A person asked for clarification regarding ARM 2.21.1934(2) regarding the monthly fee.

RESPONSE #3: Although there is currently no monthly fee associated with the VEBA plan, the changed language allows for the department to impose fees if necessary in the future.

COMMENT #4: A person asked for clarification about how existing groups of less than five members will be treated under the new minimum of five members in ARM 2.21.1932(4).

RESPONSE #4: An existing group of less than five may continue or choose to disband. If the group decides to disband, it will not be allowed to create another group with less than five members.

COMMENT #5: A person asked for clarification regarding ARM 2.21.1932(6) and what would happen if an employee transfers to an employer with no VEBA plan.

RESPONSE #5: The department has added a sentence to explain that if an employee transferred to another employer without a VEBA plan, then the employee would receive any leave as a taxed cash payout. The department has also added the words "or public entity" to ARM 2.21.1932(6) to clarify that an employee may transfer between the state and another public entity.

COMMENT #6: A person suggested that the department clarify how a contribution source is determined.

RESPONSE #6: The department agrees and is adopting ARM 2.21.1938(4) as shown above.

COMMENT #7: A person asked for clarification about whether union employees can opt out of a group based upon their union status as discussed in ARM 2.21.1938(5).

RESPONSE #7: A group of union employees may form their own VEBA group. Otherwise, they would be included with the group that is formed by all employees.

COMMENT #8: Concerning ARM 2.21.1940, a person asked for clarification regarding whether an employee who has excess annual leave and is currently in a

VEBA can choose to have that excess annual leave be put into their VEBA even before they terminate.

RESPONSE #8: The state, as an employer, does not allow state employees to contribute excess annual leave prior to separation from service, but other public entities may allow this. As explained in the statement of reasonable necessity, the state does not allow the contribution of any type of leave prior to separation from service because it is not financially possible for the state to make annual employer contributions. To clarify the rule, the department has amended ARM 2.21.1940(3) as shown above.

In addition, the department has amended language in (6) to use the correct term.

COMMENT #9: A person suggested that the department define "proof of a VEBA participant's death" in ARM 2.21.1941(2).

RESPONSE #9: The state's VEBA plan is administered by a third-party administrator. It is the third-party administrator's contractual duty to set the parameters for using the balance of a deceased VEBA participant's account.

To clarify the matter, the department has amended ARM 2.21.1941(2) as shown above.

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 June 10, 2013.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rules I	)	TEMPORARY EMERGENCY RULES
through IV that establish 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)	

TO: All Concerned Persons

1. The Montana Public Employees' Retirement Board is adopting the following emergency rules because sections 3, 4, 5, 6, and 7, Chapter 390, Laws of 2013, require the Board's actuary to provide important actuarial analyses of the Public Employees' Retirement System as part of its actuarial valuation of the system for fiscal year 2013. In addition to the yearly actuarial valuation of the system, the actuary must determine amortization periods and funding level percentages based in part on guaranteed annual benefit adjustment (GABA) rates that, under Chapter 390, Laws of 2013, are fluctuating and uncertain; and on contribution increases which are subject to triggers impacted by those fluctuating and uncertain GABA rates. The FY 2013 valuation will commence in July 2013, prior to the time in which the necessary rules could be adopted through the regular rulemaking process.

The rules are necessary to provide direction to the actuary regarding assumptions required for determining accurate and helpful valuations, including projections of amortization periods and funding level percentages. The rules will also assist the actuary in establishing yearly GABA rates and providing actuarial equivalent factors to be used for calculating money purchase retirement benefits, early retirement reductions, optional benefits, and the cost of various service purchases.

2. The Montana Public Employees' Retirement Board 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 Montana Public Employees' Retirement Administration no later than 5:00 p.m. on July 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service/etc. (406) 444-1421; or e-mail kvlastic@mt.gov.

3. The temporary emergency rules will be effective July 1, 2013.

4. The text of the temporary emergency rules provide as follows:

RULE I APPLICATION OF ACTUARIAL ASSUMPTIONS FOR TESTING PURPOSES (1) For purposes of determining the PERS funding level percentage referenced in 19-3-1605(5)(a), MCA (2013), the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years;
- (b) assume the actuarial value of the assets; and
- (c) set the funding percentage rounded to the nearest whole number.

(2) For purposes of determining the amortization period referenced in 19-3-1605(5)(b), MCA (2013), the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years; and
- (b) assume the actuarial value of the assets.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for implementing Chapter 390, Laws of 2013. The actuary must determine the PERS funding percentage and the amortization period in order to set a GABA rate. However, the assumptions used to determine both the funding percentage and the amortization period include an established GABA rate. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. Thus an initial GABA rate is necessary to start the calculations.

The current 3% GABA is significantly higher than future GABAs and would result in a significantly greater unfunded liability and longer amortization period than actually exists under a reduced GABA. Chapter 390, Laws of 2013 establishes a GABA with a 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in increments of one tenth of one percent. The Board has established the assumption of 1.5% for the testing GABA rate because, as the highest possible GABA under Chapter 390, Laws of 2013, it will result in the largest possible reasonable liability, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

The Board has determined to use the actuarial value of assets rather than the market value of assets as the actuarial value of assets is the industry-accepted standard and is currently relied on when conducting annual actuarial valuations for all retirement systems administered by MPERA.

The Board has determined to set the funding percentage as a whole number to facilitate its decision in Rule II below to only reduce the GABA for each full 2% the funding percentage is below 90%.

RULE II APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING GABA (1) For purposes of determining the PERS GABA rates referenced in 19-3-1605(5), MCA (2013), the actuary will:

- (a) reduce the 1.5% GABA rate established in 19-3-1605(4), MCA (2013) by 0.1% for each full 2 percentage points the funded percentage is below 90%;
 - (b) establish a GABA rate expressed in tenths of a percent.
- (2) This rule will not apply until the PERS amortization period is under 40 years.
- (3) Once the PERS amortization period is under 40 years, the actuary will adjust the 1.5% GABA each year, based on that year's funding percentage.

AUTH: 19-2-403, 19-3-1605, MCA
IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining the GABA rate to be applied to PERS retiree benefits on an annual basis.

The actuary questioned whether GABA should be reduced proportionately. For example, if the funded percentage is 79%, should the GABA be reduced from 1.5% to .95% ($90\% - 79\%/2 = .55\%$; $1.5\% - .55\% = .95\%$)? The Board determined that reductions in one tenth of one percent would be sufficient to meet the legislative goal of bringing the system to a position of actuarially sound funding while maintaining the ability to explain the GABA reductions to members and without causing undue administrative hardship. Thus, in the above example, the GABA rate would be reduced from 1.5% to 1% ($90\% - 80\%/2 = .5\%$; $1.5\% - .50\% = 1.0\%$).

Sections (2) and (3) are necessary to specify how the GABA rate will be calculated each year after the amortization period is below 40 years. Members and stakeholders have questioned whether the legislation provides a mechanism for changing the GABA each year. The Board believes the legislation was intended to allow the GABA to be recalculated and reset each year in a manner consistent with 19-3-1605(5), MCA (2013).

RULE III APPLICATION OF ACTUARIAL ASSUMPTIONS AND PROCESS FOR DETERMINING ACTUARIAL EQUIVALENT FACTORS (1) For purposes of determining actuarial equivalent factors for optional benefit determinations, early retirement factors, money purchase benefit calculations, and service purchases, the actuary will:

- (a) assume a 1.5% GABA rate for future years; and
 - (b) establish new actuarial equivalent factors effective January 1, 2014 following the fiscal year 2013 actuarial valuation.
- (2) The 1.5% GABA rate established in (1)(a) is prospective only. Optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases implemented prior to July 1, 2013, will not be affected.
- (3) Prior to January 1, 2014, MPERA will work with members regarding the options available to them regarding optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases.

(4) In the event of a court order prohibiting the board from implementing a 1.5% GABA rate pursuant to 19-3-1605, MCA, the actuary will continue assuming a 3% GABA rate until the court order is amended or lifted.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining actuarial equivalent factors used for calculating various actuarially equivalent benefits and the cost of various service purchases. The GABA rate is an important assumption in these calculations.

Chapter 390, Laws of 2013 establishes a GABA with 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in increments of one tenth of one percent. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. The Board has determined to use the ceiling of 1.5% because it will result in the largest possible liability, and the highest average service purchase cost, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

Sections (2) and (3) are necessary as the Board has been contacted by members concerned that their prior service purchases were based on assumptions that are no longer true.

Section (4) is necessary as the Board has been advised that a lawsuit challenging the constitutionality of a decreased GABA rate is pending and that the plaintiffs would be seeking an injunction to prevent implementation of the new GABA rate pending resolution of the lawsuit.

RULE IV APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING THE AMOUNT OF COAL SEVERANCE TAX AND INTEREST INCOME STATUTORILY APPROPRIATED TO THE PERS DEFINED BENEFIT PLAN TRUST FUND (1) For purposes of determining the annual amount of coal severance tax and interest income from the coal tax severance permanent fund that will be statutorily appropriated to the PERS defined benefit plan trust fund, the actuary will rely on reports provided to the board by the Office of Budget and Program Planning.

(2) The report provided to the board pursuant to (1) will be available on the board's web site on or before July 31 of each applicable year.

AUTH: 19-2-403, MCA

IMP: 19-2-405, MCA

STATEMENT OF REASONABLE NECESSITY: Sections 1 and 2, Chapter 390, Laws of 2013 provide for payment of an unknown amount of coal severance tax

funds and a maximum amount of interest income from the coal severance tax permanent tax fund. The exact amount of those statutory appropriations must be provided to the Board so that its actuary can include those amounts in the annual PERS actuarial valuation. The Office of Budget and Program Planning has indicated that it will provide this information to the Board as needed.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rules.

6. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Roxanne Minnehan at the address above.

7. The Montana Public Employees' Retirement 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 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 2 above or may be made by completing a request form at any rules hearing held by the Montana Public Employees' Retirement Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Melanie Symons
Melanie Symons, Legal Counsel
and Rule Reviewer

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

Certified to the Secretary of State June 10, 2013

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

In the matter of the adoption of	)	NOTICE OF ADOPTION OF A
Temporary Emergency Rule I and the	)	TEMPORARY EMERGENCY RULE
temporary emergency amendment of	)	AND TEMPORARY EMERGENCY
ARM 2.43.2114 regarding increased	)	AMENDMENT OF A CURRENT
PERS employer contributions paid on	)	RULE
behalf of University employees who)	
elect to participate in the Optional)	
Retirement Program rather than in)	
the Public Employees' Retirement)	
System)	

TO: All Concerned Persons

1. The Montana Public Employees' Retirement Board is adopting the following emergency rule and amending ARM 2.43.2114 because Chapter 390, Laws of 2013, does not indicate where the additional PERS employer contributions provided for in section 4 of Chapter 390, Laws of 2013 and paid to University employees who elect to participate in the University Systems' Optional Retirement Program are to be allocated. The additional employer contributions commence on July 1, 2013, prior to the time in which the necessary rule could be adopted through the regular rulemaking process.

2. The Montana Public Employees' Retirement Board 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 Montana Public Employees' Retirement Administration no later than 5:00 p.m. on July 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service/etc. (406) 444-1421; or e-mail kvlastic@mt.gov.

3. The temporary emergency rules will be effective July 1, 2013.

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

RULE I ALLOCATION OF ADDITIONAL EMPLOYER CONTRIBUTIONS ON BEHALF OF MONTANA UNIVERSITY SYSTEM EMPLOYEES IN THE OPTIONAL RETIREMENT PROGRAM

(1) The additional employer contributions provided for in 19-3-316(3), MCA that are paid on behalf of MUS employees in the optional retirement program will be allocated as follows:

(a) The 1.00% additional employer contribution will be directed to the PERS defined benefit plan trust fund.

(b) The 0.27% additional employer contribution is already allocated to the PERS defined benefit retirement plan's plan choice rate pursuant to 19-21-214(2)(b), MCA.

(c) The 0.1% additional employer contribution that commences July 1, 2014, will be directed to the PERS defined benefit plan trust fund unless the board determines pursuant to 19-3-2121, MCA that an increase in the plan choice rate is required to actuarially fund the PERS defined contribution retirement plan's share of the PERS defined benefit's plan unfunded liability. In that event, the 0.1% additional employer contribution will be directed to the PERS defined contribution retirement plan's plan choice rate.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-3-2104, MCA

STATEMENT OF REASONABLE NECESSITY: Section 6, Chapter 390, Laws of 2013 amends 19-3-2117, MCA to allocate the additional employer contributions paid on behalf of PERS defined contribution retirement plan members. Unfortunately, there is no allocation for MUS employees in PERS-covered positions who elect to participate in the Optional Retirement Program (ORP) rather than either the PERS defined benefit retirement plan or the PERS defined contribution retirement plan. Section 19-21-214, MCA instructs the Board regarding payment of employer contributions to the ORP. That statute is silent regarding the additional employer contributions provided for in Section 4, Chapter 390, Laws of 2013. However, 19-21-214(3), MCA provides that employer contribution allocations are subject to adjustment by the Board provided the adjustments are consistent with 19-3-2121, MCA.

Section 19-3-2121, MCA allows the Board to use employer contributions to increase the plan choice rate contribution under certain circumstances. If those circumstances are met, the Board has determined it to be appropriate to allocate the 0.1% increase to the plan choice rate. If the circumstances are not met, the 0.1% increase will go to help the defined benefit retirement plan's unfunded liability.

The Board will ask the 2015 Legislature to amend 19-21-214, MCA to address the allocation of the additional employer contributions on behalf of MUS employees in PERS-covered positions who elect to participate in the ORP. The Board will propose to the 2015 Legislature that the allocation mirror that in 19-3-2117, MCA for PERS Defined Contribution Retirement Plan members.

5. The text of the temporary amendment of an existing rule provides as follows:

2.43.2114 REQUIRED EMPLOYER REPORTS (1) through (5) remain the same.

(a) Commencing July 1, 2013, MUS shall transmit to MPERA the 1.0% additional employer contribution provided for in Chapter 390, Laws of 2013.

(b) Commencing July 1, 2014, MUS shall also transmit to MPERA the 0.1% additional employer contribution provided for in Chapter 390, Laws of 2013.

(6) remains the same.

AUTH: 19-2-403, MCA

IMP: Section 4, Chapter 390, Laws of 2013, 19-20-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-21-214, MCA allocates the current 0.27% additional employer contribution to the PERS defined benefit plan to eliminate the plan choice rate unfunded actuarial liability. However, Chapter 390, Laws of 2013 does not address the allocation of the additional employer contributions paid by MUS on behalf of employees in covered PERS positions who elect to participate in the ORP. Therefore, this amendment is necessary to ensure that MUS transmits the new additional employer contributions to MPERA for proper accounting.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Roxanne Minnehan at the address above.

8. The Montana Public Employees' Retirement 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 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 2 above or may be made by completing a request form at any rules hearing held by the Montana Public Employees' Retirement Board.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Melanie Symons
Melanie Symons, Legal Counsel
and Rule Reviewer

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

Certified to the Secretary of State June 10, 2013

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Twelve Mile Dam Fishing Access Site) TEMPORARY EMERGENCY RULE
in Custer County)

TO: All Concerned Persons

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

- (a) The Tongue River and Pumpkin Creek are flooding into the Twelve Mile Dam Fishing Access Site (FAS).
- (b) Persons recreating in the flooded portion of the FAS are at risk of:
 - (i) drowning due to unexpected changes to topography obscured by flood waters; or
 - (ii) drowning due to swift current created by flood water around trees.
- (c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 12 of the 2013 Montana Administrative Register.

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

3. The temporary emergency rule is effective May 31, 2013 when this rule notice is filed with the Secretary of State.

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

- RULE I TWELVE MILE DAM FISHING ACCESS SITE TEMPORARY EMERGENCY CLOSURE
- (1) The Twelve Mile Dam Fishing Access Site is located in Custer County.
 - (2) Twelve Mile Dam Fishing Access Site is closed to all public occupation and recreation as signed.
 - (3) This rule is effective as long as water is flooding the fishing access site.
 - (4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the

extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 454-5845; fax (406) 761-8477; or e-mail jesssnyder@mt.gov. Any comments must be received no later than July 19, 2013.

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

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

/s/ Mike Volesky

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

/s/ Rebecca Dockter

Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State May 31, 2013.

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Kinsey Bridge Fishing Access Site in) TEMPORARY EMERGENCY RULE
Custer County)

TO: All Concerned Persons

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

(a) The Yellowstone River is flooding into the Kinsey Bridge Fishing Access Site (FAS).

(b) Persons recreating in the flooded portion of the FAS are at risk of:

(i) drowning due to unexpected changes to topography obscured by flood waters; or

(ii) drowning due to swift current created by flood water.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 12 of the 2013 Montana Administrative Register.

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

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

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

RULE I KINSEY BRIDGE FISHING ACCESS SITE TEMPORARY EMERGENCY CLOSURE (1) The Kinsey Bridge Fishing Access Site is located in Custer County.

(2) Kinsey Bridge Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the

extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

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

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 454-5845; fax (406) 761-8477; or e-mail jesssnyder@mt.gov. Any comments must be received no later than July 19, 2013.

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

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

/s/ Mike Volesky

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

/s/ Rebecca Dockter

Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State June 3, 2013.

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 37.34.2003 pertaining to)
discontinuation of services)

TO: All Concerned Persons

1. On March 14, 2013 the Department of Public Health and Human Services published MAR Notice No. 37-629 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 332 of the 2013 Montana Administrative Register, Issue Number 5.

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

37.34.2003 DISCONTINUATION BY PROVIDER OF SERVICE DELIVERY:
PROVIDER INITIATED (1) When a person receiving developmental disability community services from a service provider refuses to cooperate in service delivery as provided for in their plan of care or otherwise fails to substantively engage in their plan of care or when, following good faith efforts, the person's health and safety needs cannot ~~appropriately be managed~~ be met by the provider, the provider may follow the process provided in these rules to be relieved of service delivery responsibilities for the person. The provider will continue to provide services to ensure the persons' health and safety during the course of the process provided for in this rule.

(2) and (3) remain as proposed.

(4) The regional manager or designee will schedule a meeting within two working days after the receipt of the notice of intent to discontinue services from the provider. The meeting will include the regional manager or the regional manager's designee, the members of the person's plan of care team, the provider, and if applicable, a designee from the state facility. The meeting may be conducted telephonically. If the person's legal representative is not available within two working days, the meeting must be scheduled at the earliest possible time the legal representative is available. If the person or a legal representative is unable to participate in the plan of care meeting, the case manager must document the reasons for the absence and the attempts made to reschedule the meeting with the person or the person's legal representative.

(6) remains as proposed.

(7) If the planning team cannot reach consensus on the implementation of a supplemental plan of care, the person(s) who does not ~~consent~~ agree may submit their disagreement along with the justification for their disagreement to the DDP program director or designee. The DDP program director or designee must:

(a) make a determination within three working days; and

(b) provide the determination in writing to the members of the planning team.
(8) remains as proposed.

(9) If it is determined in the course of planning that an alternative provider is required needed, the case manager will assist the person, the legal representative, or both in seeking an alternative provider. The case manager will place the person on the port list. If additional funding is required, the case manager will also place the person on the waiting list for screening into an opening with sufficient funding.

(10) remains as proposed.

(11) The regional manager or designee will schedule a meeting between 15 to 30 calendar days prior to the expiration of the 90 calendar days to review the outcome of the supplemental plan of care. The meeting will include the regional manager or the regional manager's designee, the members of the person's plan of care team, the provider, and, if applicable, a designee from the state facility. The meeting may be conducted telephonically. If the person's legal representative is not available within two working days, the meeting must be scheduled at the earliest possible time the legal representative is available. If the person or a legal representative is unable to participate in the plan of care meeting, the case manager must document the reasons for the absence and the attempts made to schedule the meeting with the person or the person's legal representative.

~~(11)~~ (12) At the expiration of 90 calendar days following the receipt by the department of a proper notice of intent to discontinue services from a provider, the provider may proceed with the discontinuation of services for the person, if the provider, as determined by the department and the planning team, has participated in good faith in a supplemental plan of care if applicable, and the basis for the discontinuation action remains.

~~(12)~~ (13) A provider must abide by applicable statutes or regulations of the state of Montana regarding the relationship between the provider as the landlord and the person as the tenant.

~~(13)~~ (14) The person or the person's legal representative maintains their right to a fair hearing as provided for in ARM 37.5.115.

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-205, MCA

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 asked for clarification regarding what to do in children's services in the event that the family or the legal representative does not respond to requests for a meeting.

RESPONSE #1: The department added language to ARM 37.34.2003 to address the commenters concern regarding how to proceed if the family or legal representative does not respond to the meeting request.

COMMENT #2: One commenter expressed concerns regarding the language in ARM 37.34.2003(1) stating that current language to discontinue services is inclusive of the person receiving services refusing to cooperate even in instances where the person did not give consent to a proposed option or has exercised his or her right to appeal a portion in the plan of care. They would also like "good faith efforts" added to ensure both the person and the provider tried to fulfill their duties under the plan of care. The commenter also requests replacing "appropriately be managed" with "be met".

RESPONSE #2: The proposed rule language states that the provider may only discontinue services in the event the person refuses to cooperate in service delivery as provided in the person's plan of care or otherwise fails to substantively engage in their plan of care or when the person's health and safety needs cannot be appropriately managed by the provider. ARM 37.34.1114, Plan of Care, requires that the planning team, of which the person or the person's legal representative is a member of, reach consensus in regards to the person's plan of care and also provides for the person's right to request an administrative fair hearing. Also, ARM 37.5.316, Continuation of Public Assistance Benefits, requires that a person continue to receive Medicaid funded services until an issuance of a hearing decision in the event an administrative hearing was requested by the person. Therefore, this rule does not allow for discontinuation of services in the event the person has not given consent for a proposed action nor does it remove the person's right to request a fair hearing and the requirement for continuation of service during the duration of the administrative hearing process.

The department added the language "good faith efforts" as requested by the commenter and the department will change the language to "be met" rather than "appropriately be managed" as requested by the commenter.

COMMENT #3: One commenter requested the department change the word "consent" in ARM 37.34.2003(7) to "agree" stating that the term consent is often used in rule in relation to the person receiving services and their legal representative giving consent, therefore causing possible confusion in reference to other members of the planning team.

RESPONSE #3: The department will replace the term "consent" with "agree" in ARM 37.34.2003(7).

COMMENT #4: One commenter requested the department change the word "required" in ARM 37.34.2003(9) to "needed" stating that the word "needed" allows the case manager latitude to find alternative placement and the flexibility to intervene earlier when necessary.

RESPONSE #4: The department will replace the word "required" in ARM 37.34.2003(9) to "needed".

COMMENT #5: One commenter requested the addition of language to require the provider to submit proof the supplemental plan of care was followed and that the issues that caused the initial action are still of concern prior to allowing the discontinuation of services to proceed at the conclusion of the 90 calendar days.

RESPONSE #5: The department agrees that due to the seriousness of the action of discontinuation of services, additional review of the result of the supplemental plan of care is pertinent. However, the department will require a plan of care meeting prior to discontinuation in order for the plan team to review the results, rather than request the provider to submit proof. The department also added language to ensure that the basis of discontinuation must be the same issue that was present at initiation of the discontinuation action.

/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 June 10, 2013.

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 37.40.307, 37.40.325, and)
37.40.361 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On April 25, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-635 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 616 of the 2013 Montana Administrative Register, Issue Number 8. On May 23, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 820 of the 2013 Montana Administrative Register, Issue Number 10.

2. The department has amended ARM 37.40.325 as proposed.

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains as proposed.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain as proposed.

(d) The total payment rate available for the ~~rate year~~ period July 1, 2013 through June 30, 2014 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, 2013. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.40.361 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE

REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective at ~~for the beginning of the rate year period~~ July 1, 2013 and for the six months thereafter, nursing facilities must report to the

department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum payment amounts for all direct care and ancillary services workers that will receive the benefit of the increased funds. The reported data shall be used by the department for the purpose of comparing types and rates of payment for comparable services and tracking distribution of direct care wage funds to designated workers.

(2) The department will pay Medicaid certified nursing care facilities located in Montana that submit an approved request to the department a lump sum payment in addition to the amount paid as provided in ARM 37.40.307 and 37.40.311 to their computed Medicaid payment rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in nursing facilities.

(a) The department will determine the lump sum payments, twice a year ~~with the first payment at the beginning of the rate year~~ commencing July 1, 2013, and again in six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (3) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

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

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

COMMENT #1: The department received several comments about the increased costs that are being incurred by nursing facilities and the adequacy of the rate that is being proposed effective July 1, 2013.

The commenters asked the department to reconsider the proposed rates to be effective July 1, 2013. This represents about a 2% rate increase following a period in which rates have been cut and frozen. Inflation over this period of time is in the 12% to 15% range, yet the department is proposing a 2% rate increase. In order to establish reasonable rates for this service the department should consider the factors outlined in 53 -6-113, MCA in addition to other pertinent factors including:

The actual cost of services - the current cost to provide a day of nursing facility care is about \$187.36 while the current rate is about \$162.67. A 2% increase is insufficient to bridge that gap.

The quality of services - facilities struggle to meet state and federal quality standards, and only a handful of facilities are in full compliance when they are surveyed annually.

The professional knowledge and skills necessary for the delivery of services - increased acuity necessitates more professional knowledge and skills for those delivering care and the availability of services.

The commenter stated that over the past year their facility has noticed an increase in the cost of medications and supplies to care for our population. Patients remain in the hospital for shorter periods of time and transfer to nursing facilities with higher care needs. This higher care needs equate to more staff required to safely care for the sicker case mix. The medications and supplies ordered for these acuity levels break the budget. A 2% rate increase will not even begin to touch the high costs associated with giving care. Without proper funding, the facility cannot adequately pay staff to do their tireless job.

It is positive that facilities receive an increase after so many years with no Medicaid rate increase but a mere 2% increase doesn't quite keep up with the continued rise in cost of provision of adequate care. The Medicaid rate remains far below the actual cost of care. Current daily cost of care year to date is over \$200 per resident per day. The projected Medicaid rate our facility will receive is \$165.70. As you can see the Medicaid rate is still well below our daily cost of care. Since we serve about 120 residents and about 60% are Medicaid recipients, we are losing about \$4,000 per day serving Medicaid recipients. Because of the continued shortfall in Medicaid reimbursement, we are forced to evaluate our services and likely cap admissions for those who are Medicaid recipients. It simply is not feasible from a business perspective to continue to serve a large percentage of Medicaid recipients at such a loss. It makes more fiscal sense to not provide services than to attempt to provide services at such a loss. The commenter said their mission was founded on enriching lives including those who had no means to help themselves. However, in order to carry out that mission the facility moves to the future, they are forced to make adjustments in their business plan to keep afloat financially.

RESPONSE #1: Federal laws or regulations do not mandate that established Medicaid rates must cover all of the actual costs incurred by nursing facility providers. This is not a standard by which the legal adequacy of rates has been measured in the past nor is it the standard that will be utilized in the future.

The department has developed rates which are reasonable and adequate and in compliance with all requirements. The price is reflective of many factors that impact the ways that nursing facilities do business and is set at a level that is fair when considering all of those factors together.

The statewide price is determined through a public process. Factors that are considered in the establishment of this price include the cost of providing nursing facility services, Medicaid member's access to nursing facility services, the quality of nursing facility care, as well as budgetary or funding levels. The price-based rate reflects a rate commensurate with the services that are required to be provided by nursing facility providers when meeting federal and state requirements.

Predictability of the reimbursement calculation is one of the required features of the price-based reimbursement approach, as is the recognition of the changes in acuity of the residents in a facility over time.

Each nursing facility receives the same operating per diem rate, which is 80% of the statewide price. The remaining 20% of the statewide price represents the direct resident care component of the rate and is acuity adjusted. Each facility's direct resident care component rate is specific to that facility and is based on the acuity of Medicaid residents served in that facility. As acuity changes in each facility based on the level of complexity of the residents being served relative to the statewide acuity, facility rates adjust upward or downward to account for this change in acuity.

Montana contracts with Myers and Stauffer LC to prepare an annual analysis of each nursing facility's cost of providing nursing facility services to Medicaid residents, and each facility's reimbursement rate. The analysis provides the department with an evaluation tool as to the adequacy of the statewide pricing for Montana nursing facilities and has done so since 2002. The annual rate to cost analysis that is performed for the rate setting process indicates for state fiscal year (SFY) 2012 that Montana's Medicaid day-weighted average total rate that includes all supplemental payments (IGT and direct care wages) was \$181.35 compared to the Medicaid inflated cost of \$187.36, or that on average Medicaid is covering approximately 96.79% of cost through the various forms of reimbursement to nursing facility providers. This rate comparison supports the determination as to the adequacy of the Medicaid reimbursement rates for nursing facilities.

Montana nursing facilities received additional funding from the IGT program in fiscal year (FY) 2013. The department took the opportunity to increase the IGT reimbursement by taking advantage of the ability to match existing county funds with enhanced federal funds up to the higher Medicare Upper Payment Limit amount thus providing an enhanced IGT payment to Montana nursing facilities in 2013. County nursing facilities will receive a total combined funding from Medicaid reimbursement, to the Upper Payment Limit (UPL) or at a minimum a net gain of \$17.84 per day, while noncounty facilities will receive IGT funding of almost \$8.48 per day in addition to their reimbursement rates set under the rate setting methodology. These amounts were significantly higher than expected and were passed on to Montana nursing facilities.

Providers will continue to participate and benefit from the Intergovernmental Fund Transfer (IGT) program that provides supplemental payments in addition to the Medicaid payment rate set through the reimbursement methodology during FY 2014.

Additionally nursing facility providers received direct care wage funds to support their direct care staffing in FY 2013. In FY 2014 Montana nursing facilities will continue to receive increases from direct care wage (DCW) funding through an appropriation that is separate and in addition to the provider rate funding provided through the price based methodology. The DCW program provides funding separately from the reimbursement rate calculation, to help facilities provide wage increases to its direct

care workforce and will provide over \$3.9 million dollars in ongoing funding during this FY that can only be used to provide for lump sum bonus' or to sustain or increase wage payments to direct care and ancillary workers in nursing facilities.

Occupancy in Montana for nursing facility care has been declining for some time but has slowed in recent years. The current statewide occupancy level is at 70% with several facilities operating at occupancy levels of under 50%. With these levels of occupancy there are open and available beds for those individuals that seek to access nursing facility placements. While some facilities are operating at a much fuller occupancy level there is capacity in many of Montana's nursing facilities to place individuals that require this level of service. The department believes that there are enough facilities that will provide Medicaid funded nursing facility services to ensure adequate access.

COMMENT #2: The department received several comments about the increased costs that are being incurred by nursing facilities related to staffing and wages.

Given that staffing costs comprise almost 50% of our operating expenses, the impact of reimbursement reductions has greatly impacted staff and pay. The commenters state concerns about merit pay increase needs, starting wage rates, and the ability to recruit and retain staff. Facilities depend in large part on Certified Nursing Assistants to deliver significant components of the care for residents and many of those staff are new in the field. Facilities provide training and certification courses for those interested in entering the field and that is the most common path for us to find new staff members. This is a demanding field of work, physically, emotionally and mentally and is greatly unappreciated by those unfamiliar with our care and work environment, but treasured rightly so by those who are impacted by their care. As relative funding has declined, and wage pressures have increased, we are finding it increasingly difficult to recruit dedicated caring and capable individuals into the field. This creates increasing pressure on our current staff that is often faced with difficult choices to make in giving more of their time to work or leaving their fellow staff and residents with less than ideal staffing.

If the current reimbursement issues remain unaddressed and funding is not adjusted to reflect the inflationary pressures we face in utility costs, food expense, cleaning and facility maintenance expenses as well as wage pressures, I fear that the continued shift of the future caregivers out of this field will result in significant impacts to our ability to provide the care for a vulnerable and desperate population who come to us in great need. Please consider the need to fund this program and the residents and staff who dedicate their lives to caring for some of our neediest and most vulnerable people. Their dedication and caring is often given in extraordinary ways and has lasting and profound impacts on those they serve and their loved ones. I do hope you will see that their efforts and care is recognized by providing inflationary increase in the funding for the care they provide.

RESPONSE #2: Nursing facility providers have benefited from additional funding that has been appropriated and targeted specifically at direct care wages for several

years. This funding is in addition to the funding allocated through the reimbursement methodology. In FY 2014 Montana nursing facilities will continue to receive increases from direct care wage (DCW) funding through an appropriation that is separate and in addition to the provider rate funding provided through the price based methodology. The DCW program provides funding separately from the reimbursement rate calculation, to help facilities provide wage increases to its direct care workforce and will provide over \$3.9 million dollars in ongoing funding during this FY that can only be used to provide for lump sum bonus' or to sustain or increase wage payments to direct care and ancillary workers in nursing facilities. This is approximately \$3.95 per Medicaid day that will be passed on to facilities to provide for wage or bonus increases for direct care and ancillary workers. This funding should serve to mitigate some of the concerns related to providing wages and bonuses to facility workers during the next FY.

COMMENT #3: The department received several comments regarding the additional 2% funding for provider rate increases that was appropriated by the Montana Legislature that was subsequently line item vetoed by the Governor in House Bill 2 (HB2).

RESPONSE #3: The department will utilize the appropriated level of funding that was included in HB2 that was signed into law by the Governor for FY 2014 rate setting. The Governor's administration proposed and supported a 2% provider rate increase for all Department of Public Health and Human Services (DPHHS) providers as part of the Governors 2014/2015 biennial budget.

COMMENT #4: A commenter stated that sequestration, starting in April 2013, is another cut to needed funding. The Multiple Procedure Payment Reduction (MPPR) starting in April 2013 is another hit to nursing facilities.

RESPONSE #4: This comment is applicable to Medicare reimbursement and does not apply to the subject of this rule which is Medicaid nursing facility reimbursement, and as such the department cannot comment on the application of the Multiple Procedure Payment Reductions.

COMMENT #5: One commenter stated that ARM, 37.40.307 should continue to apply to a particular rate year, i.e., July 1, 2013 to June 30, 2014, rather than simply use the term "rate year." Our rationale is that rates are typically scheduled to change each FY and nursing homes should have an opportunity to comment on the rates being proposed. The commenter is concerned that the new language will mean that new rates can be adopted without going through the rulemaking process and affording an opportunity for comment by those affected. This comment applies to each proposed rule that includes a change to the term "rate year" instead of including the actual effective dates.

RESPONSE #5: This change was proposed to eliminate the need to change the effective date each FY in the state plan amendment process, not to curtail or eliminate the ability to comment on rule and rate changes. Rate year is defined in

ARM 37.40.302 as a 12-month period beginning July 1. The state did not feel that it was necessary to restate in ARM 37.40.307 the period July 1 - June 30 of the rate year as this was redundant. It would require us to continue to make changes in state plan pages and ARM pages each year at an additional cost to the state to make this amendment to just change the year tied to the July 1 through June 30 period.

The department is required to comply with the public notice requirements in 42 CFR 47.205 in proposing significant changes to the methods and standards for setting payment rates for nursing facility services in the Federal State Plan.

The department has procedures under which the data and methodology used in establishing payment rates are made available to the public (42 CFR 447.253(b) (1) (iii) (C)) and that this process complies with the requirements of Section 1902(a) (13) (A) of the Social Security Act.

The department does not agree that the proposed change to remove the particular rate year and simply use the term "rate year" will result in the curtailment or elimination of the ability to have public hearings or to comment on rule and rate changes each SFY, as that is not the intent of this rule change. However, based on the comment that this would create a perception that the department is trying to limit comment or feedback on rate or rule changes, the department will agree to retain the rule in its previous format to identify the specific rate year in ARM 37.40.307 and 37.40.361.

COMMENT #6: The department may need to begin entertaining modifications to the current case-mix adjusted per diem rate system. Among changes to consider are to award providers for providing access and meeting quality benchmarks. If quality improvements and other incentives can be provided to achieve cost savings it is possible for the department to use those savings to improve payment adequacy for nursing facilities. The department may need to consider an alternative to measuring payment adequacy based upon average costs. In its 2012 report to the department, Myers and Stauffer noted the limited value of basing payment adequacy analyses upon average costs. But in the same study, the firm concluded that Medicaid rates appeared adequate because just over one-half of the facilities could cover their costs. The department should require Myers and Stauffer to provide additional analysis to better differentiate the characteristics of those facilities that are able to cover their costs with Medicaid payments, compared to those who cannot.

RESPONSE #6: The department will consider this comment and will discuss with Myers and Stauffer any new options or trends in analyzing and measuring payment adequacy for nursing facilities or new payment options such as pay for performance, etc.

5. These rule amendments are effective July 1, 2013.

/s/ Valerie A. Bashor
Valerie A. Bashor
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013

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 and II, and the amendment of	)	AMENDMENT
ARM 37.40.705, 37.40.1105,)	
37.40.1303, 37.79.102, 37.79.304,)	
37.85.105, 37.85.212, 37.86.105,)	
37.86.205, 37.86.805, 37.86.1004,)	
37.86.1006, 37.86.1105, 37.86.1506,)	
37.86.1802, 37.86.1807, 37.86.2005,)	
37.86.2206, 37.86.2207, 37.86.2230,)	
37.86.2405, 37.86.2505, 37.86.2605,)	
37.86.3020, 37.86.3515, 37.86.4010,)	
37.86.4205, 37.87.901, 37.87.1303,)	
37.87.1313, 37.87.1314, 37.87.1333,)	
37.87.2233, 37.88.907, 37.89.125,)	
37.89.523, and 37.90.408 pertaining)	
to revision of fee schedules for)	
Medicaid provider rates)	

TO: All Concerned Persons

1. On April 25, 2013 the Department of Public Health and Human Services published MAR Notice No. 37-636 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 621 of the 2013 Montana Administrative Register, Issue Number 8. On May 23, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Adoption and Amendment at page 824 of the 2013 Montana Administrative Register, Issue Number 10.

2. The department has adopted New Rule II (37.85.104), as proposed.

3. The department has amended ARM 37.40.705, 37.40.1105, 37.40.1303, 37.79.102, 37.79.304, 37.85.105, 37.85.212, 37.86.105, 37.86.205, 37.86.805, 37.86.1004, 37.86.1006, 37.86.1105, 37.86.1506, 37.86.1802, 37.86.1807, 37.86.2005, 37.86.2206, 37.86.2207, 37.86.2230, 37.86.2405, 37.86.2505, 37.86.2605, 37.86.3020, 37.86.3515, 37.86.4010, 37.86.4205, 37.87.901, 37.87.1303, 37.87.1313, 37.87.1314, 37.87.1333, 37.87.2233, 37.88.907, 37.89.125, 37.89.523, and 37.90.408 as proposed.

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

NEW RULE I (37.86.2235) EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), ORIENTATION AND MOBILITY SPECIALIST SERVICES (1) remains as proposed.

(2) Orientation and Mobility Specialist Services are medically necessary services provided to Medicaid clients whose ~~health conditions~~ blindness and visual impairment cause them to need vision-assisted services.

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

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

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

HUMAN RESOURCES DIVISION

HEALTHY MONTANA KIDS

No comments were received regarding the Healthy Montana Kids Program.

HOSPITAL AND CLINIC SERVICES

COMMENT #1: One comment supported the department's proposal to propose all Medicaid fee schedules in a single notice. An additional comment stated appreciation for the department amending the proposed rule to eliminate sequestration from the rule.

RESPONSE #1: The department interprets the comment to mean that the commenter is referring to the rule rather than the notice. The department thanks the commenters for their support of the rule.

COMMENT #2: One comment expressed support for the 5.7% increase in the physician services conversion factor regarding the RBRVS fee schedule.

RESPONSE #2: The department thanks the commenter for their support regarding the rate increase.

COMMENT #3: One commenter, representing Montana health care providers did not support or oppose the department's decision to put the entire rate increase into inpatient services. The department requested provider reaction to this proposal. After polling its members, the commenter felt that providers were unable to respond because no data was available illustrating the implications of the proposal. The commenter solicited a commitment from the department to work with the commenter to better analyze the policy implications prior to state fiscal year 2015.

RESPONSE #3: The department appreciates the need for accurate data in order to review the policy implications generated by the proposed rule amendments. The

department's methodologies for calculating Medicaid reimbursement rates are set forth in ARM 37.86.2803, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2925, and 37.86.2928. While the limited time available to implement a July 1, 2013 rule for a provider rate increase prevented the department from generating the different rate scenarios, providers were able to calculate alternative rate scenarios and comment accordingly. The department is committed to working with members of the health care industry in the implementation of the rate increases slated for July 1, 2014. The department acknowledges and thanks the commenter for their concerns.

COMMENT #4: One comment expressed concern about the proposed base price for the APR-DRG system. The commenter expressed inability to determine how the department calculated the proposed rate increase. In addition, the commenter suggests the department uses fiscal year 2012 actual discharges to figure the base payment as opposed to fiscal year 2013 actual discharges.

RESPONSE #4: The department provided the rate sheet calculations to interested parties. A complete list of Medicaid provider rate methodologies appears in the response to comment #3. The calculations proposed by the department were based upon a set dollar figure appropriated by the 63rd Montana Legislature. The department believes that figuring the base payment using fiscal year 2013 actual discharges provides a more current and accurate base rate figure. The department does recognize that an incorrect calculation did occur with the proposed base rate figure of \$4,742. The corrected figure for the Montana average inpatient hospital base rate will be amended to \$4,758. The department wishes to thank the commenter for bringing this to the attention of the department.

PHYSICIAN SERVICES

COMMENT #5: One commenter expressed support for the 5.7% increase in the physician services conversion factor regarding the RBRVS fee schedule.

RESPONSE #5: The department thanks the commenter for their support regarding this rate increase.

ACUTE SERVICES

COMMENT #6: A commenter was concerned that Orientation and Mobility (O&M) Specialist Services would be less accessible to all Montana children rather than more accessible.

RESPONSE #6: The department appreciates the comment, but respectfully disagrees. The O&M Specialist Service that is being added to the School-Based Services in ARM 37.86.2230 is to make the services of promoting self-care and home-management training as well as teaching activities of daily living and help in learning sensory integrative techniques. By adding a reference to New Rule I (37.86.2235) in ARM 37.86.2206, the services are also being made available to

Medicaid eligible children, age 0 to 3 years old, that are not in school and require these services from an O&M specialist. The department believes that by making this service available for Medicaid reimbursement, children, both in school and before school age, would have greater access to this service.

COMMENT #7: A commenter was concerned about Medicaid purchasing canes for blind children and the cost of the cane going up.

RESPONSE #7: The department appreciates the comment; however, the purchasing of canes is not a part of this rule. The department currently reimburses the cost of canes through the Medicaid Durable Medical Equipment (DME) program for those members that qualify and will continue to do so in the future.

COMMENT #8: A commenter was concerned about the O&M Specialist Services being reimbursed in a school when "The Office of Public Instruction (OPI) already pays for Mobility and Vision Services." This appears to be a duplication of existing state services. The commenter also is concerned that this rule will set blind children apart from the mainstream educational setting and that non-Medicaid eligible children will not receive the service in a school.

RESPONSE #8: The department thanks the commenter and understands that OPI already supplies the service to those that need and qualify for O&M Specialist Services. This rule will allow Medicaid reimbursement for those students whose Individual Education Plan (IEP) includes O&M Specialist Services and will help offset the schools expense in providing the services. The department's school-based services program ensures that Medicaid eligible children with IEPs receive access to medically necessary services to fulfill their education plan.

COMMENT #9: A commenter suggested changes in the O&M Specialist Services New Rule 1 (37.86.2235) that would have replaced "medically necessary" with "educationally necessary" and "health conditions" with "blindness or visual impairment."

RESPONSE #9: The department thanks the commenter and has adopted the suggested change from "health conditions" to "blindness or visual impairment." The department will not change the "medically necessary" verbiage because Medicaid does not reimburse for educational activities in the School-Based Services Program.

COMMENT #10: The department received multiple comments in support of adding the O&M Specialist Services to its fee schedule for Montana Medicaid eligible clients, age 0 to 20, that are not in school or in school as a reimbursable service.

RESPONSE #10: The department appreciates the comments of support from these individuals.

COMMENT #11: The department received several comments that suggested the department set a fee schedule amount for the diabetic testing supplies instead of

utilizing the Medicare single payment amount that goes into effect July 1, 2013. The commenters also pointed out numerous flaws that they see in regards to the new competitive bidding rate process and the negative impact it could have on the residents and DME providers for our state. They argued that the adoption of the Medicare Round Two Competitive Bidding rates were set by studies of large metropolitan areas and did not take into consideration the impact on the smaller rural areas. The commenters argue that the rates are too low and will ultimately create job losses in our state and poor access for Medicaid patients needing these products and services.

RESPONSE #11: The department thanks the commenters but disagrees. The department's DME fee schedule follows the Medicare Region D allowable fee for all items except where no Medicare allowable fee is available. The new Medicare single payment amount for the mail order diabetic testing supplies will replace the existing fee schedule amount on the Medicare fee schedule effective July 1, 2013. The department's DME fee schedule has incorporated Medicare fees since 2004 and will continue to follow this methodology.

COMMENT #12: The department received comments voicing concerns about Medicare's requirement that a documented face-to-face evaluation, between the beneficiary and the physician, be done prior to the dispensing of DME items. Commenters also argued that the Medicare system's coverage criteria are outdated and that Medicare rules and coverage determinations are written primarily to meet the need of the elderly population. They stated this creates a major gap in coverage of essential DME items for the younger population. Commenters also argued that the department chooses to follow Medicare coverage criteria when it is convenient to do so.

RESPONSE #12: The department thanks the commenters. However, the comments are not relevant to the proposed amendments of rule ARM 37.85.105. The department has adopted Medicare coverage criteria for Medicare covered DME as outlined in the Region D Supplier Manual, local coverage determinations (LCDs), and national coverage determinations (NCDs). The department will continue to take into consideration relevant coverage and policy exceptions to Medicare coverage criteria as it relates to the Medicaid DME Program.

ADDICTIVE AND MENTAL DISORDERS DIVISION & DEVELOPMENT SERVICES DIVISION

COMMENT #13: One commenter disagrees with the department's decision to reduce the proposed psychiatrist provider rate of reimbursement adjustment from 125% to 112% in ARM 37.85.105(f). The commenter states the rate of adjustment for psychiatry was 150% and the department reduced the rate to 125% because it was "stated the adjustment did not affect Medicaid patient's access to psychiatry." The commenter expressed concern that the provider rate of reimbursement is further reduced to 112%. The commenter asked the department to explain why there is a need for further reduction, what evidence does the department have that this will not

affect access to psychiatry, does the state think psychiatry is over-compensated or is in over-abundance, how does it benefit the rural accessibility, and what is the purpose for the reduction?

RESPONSE #13: The department recognizes the contribution Medicaid providers make to quality health care and agrees with the commenter that access to psychiatrists is important for Medicaid clients. The department uses federally computed relative value units (RVUs). Changes in RVUs increase or decrease a provider's reimbursement or that of a provider's specialty. When a change is made to increase the relative value for services of some procedures or specialties then the relative value for other procedures or specialties must be reduced in order for the department to remain within the legislative appropriation. These annual RVU changes may impact some specialties to a greater degree than others.

Resource-Based Relative Value Scale (RBRVS) provider rates for psychiatrists adjusted at 125% of the rate paid to physicians in order to address inadequate access to mental health services by Medicaid members. These services will continue to have a favorable provider rate adjustment to address access problems; however, it has been adjusted from 125% to 112% in order for the department to stay with the legislative appropriations for state fiscal year (SFY) 2014.

The policy adjustor is just one piece to the equation in how the rate is set in RBRVS; although the policy adjustor was reduced from 125% to 112% for psychiatrists, the actual rates to psychiatrists increase overall with RVU and conversion factor changes. Since rates will be higher overall for psychiatrists, it should not negatively impact access. Additionally, the department's proposed change remains a positive rate adjustment for psychiatrists in relation to other licensed physicians.

SENIOR AND LONG TERM CARE DIVISION

COMMENT #14: The department received several comments related to ARM 34.40.1303, "Self-Directed Personal Assistance Services" and ARM 37.40.1105, "Personal Care Services – Agency Based" asking for clarifications on various definitions that are currently in these rules. The commenters requested additional clarification on the tasks that can be provided under various definitions in the rule and when the definitions will be completed and if there will be a comment period.

RESPONSE #14: The department has not proposed any changes related to the service delivery provision of these services or the definition of these services in this rule notice. These rule changes were to incorporate the fee schedule by reference into one administrative rule, and to restate in a clearer way the services under each of these rules.

The personal assistance service administrative rule and program policy provides for billing of specific oversight and nurse supervision; however, this service was never intended to reimburse for all administrative and follow-up costs. The department understands that there are costs to doing business that are not directly billable and

accounts for this in the overall rate structure. The department has developed specific policy related to Medicaid provider requirements for program oversight in the personal assistance program. Administrative costs are not billable and are included in the reimbursement rate for personal assistance service.

The department has developed specific policy related to what constitutes an approved service under medical escort. It is up to the personal assistance provider agency to implement safeguards to ensure that the service of medical escort is provided within the policy guidance. The department has allowed for flexibility so that each agency can design their own approach for delivering this service within the parameters set through rule and policy.

The department agrees that the rule does not specifically address reimbursement of mileage for medical escort. Reimbursement for this service is primarily provided through Medicaid Transportation. When this service is billed to the Personal Assistance Program it is very limited and the department provides the parameters for its use in the Personal Assistance Service and Self-Directed Personal Assistance Service Policy Manuals. The service is billed the same as mileage for shopping, which is included in the amended rule.

The rate for mileage reimbursement in the Personal Assistance Service Program coincides with the rate Medicaid pays for mileage reimbursement under Medicaid Transportation. The Medicaid Transportation rate did not increase, thus the rate for mileage in the Personal Assistance Program remained unchanged.

The department provides direction, clarification, and examples in the Personal Assistance Service and Self-Directed Personal Assistance Service Policy Manuals related to the types of activity that can be included under these categories of service and definitions for these services. The department would direct the respondent and others interested to those policy manuals, which are available upon request or are located on the division's web site at <http://www.dphhs.mt.gov/sltc/services/communityservices/PAS.shtml>.

COMMENT #15: A commenter raised concerns about the quarterly updates as necessary to the fee schedule noted in the amendment in ARM 37.85.105(1) and would like clarification that this sentence specifies only new and old procedure codes will be added, deleted, or both and does not indicate rates will be adjusted quarterly. Quarterly adjustment of rates would be an unreasonable administrative burden on billing staff.

RESPONSE #15: The rule language allows for quarterly updates to the fee schedule, in addition to procedure codes. It does not require quarterly updates to programs where these updates are not necessary. The department needs the ability to be responsive to changing circumstances that may precipitate a change in the fee schedule, which is the subject of this section of the administrative rules. It would be unlikely that the department would update the fee schedule for Personal Assistance or Self-Directed Personal Assistance providers more often than annually.

6. These rule amendments are effective July 1, 2013.

/s/ John Koch
John Koch
Rule Reviewer

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

Certified to the Secretary of State June 10, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.6.111, 44.6.112, 44.6.113)
pertaining to fees charged by the)
Business Services Division and)
output relating to the Farm Bill Master)
List)

TO: All Concerned Persons

1. On April 11, 2013, the Secretary of State published MAR Notice No. 44-2-186 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 522 of the 2013 Montana Administrative Register, Issue Number 7.
2. The Secretary of State has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The amendments are effective July 1, 2013.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 10th day of June, 2013.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2012. This table includes those rules adopted during the period January 1, 2013, through March 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 December 31, 2012, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2012/2013 Montana Administrative Register.

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

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- 2.55.320 and other rule - Classifications of Employments - Construction Industry Premium Credit Program, p. 2427, 211

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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 May 2013 appear. Vacancies scheduled to appear from July 1, 2013, through September 30, 2013, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 1, 2013.

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 MAY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Pardons and Parole (Corrections)			
Mr. Pete Lawrenson Missoula Qualifications (if required): Public Representative	Governor	Lemaich	5/1/2013 1/1/2017
Ms. Coleen Magera Plains Qualifications (if required): Attorney	Governor	McCann-O'Connor	5/1/2013 1/1/2017
Mr. Jack Puckett Missoula Qualifications (if required): Public Representative	Governor	Ward	5/1/2013 1/1/2017
Commissioner of Political Practices (Political Practices)			
Mr. Jonathan Motl Helena Qualifications (if required): appointed	Governor	Murray	5/20/2013 1/1/2017
Community First Choice Development and Implementation Council (Public Health and Human Services)			
Ms. Dawna Brinkel Bozeman Qualifications (if required): Provider	Director	not listed	5/17/2013 5/17/2015
Ms. Kris Carlson Kalispell Qualifications (if required): Provider	Director	not listed	5/17/2013 5/17/2015

BOARD AND COUNCIL APPOINTEES FROM MAY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.			
Ms. Claudia Clifford Helena	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Representative		
Ms. Glenna Dreese Florence	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Consumer		
Ms. Ashli Gross Missoula	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Consumer		
Ms. Deb Heerdt Bozeman	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Provider		
Mr. Travis Hoffman Missoula	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Consumer		
Ms. Janece Jacob-Sharkey Missoula	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Provider		

BOARD AND COUNCIL APPOINTEES FROM MAY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.			
Ms. Connie Leveque Helena	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Representative		
Ms. Tiffany Metzler Billings	Governor	not listed	5/24/2013 5/17/2015
Qualifications (if required):	Consumer		
Ms. Sue Neff Butte	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Provider		
Ms. Kelly Reynolds Missoula	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Provider		
Ms. Patty Rigney Missoula	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Provider		
Mr. Quentin Schroeter Helena	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Representative		
Ms. Lisa Sheppard Kalispell	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required):	Provider		

BOARD AND COUNCIL APPOINTEES FROM MAY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.			
Mr. Richard Stuker Chinook	Governor	not listed	5/24/2013 5/17/2015
Qualifications (if required): Consumer			
Ms. Diana Tavary Helena	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required): Consumer			
Ms. Meg Traci Missoula	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required): Representative			
Mr. Todd Wood Roundup	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required): Provider			
Montana Cherry Commodity Advisory Committee (Agriculture)			
Ms. Tanya Campbell no city listed	Director	not listed	5/17/2013 5/3/2014
Qualifications (if required): none specified			
Mr. Barry Hansen Polson	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM MAY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Cherry Commodity Advisory Committee (Agriculture) cont.			
Mr. Cody Herring Big Fork	Director	not listed	5/17/2013 5/3/2014
Qualifications (if required): none specified			
Mr. Dupuis Oliver Polson	Director	not listed	5/17/2013 5/17/2015
Qualifications (if required): none specified			
Ms. Lise Rousseau Polson	Director	not listed	5/17/2013 5/3/2014
Qualifications (if required): none specified			
Mr. Jan Tusick Ronan	Director	not listed	5/17/2013 5/3/2015
Qualifications (if required): none specified			
Potato Commodity Advisory Council (Agriculture)			
Mr. Dave Cottom Dillon	Director	not listed	5/20/2013 5/20/2015
Qualifications (if required): Potato Producer			
Mr. Dennis Day Twin Bridges	Director	not listed	5/20/2013 5/20/2015
Qualifications (if required): Potato Producer			

BOARD AND COUNCIL APPOINTEES FROM MAY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Potato Commodity Advisory Council (Agriculture) cont.			
Mr. Pat Fleming Pablo	Director	not listed	5/20/2013 5/20/2016
Qualifications (if required):	Potato Producer		
Mr. Brad Haidle Fallon	Director	not listed	5/20/2013 5/20/2016
Qualifications (if required):	Potato Producer		
Mr. Dan Lake Ronan	Director	not listed	5/20/2013 5/20/2015
Qualifications (if required):	Potato Producer		
Mr. Sid Schutter Manhattan	Director	not listed	5/20/2013 5/20/2014
Qualifications (if required):	Potato Producer		
Mr. Roger Starkel Ronan	Director	not listed	5/20/2013 5/20/2014
Qualifications (if required):	none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Ageing Advisory Council (Public Health and Human Services) Ms. Betty Aye, Broadus Qualifications (if required): public representative</p>	Governor	7/18/2013
<p>Ms. Connie Bremner, Browning Qualifications (if required): public representative</p>	Governor	7/18/2013
<p>Mr. Alex Ward, Helena Qualifications (if required): public representative</p>	Governor	7/18/2013
<p>Ms. Cecelia (C.A.) Buckley, Great Falls Qualifications (if required): public representative</p>	Governor	7/18/2013
<p>Agriculture Development Council (Agriculture) Mr. Ervin Schlemmer, Joliet Qualifications (if required): agriculture producer</p>	Governor	7/1/2013
<p>Mr. Verges Aageson, Gilford Qualifications (if required): agriculture producer</p>	Governor	7/1/2013
<p>Alternative Health Care Board (Labor and Industry) Ms. Molly Danison, Missoula Qualifications (if required): midwife</p>	Governor	9/1/2013
<p>Board of Banking (Administration) Ms. Evelyn Casterline, Vida Qualifications (if required): public representative</p>	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Banking (Administration) cont. Mr. Kenneth M. Walsh, Twin Bridges Qualifications (if required): national bank officer of a medium-sized bank</p>	Governor	7/1/2013
<p>Board of Funeral Service (Labor and Industry) Mr. William Cronin, Havre Qualifications (if required): mortician</p>	Governor	7/1/2013
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Gene W. Bukowski, Billings Qualifications (if required): hearing aid dispenser with a master's degree and national certification</p>	Governor	7/1/2013
<p>Board of Medical Examiners (Labor and Industry) Ms. Carole Erickson, Missoula Qualifications (if required): public representative</p>	Governor	9/1/2013
<p>Mr. Dwight Thompson, Harlowton Qualifications (if required): licensed physician assistance</p>	Governor	9/1/2013
<p>Dr. Kris Spanjian, Billings Qualifications (if required): doctor of medicine</p>	Governor	9/1/2013
<p>Ms. Patricia Bollinger, Helena Qualifications (if required): nutritionist</p>	Governor	9/1/2013
<p>Ms. Linda Cetrone Levy, Billings Qualifications (if required): public representative</p>	Governor	9/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Medical Examiners (Labor and Industry) cont. Mr. Ryan Burke, Great Falls Qualifications (if required): volunteer emergency medical technician</p>	Governor	9/1/2013
<p>Ms. Eileen Sheehy, Billings Qualifications (if required): public representative</p>	Governor	9/1/2013
<p>Mr. Charles Farmer, Cut Bank Qualifications (if required): volunteer emergency medical technician</p>	Governor	9/1/2013
<p>Mrs. Ana Diaz, Billings Qualifications (if required): Public Representative</p>	Governor	9/1/2013
<p>Board of Nursing (Labor and Industry) Ms. Barbara Lundemo, Sidney Qualifications (if required): advanced practice registered nurse</p>	Governor	7/1/2013
<p>Board of Pharmacy (Labor and Industry) Ms. Frances Carlson, Great Falls Qualifications (if required): public representative</p>	Governor	7/1/2013
<p>Ms. Rebekah Matovich, Billings Qualifications (if required): pharmacy technician</p>	Governor	7/1/2013
<p>Board of Physical Therapy Examiners (Labor and Industry) Ms. Robin Peterson Smith, Billings Qualifications (if required): physical therapist</p>	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Private Security (Labor and Industry) Mr. Mark Chaput, Billings Qualifications (if required): representative of an electronic security company</p>	Governor	8/1/2013
<p>Board of Psychologists (Labor and Industry) Dr. Susan Mattocks, Miles City Qualifications (if required): private practice psychologist</p>	Governor	9/1/2013
<p>Board of Public Accountants (Labor and Industry) Mr. Rick Reisig, Great Falls Qualifications (if required): Certified Public Accountant</p>	Governor	7/1/2013
<p>Ms. Linda Harris, Absarokee Qualifications (if required): Certified Public Accountant</p>	Governor	7/1/2013
<p>Board of Radiologic Technologists (Labor and Industry) Mr. Mike Nielsen, Billings Qualifications (if required): radiologic technician/radiology practitioner assistant</p>	Governor	7/1/2013
<p>Board of Sanitarians (Labor and Industry) Mr. James Zabrocki, Miles City Qualifications (if required): sanitarian</p>	Governor	7/1/2013
<p>Board of Veterans' Affairs (Military Affairs) General John Walsh, Helena Qualifications (if required): Adjutant General</p>	Governor	8/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Veterans' Affairs (Military Affairs) cont. Mr. Keith Heavyrunner, Browning Qualifications (if required): veteran and resident of Region 3</p>	Governor	8/1/2013
<p>Ms. Jennifer Perez Cole, Helena Qualifications (if required): director of the Office of Indian Affairs</p>	Governor	8/1/2013
<p>Mr. Byron Erickson, Helena Qualifications (if required): U.S. Department of Labor Representative</p>	Governor	8/1/2013
<p>Board of Veterinary Medicine (Labor and Industry) Dr. Jean Lindley, Miles City Qualifications (if required): veterinarian</p>	Governor	7/31/2013
<p>Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat Byrne, Great Falls Qualifications (if required): water well contractor</p>	Governor	7/1/2013
<p>Burial Preservation Board (Administration) Mr. Robert P. Four Star, Poplar Qualifications (if required): representative of the Fort Peck Tribes</p>	Governor	8/22/2013
<p>Mr. Steve Platt, Helena Qualifications (if required): representative of the State Historic Preservation Office</p>	Governor	8/22/2013
<p>Mr. John Murray, Browning Qualifications (if required): representative of the Blackfeet Tribe</p>	Governor	8/22/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Board (Administration) cont.		
Mr. Reuben Mathias, Pablo Qualifications (if required): representative of the Salish-Kootenai Tribes (Flathead)	Governor	8/22/2013
Ms. Marilyn Silva, Miles City Qualifications (if required): public representative	Governor	8/22/2013
Ms. Skye Gilham, Browning Qualifications (if required): physical anthropologist	Governor	8/22/2013
Community Service Commission (Labor and Industry)		
Director Keith Kelly, Helena Qualifications (if required): agency representative	Governor	7/1/2013
Mr. Doug Braun, Billings Qualifications (if required): representative of organized labor	Governor	7/1/2013
Ms. Kimberly Miske, Wibaux Qualifications (if required): representative of local government	Governor	7/1/2013
Mr. Austin Lyle, Helena Qualifications (if required): youth representative	Governor	7/1/2013
Mr. Adam Vauthier, Anaconda Qualifications (if required): representative of a nonprofit organization	Governor	7/1/2013
Ms. Stefani Hicswa, Miles City Qualifications (if required): representative of a national service program	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Council (District Court) Judge Robert L. Dusty Deschamps III, Missoula Qualifications (if required): nominated	District Court	7/1/2013
Economic Development Advisory Council (Commerce) Mr. Jim Smitham, Butte Qualifications (if required): public representative	Governor	7/23/2013
Mr. Paul Tuss, Havre Qualifications (if required): public representative	Governor	7/23/2013
Mr. Brodie Cooney, Missoula Qualifications (if required): public representative	Governor	7/23/2013
Mr. Alan Ekblad, Great Falls Qualifications (if required): public representative	Governor	7/23/2013
Electrical Board (Labor and Industry) Mr. Jack Fisher, Butte Qualifications (if required): licensed electrician	Governor	7/1/2013
Family Education Savings Oversight Committee (Commissioner of Higher Education) Mr. Jon Satre, Helena Qualifications (if required): public representative	Governor	7/1/2013
Mr. Robert W. Minto Jr., Missoula Qualifications (if required): public representative	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Future Fisheries Review Panel (Fish, Wildlife and Parks Department)		
Mr. Corey Fisher, Missoula Qualifications (if required): licensed angler	Governor	7/1/2013
Mr. Rick Arnold, Bozeman Qualifications (if required): licensed angler	Governor	7/1/2013
Mr. Gary Frank, Missoula Qualifications (if required): silvicultrist	Governor	7/1/2013
Ms. Ann Schwend, Helena Qualifications (if required): Conservation District representative	Governor	7/1/2013
Mr. William Gavin, Bozeman Qualifications (if required): restoration professional	Governor	7/1/2013
Mr. Levi Luoma, Red Lodge Qualifications (if required): high school student	Governor	7/1/2013
Historical Society Board of Trustees (Historical Society)		
Clerk Ed Smith, Helena Qualifications (if required): public member	Governor	7/1/2013
Judicial Standards Commission (Justice)		
Mr. John Murphy, Great Falls Qualifications (if required): public representative	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Medical Home Working Group (State Auditor) Mr. John Hoffland, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Deborah Agnew, Billings Qualifications (if required): none specified	State Auditor	8/21/2013
Ms. Paula Block, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Doug Carr, Billings Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Paul Cook, Billings Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Janice Gomersall, Missoula Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Jonathan Griffin, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Ms. Kristin Juliar, Bozeman Qualifications (if required): none specified	State Auditor	8/21/2013
Ms. Carol Kelley, Bozeman Qualifications (if required): none specified	State Auditor	8/21/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Medical Home Working Group (State Auditor) cont. Mr. Jay Larson, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Ms. Kirsten Mailloux, Billings Qualifications (if required): none specified	State Auditor	8/21/2013
Mr. Bob Olson, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Fred Olson, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Mr. Bill Pfingsten, Bozeman Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Tom Roberts, Missoula Qualifications (if required): none specified	State Auditor	8/21/2013
Ms. Bernadette Roy, Missoula Qualifications (if required): none specified	State Auditor	8/21/2013
Dr. Rob Stenger, Great Falls Qualifications (if required): none specified	State Auditor	8/21/2013
Ms. Claudia Stephens, Billings Qualifications (if required): none specified	State Auditor	8/21/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Medical Home Working Group (State Auditor) cont. Ms. Lisa Wilson, Missoula Qualifications (if required): none specified	State Auditor	8/21/2013
Mr. Rick Yearry, Helena Qualifications (if required): none specified	State Auditor	8/21/2013
Mental Disabilities Board of Visitors (Governor) Ms. Lin Olson, Helena Qualifications (if required): family member of a consumer of developmental disability services	Governor	7/1/2013
Ms. Betty N. Cooper, Heart Butte Qualifications (if required): mental health treatment professional	Governor	7/1/2013
Ms. Patricia Harant, Helena Qualifications (if required): consumer of mental health services	Governor	7/1/2013
Mint Committee (Agriculture) Mr. Kenneth W. Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2013
Montana Historical Society Board of Trustees (Historical Society) Ms. Sharon Lincoln, Billings Qualifications (if required): public member	Governor	7/1/2013
Ms. Janene Caywood, Missoula Qualifications (if required): archeologist	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. James Bouma, Choteau Qualifications (if required): forage producer	Director	9/17/2013
Mr. Kehoe Wayman, Ronan Qualifications (if required): representative of the outfitters and guides	Director	9/17/2013
Mr. Mark Siderius, Kalispell Qualifications (if required): forage producer	Director	9/17/2013
Montana Wheat and Barley Committee (Agriculture) Mr. Chris Kolstad, Ledger Qualifications (if required): wheat and/or barley producer in District 3	Governor	8/20/2013
Mr. Randy Hinebauch, Conrad Qualifications (if required): wheat and/or barley producer in District 2	Governor	8/20/2013
Motorcycle Safety Advisory Commission (Commissioner of Higher Education) Mr. Carl Lawson, Missoula Qualifications (if required): cycle group member	Governor	7/1/2013
Poet Laureate (Montana Arts Council) Ms. Sheryl Noethe, Missoula Qualifications (if required): Montana poet	Governor	8/1/2013
Private Lands/Public Wildlife Council (Fish, Wildlife and Parks Department) Rep. Bob Ream, Helena Qualifications (if required): Fish, Wildlife and Parks Commissioner	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Lands/Public Wildlife Council (Fish, Wildlife and Parks Department) cont.		
Mr. Jack Billingsley, Glasgow Qualifications (if required): outfitter	Governor	7/1/2013
Commissioner Chris King, Winnett Qualifications (if required): landowner	Governor	7/1/2013
Ms. Kathy Hadley, Deer Lodge Qualifications (if required): landowner	Governor	7/1/2013
Mr. Mike Penfold, Billings Qualifications (if required): sportsperson	Governor	7/1/2013
Mr. Joe Cohenour, East Helena Qualifications (if required): sportsperson	Governor	7/1/2013
Mr. Alex Nixon, Roberts Qualifications (if required): outfitter	Governor	7/1/2013
Professional Engineers and Land Surveyors (Labor and Industry)		
Mr. John Neil, Great Falls Qualifications (if required): licensed civil engineer	Governor	7/1/2013
Mr. Tom Heinecke, Kalispell Qualifications (if required): licensed mechanical engineer	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Defender Commission (Administration)		
Mr. Richard Gillespie, Helena	Governor	7/1/2013
Qualifications (if required): an attorney nominated by the Montana State Bar who represents criminal defense lawyers		
Mr. William Snell, Billings	Governor	7/1/2013
Qualifications (if required): employee of an organization providing addictive behavior counseling		
Ms. Margaret Novak, Chester	Governor	7/1/2013
Qualifications (if required): member of an organization advocating on behalf of indigent persons		
Mr. Alfred F. Avignone, Bozeman	Governor	7/1/2013
Qualifications (if required): attorney nominated by the Montana Supreme Court		
Mr. Brian Gallik, Bozeman	Governor	7/1/2013
Qualifications (if required): attorney nominated by the Montana Supreme Court		
Research and Commercialization Technology Board (Commerce)		
Mr. Jim Davison, Anaconda	Governor	7/1/2013
Qualifications (if required): public representative		
State Workforce Investment Board (Labor and Industry)		
Mr. Mike Grove, Helena	Governor	7/1/2013
Qualifications (if required): private sector representative		
Director Keith Kelly, Helena	Governor	7/1/2013
Qualifications (if required): veteran and a public sector representative		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Workforce Investment Board (Labor and Industry) cont. Mr. Robert Miller, Dillon Qualifications (if required): section 166 representative	Governor	7/1/2013
Commissioner Connie Eissinger, Brockway Qualifications (if required): private sector representative	Governor	7/1/2013
Director Dore Schwinden, Helena Qualifications (if required): public sector representative	Governor	7/1/2013
Mr. Evan Barrett, Butte Qualifications (if required): Governor's representative	Governor	7/1/2013
Mr. Michael McGinley, Dillon Qualifications (if required): county commissioner	Governor	7/1/2013
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): private sector representative	Governor	7/1/2013
Ms. Linda Woods, Darby Qualifications (if required): public sector representative	Governor	7/1/2013
Mr. Jeff Rupp, Bozeman Qualifications (if required): public sector representative	Governor	7/1/2013
Mr. John Cech, Billings Qualifications (if required): public sector representative	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Workforce Investment Board (Labor and Industry) cont. Mr. Dave Crum, Great Falls Qualifications (if required): private sector representative	Governor	7/1/2013
Ms. Martina Copps, Broadus Qualifications (if required): private sector representative	Governor	7/1/2013
Mr. Thomas Curry, Billings Qualifications (if required): labor representative	Governor	7/1/2013
Mr. Michael DesRosier, Browning Qualifications (if required): county commissioner	Governor	7/1/2013
Mr. Kirk Hammerquist, Kalispell Qualifications (if required): private sector representative	Governor	7/1/2013
Ms. Jacquie Helt, Missoula Qualifications (if required): labor representative	Governor	7/1/2013
Ms. Maureen Kenneally, Butte Qualifications (if required): private sector representative	Governor	7/1/2013
Mr. Alan Skari, Chester Qualifications (if required): private sector representative	Governor	7/1/2013
Mrs. Sandi Miller, Helena Qualifications (if required): private sector representative	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Workforce Investment Board (Labor and Industry) cont. Mr. Thomas McKenna, Lewistown Qualifications (if required): private sector representative	Governor	7/1/2013
Ms. Anna Whiting-Sorrell, Helena Qualifications (if required): public sector representative	Governor	7/1/2013
Mr. George Kipp, Browning Qualifications (if required): section 166 representative	Governor	7/1/2013
Superintendent Denise Juneau, Helena Qualifications (if required): public sector representative	Governor	7/1/2013
Ms. Vicki Judd, Missoula Qualifications (if required): private sector representative	Governor	7/1/2013
Mr. Henry Dykema, Red Lodge Qualifications (if required): private sector representative	Governor	7/1/2013
Mr. John DeMichiei, Roundup Qualifications (if required): private sector representative	Governor	7/1/2013
Mr. Nicholas Kujawa, Butte Qualifications (if required): private sector representative	Governor	7/1/2013
Ms. Tina Bundtrock, Great Falls Qualifications (if required): private sector representative	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Interoperability Governing Board (Administration)		
Mr. Tim Reardon, Helena Qualifications (if required): Director of the Montana Department of Transportation	Governor	9/30/2013
Mr. Dick Clark, Helena Qualifications (if required): Chief Information Officer	Governor	9/30/2013
Sheriff Leo C. Dutton, Helena Qualifications (if required): representative of the Montana's Sheriffs and Peace Officers Association	Governor	9/30/2013
Ms. Sheena Wilson, Helena Qualifications (if required): Governor's office representative	Governor	9/30/2013
Atty. General Steve Bullock, Helena Qualifications (if required): Attorney General	Governor	9/30/2013
Teachers' Retirement Board (Administration)		
Mr. Scott A. Dubbs, Lewistown Qualifications (if required): administrator/member	Governor	7/1/2013
Telecommunications Access Services for Persons with Disabilities Committee (Public Health and Human Services)		
Mr. Ron Bibler, Great Falls Qualifications (if required): hearing disabled	Governor	7/1/2013
Ms. Linda Kirkland, Helena Qualifications (if required): agency representative	Governor	7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Telecommunications Access Services for Persons with Disabilities Committee (Public Health and Human Services) cont.		
Ms. Chris Caniglia, Helena Qualifications (if required): a nondisabled business person	Governor	7/1/2013
Mr. James Marks, Helena Qualifications (if required): agency representative	Governor	7/1/2013
Tourism Advisory Council (Commerce)		
Ms. Rhonda Fitzgerald, Whitefish Qualifications (if required): resident of Glacier Country	Governor	7/1/2013
Mr. Stan Ozark, Glasgow Qualifications (if required): resident of Missouri Country	Governor	7/1/2013
Mr. Bill McGladdery, Butte Qualifications (if required): resident of Goldwest Country	Governor	7/1/2013
Ms. Michelle Robinson, Billings Qualifications (if required): resident of Custer Country	Governor	7/1/2013
Mr. Dan Austin, Billings Qualifications (if required): resident of Southeast Montana	Governor	7/1/2013
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice)		
Mr. Jim Kambich, Butte Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.		
Mr. Jon A. Krutar, Helena Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013
Ms. Tracy Stone-Manning, Missoula Qualifications (if required): Director of the Department of Environmental Quality	Governor	7/31/2013
Director Jeff Hagener, Helena Qualifications (if required): Director of Fish, Wildlife and Parks	Governor	7/31/2013
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	7/31/2013
Director Richard Opper, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	7/31/2013
Mr. William Rossbach, Missoula Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013
Mr. Joe Maurier, Helena Qualifications (if required): Director of the Department of Fish, Wildlife and Parks	Governor	7/31/2013
Mr. Roy O'Connor, Missoula Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013
Mr. Elton Ringsak, Butte Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2013 THROUGH SEPTEMBER 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont. Ms. Katherine Eccleston, Anaconda Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013
Mr. Michael McLean, Anaconda Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013
Ms. Maureen Connor, Philipsburg Qualifications (if required): resident of the Upper Clark Fork River Basin	Governor	7/31/2013
Director John Tubbs, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	7/31/2013