

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.94.3727 pertaining to the) PROPOSED AMENDMENT
administration of the 2011-2012)
Federal Community Development)
Block Grant (CDBG) Program)

TO: All Concerned Persons

1. On November 15, 2012, at 9:00 a.m., the Department of Commerce will hold a public hearing in Room 504A of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on November 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Gus Byrom, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; fax (406) 841-2771; TDD (406) 841-2702; or e-mail gbyrom@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2011-2012 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended April 2012; the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2011 Application Guidelines for Planning Projects; the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); the Montana Community Development Block Grant Program and Neighborhood Stabilization Program (NSP) FFY ~~2011~~ 2012 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Public Facilities Projects and the FFY 2012 Application Guidelines for Housing and Neighborhood Renewal Projects.

- (2) The rules incorporated by reference in (1) relate to the following:
 - (a) policies governing the program;

- (b) requirements for applicants;
 - (c) procedures for evaluating applications;
 - (d) procedures for local project start up;
 - (e) environmental review of project activities;
 - (f) procurement of goods and services;
 - (g) financial management;
 - (h) protection of civil rights;
 - (i) fair labor standards;
 - (j) acquisition of property and relocation of persons displaced thereby;
 - (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
 - (l) project audits;
 - (m) public relations;
 - (n) project monitoring; and
 - (o) planning assistance.
- (3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcpx> or <http://cdbged.mt.gov/draftguidelines.mcpx>, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2012 Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Gus Byrom, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2550; fax (406) 841-2777; TDD (406) 841-2702; or e-mail gbyrom@mt.gov, or to the Business Resources Division, 301 South Park, P.O. Box 200505, Helena, Montana 59620-0505, telephone (406) 841-2736; fax (406) 841-2731; e-mail ddemarais@mt.gov and must be received no later than 5:00 p.m., November 23, 2012.

5. Gus Byrom, Department of Commerce, 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 section 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/ Kelly A. Casillas
KELLY A. CASILLAS
Rule Reviewer

/s/ Dore Schwinden
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State October 15, 2012.

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

In the matter of the adoption of NEW) NOTICE OF PROPOSED ADOPTION
RULE I regarding shooting preserve)
applications) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On December 20, 2012, the Department of Fish, Wildlife and Parks (department) proposes to adopt the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the department no later than November 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jesssnyder@mt.gov.

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

NEW RULE I SHOOTING PRESERVE LICENSE APPLICATION (1) The license period for shooting preserves is July 1 through June 30.

(2) Applications, renewals, and expansion requests for a shooting preserve license must be submitted on a form provided by the department.

(3) Applications, renewals, and expansion requests for a shooting preserve license are to be postmarked no later than July 1. Applications, renewals, and expansion requests postmarked after July 1 will not be considered until the following license period.

(4) Any shooting preserve that is not renewed by July 1 will be considered to have lapsed and is subject to the provisions of a new license application.

AUTH: 87-4-501, MCA

IMP: 87-4-501, MCA

Reasonable Necessity: The department is proposing a new rule in order to provide shooting preserve licensees and the department with a consistent application process and deadlines. The process and deadlines will ensure department personnel are available to complete the necessary licensing requirements and inspections in a timely fashion. It also will provide the department with the necessary information to budget and order an appropriate amount of required supplies such as shooting preserve record books and bird tags.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also

be submitted to Mike Lee, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; fax 406-444-7894; e-mail milee@mt.gov, and must be received no later than November 23, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Mike Lee at the above address no later than 5:00 p.m., November 23, 2012.

6. 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 11 persons based on the number of shooting preserves license holders.

7. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which 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 commission or 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/ Aimee Fausser

Aimee Fausser, Legal Counsel
Rule Reviewer

Certified to the Secretary of State October 15, 2012

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.101.413 renewal dates and) PROPOSED AMENDMENT,
requirements, 24.171.401 fees,) ADOPTION, AND REPEAL
24.171.408 outfitter records,)
24.171.701 NCHU categories,)
transfers, and records, 24.171.2101)
renewals, the adoption of NEW RULE)
I incomplete outfitter and guide)
license applications, and the repeal of)
24.171.409 guide to hunter ratio and)
24.171.605 provisional guide license)

TO: All Concerned Persons

1. On November 19, 2012, at 1:30 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters (board) no later than 5:00 p.m., on November 14, 2012, to advise us of the nature of the accommodation that you need. Please contact Trudy Phippen, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

3. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(w) remain the same.

(x)	Outfitters	Outfitter Professional Guide Guide (including provisional guide)	Annually Annually Annually	December 31 December 31 December 31
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(y) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The board is amending this rule and ARM 24.171.401, and repealing ARM 24.171.605, because after passage of a full licensing year, the board concluded the rule is not fulfilling its intended purpose of allowing outfitters to license up to three guides a year on inactive status, but not pay any fees until activating the licenses. It is also apparent that there is no need within the industry, as the board has not issued any inactive guide licenses since the initial adoption of the rule on August 27, 2010.

4. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.171.401 FEES (1) through (1)(e) remain the same.

~~(f) Guide license~~

~~(i) initial~~

(f) Initial and renewal guide license 150

~~(ii) initial processing of inactive guide license~~ 50

~~(iii) activation of inactive guide license~~ 100

~~(iv) renewal of inactive guide license~~ 50

(g) through (k)(iii) remain the same.

~~(iv) activating inactive guide license~~ 125

(l) remains the same.

AUTH: 37-1-131, 37-1-134, ~~37-1-319~~, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, ~~37-1-319~~, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-318, MCA

REASON: Authority and implementation cites are amended to align with the elimination of the inactive guide license.

24.171.408 OUTFITTER RECORDS (1) remains the same.

(2) Outfitter records shall be maintained on forms prescribed by the board and shall contain information as required by the board. The information required shall include, ~~but not be limited to:~~

(a) through (f) remain the same.

(g) the actual leased acreage unused by clients during that year; and

~~(h) tally sheets reflecting the number of clients served per NCHU category as defined in ARM 24.171.701 each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed; and~~

(i) remains the same, but is renumbered (h).

(3) Amendments to logs shall be made immediately when errors are discovered. Amendments that only supplement records with information that arose after license renewal are always proper. However, cases of amendments to records for any other reason shall be brought to the screening panel for a decision as to whether an investigation should follow.

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

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-301, MCA

REASON: The board determined it is reasonably necessary to amend (2) so that all the information required on the board forms is presented in rule. Without the amendment, the board is able to amend the forms and change what must be reported without providing notice to licensees. The board has received numerous complaints regarding the amount of record-keeping required on the forms, as some of the information requested is not called for by statute or rule. The board is deleting the NCHU tally sheets in (h), because the information required on the sheets is already reported in client logs, and the tally sheet forms request information not required by rule or statute.

In conjunction with the amendment to ARM 24.171.2101, the board is amending (3) to require that licensees amend client logs as soon as errors are discovered. It is the board's intent that this is an ongoing licensee obligation, and is specifying that amendments for any reason other than to supplement records with updated information will be reviewed by the screening panel. This amendment is reasonably necessary to address recent situations that convinced the board of the need to monitor amendments to outfitter records to avoid abuse.

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) through (8) remain the same.

(9) An outfitter who is subject to an adjustment of NCHU under 37-47-316, MCA, that would otherwise occur on or before December 4 ~~31, 2013~~ 2014, shall have up to and including December 4 ~~31, 2013~~ 2014, to establish the NCHU. The category definitions under this rule may be applied retroactively for purposes of establishing NCHU.

(10) and (11) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-316, MCA

REASON: Net client hunter use (NCHU) received in a transfer that occurred during the time period set forth in 37-47-316, MCA, and this rule, is subject to loss if not used within the prescribed time. When this provision was originally effective on October 14, 2011, licensees were expected to receive the results of a recently concluded board audit of NCHU, so they would have three hunting seasons to use any NCHU that might otherwise be subject to loss. The audit was not completed until after the 2011 hunting season had ended, leaving licensees only two years to use the NCHU that was at risk, according to the audit. The board is extending the timeline to maintain the original intent of the rule and allow licensees three hunting seasons after the publication of the audit results to use NCHU that might otherwise be subject to loss.

24.171.2101 RENEWALS (1) through (2)(c) remain the same.

(d) a copy of the licensee's current insurance certificate with the licensee as the named insured; and

(e) complete client report logs; ~~and,~~

~~(f) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year.~~

(3) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, 37-47-318, MCA

REASON: The board is deleting certain required records from this rule as the information is no longer necessary and such tally sheets are being deleted from ARM 24.171.408.

5. The proposed new rule provides as follows:

NEW RULE I INCOMPLETE OUTFITTER AND GUIDE LICENSE

APPLICATIONS (1) Applications received by the board will be reviewed for completeness. If an application is not complete when first received by the board, the applicant will be mailed a letter stating that the application is incomplete. The board may indicate which documents or information is missing in this letter. However, the applicant remains responsible for ensuring all required information and documents are timely submitted. If the application is not completed within one year from the date the incomplete application first arrived, the application expires, and the applicant shall be required to submit a new application and fees before being considered for licensure.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: The board will occasionally receive an application that will remain active, but not complete, for an extended period of time. Open applications require additional time and resources to maintain. The board is proposing this rule to establish a procedure to close application files that do not progress to licensure within a reasonable period of time, which the board has determined to be within one year of beginning the process. This rule is not intended to affect the department's practice of refusing incomplete applications when no fee accompanies the application.

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

24.171.409 GUIDE TO HUNTER RATIO found at ARM page 24-18525.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-402, MCA

REASON: The board is repealing this unnecessary rule, as it no longer serves any purpose following the elimination of outfitter-sponsored licenses.

24.171.605 PROVISIONAL GUIDE LICENSE found at ARM page 24-18573.

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA

IMP: 37-1-131, 37-1-319, 37-47-201, 37-47-301, 37-47-303, 37-47-307,
MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsout@mt.gov, and must be received no later than 5:00 p.m., November 27, 2012.

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

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsout@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
LEE KINSEY, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 15, 2012

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 24.183.1001 form of corner) HEARING ON PROPOSED
records, 24.183.1104 uniform) AMENDMENT
standards for certificates of survey,)
and 24.183.1107 uniform standards)
for final subdivision plats)

TO: All Concerned Persons

1. On September 6, 2012, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR notice no. 24-183-39 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1716 of the 2012 Montana Administrative Register, issue no. 17. A public hearing was scheduled in the notice and held on September 27, 2012, in Helena.

2. It was subsequently discovered that an error had occurred and the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and has scheduled a second public hearing as shown below.

3. On November 19, 2012 at 9:00 a.m. a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

4. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors no later than 5:00 p.m., on November 14, 2012, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpels@mt.gov.

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

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the ~~board of professional engineers and land surveyors~~ Board of Professional

Engineers and Professional Land Surveyors. The approved version of the form for the public land survey system was adopted by the board on ~~July 1, 1981~~ February 2, 2012, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, P.O. Box 359, Columbia Falls, Montana 59912, by contacting the association directly at (406) 892-4579, or on the internet at www.marls.com.

(2) remains the same.

(a) A a description or quotation of those portions of the original or subsequent record, which were used in evaluating the corner position;

(i) remains the same.

(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey, or other surveys of record.

(iii) Subsequent record can come from sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data help support the reestablished corner position, because they clearly show on what history the surveyor based the corner position. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, if applicable, must appear on the corner record.

(b) A a description of the original or subsequent record evidence found that locates the corner position;

(i) through (iii) remain the same.

(c) A a listing of all details about the corner and its location, which will help exclusively identify the corner position, including the size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls, which help locate the corner. In many cases, instructions on how to find the corner should be included;

(i) and (ii) remain the same.

(d) A a sketch of the corner to show how a found or set corner is marked or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified;

(e) ~~The~~ the surveyor who performed or directed the ~~field work~~ fieldwork, which is depicted on the corner record, shall sign and affix the licensee's seal in the certification;

(i) remains the same.

(ii) The employer blank is optional, but useful, in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.

(f) ~~For~~ for public land survey system corners, the cross index at the bottom of the page must be completed by the surveyor. Only the single township and range index where the corner is filed is to be completed.

(i) remains the same.

AUTH: 37-67-202, 70-22-107, MCA

IMP: 70-22-107, MCA

REASON: The board determined it is reasonably necessary to amend this rule to reflect the most current version of the corner recordation form as approved by the board. The Montana Association of Registered Land Surveyors initially requested that the board review this form and add more specific instructions, similar to those on the Public Land Survey System Corner Record form. The board has also amended the form to clarify the possible number of parcels and corners. Other nonsubstantive amendments are proposed to comply with the formatting and grammar requirements of the Secretary of State.

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1) A certificate of survey ~~may not be filed by a county clerk and recorder unless it complies~~ must comply with the following requirements:

(a) A certificate of survey must be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, ~~overall to include a 1 1/2 inch margin on the binding side~~ with a minimum 1/2-inch margin on all sides, or as required by the filing office.

(b) ~~One signed copy on cloth-backed material or original on 3 three mil or heavier matte stable-base polyester film or equivalent and/or one signed reproducible copy original on a stable-base polyester film 24# white bond paper or equivalent must be submitted, or on such medium as required by the filing office.~~

(c) If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed ~~or referred to~~ on sheet number one sheet of the certificate of survey.

(d) A certificate of survey must show or contain ~~on its face or on separate sheets referred to on its face~~ the following information: ~~The surveyor may, at his or her discretion, provide additional information regarding the survey.~~

(i) A a title or title block, including the quarter-section, section, township, range, principal meridian, and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not ~~bear~~ contain the title "plat," "subdivision," or any title other than "Certificate of Survey-";

(ii) ~~The~~ the name(s) of the person(s) who commissioned the survey, the name(s) of the owner(s) of the land surveyed, if other than the person(s) commissioning the survey, and the names of any adjoining ~~platted subdivisions plats,~~

(iii) ~~The~~ the date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line, or retrace an existing parcel of land;

(iv) A a north arrow;

(v) A a scale bar. ~~{The scale of the certificate of survey must be sufficient to legibly represent the required information and data on the certificate of survey;}~~

(vi) ~~The~~ the location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101(1)(c);

(A) If additional monuments are to be set after the certificate of survey is filed, the location of these monuments must be shown by a distinct symbol, and the certificate of survey must bear contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set.

(B) All monuments found during ~~a retracement~~ the survey that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).

(C) Witness and reference monuments must be clearly shown.

(vii) ~~The~~ the location of any section ~~corners~~ corner or corners of divisions of sections the land surveyor deems to be pertinent to the survey, or that was used as a control in the survey;

(viii) ~~Witness and reference monuments and basis of bearings bearing.~~ For purposes of this rule, the term "basis of ~~bearings bearing~~" means the land surveyor's statement as to the origin of the bearings shown in on the certificate of survey. The If the basis of bearings bearing(s) may refer refers to a particular line between two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the certificate of survey; the line marked by the two previously monumented points must be labeled "basis of bearing," and the previously filed survey document name or number must be cited in the land surveyor's statement as to the origin of the bearing(s). If the certificate of survey shows true bearings, the basis of ~~bearings bearing~~ must describe the method by which these true bearings were determined;

(ix) ~~The~~ the bearings, distances, and curve data of all boundary lines, and all control or pertinent lines used to determine the boundaries of the parcel(s) surveyed. If the parcel surveyed is bounded by an irregular shoreline or a body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given;

(A) The courses along a meander line are shown solely to provide a basis for calculating the ~~acreage~~ area of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.

(B) For purposes of this rule, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(C) If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown, and each segment must at least include distance.

(x) ~~Data~~ data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves, ~~these~~ the data must at least include radius and arc length, and either delta angle, radial bearings, or chord bearing and distance. All nontangent points of intersection on the curve must show either the bearings of radial lines or chord length and bearing. Nontangent curves must be so labeled; For nontangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.

(xi) ~~Lengths~~ lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically-;

~~(xii)~~ at least one record measurement reference, if available, must be shown;

~~(xii)~~ (xiii) A a narrative legal description of the parcel parcel(s) surveyed. The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:

~~(A)~~ If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is narrative legal description may be the aliquot part or the government lot description of the parcel-;

~~(B)~~ If the certificate of survey depicts the retracement or division of a parcel one or lot that is more parcels shown on a previously filed certificate of survey or subdivision plat, the information required by this subsection is narrative legal description may be the number or name of the previously filed certificate of survey or plat and the parcel or lot number of the parcel parcel(s) previously surveyed-; or

~~(C)~~ If the certificate of survey depicts the retracement of one or more parcels shown on a previously filed certificate of survey, plat, or amended plat, the narrative legal description may be the number of the previously filed certificate of survey or the name of the previously filed plat or amended plat, and the parcel number of the parcel(s) previously surveyed-;

~~(C)~~ (D) If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above survey creates or retraces one or more parcels, the information narrative legal description required by this subsection is may be either the metes-and-bounds description of each individual parcel created by the survey or the metes-and-bounds description of the perimeter boundary of the parcel parcels surveyed-;

~~(D)~~ If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.

~~(E)~~ If the narrative legal description does not fall within (1)(d)(xiii)(A), (B), or (C), then the narrative legal description required by this subsection must conform with (1)(d)(xiii)(D);

~~(E)~~ (G) The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel-;

~~(F)~~ If the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the parcel surveyed, must be labeled "Point of Beginning"; and

~~(xiii)~~ (xiv) Except as provided by (1)(f)(iv), all parcels created or retraced by the certificate of survey, designated by number or letter, and the dimensions bearings, distances, curve data, and area of each parcel, except as provided in (1)(f)(iii). (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the certificate of survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification-;

~~(xiv)~~ (xv) The the location, bearings, distances, and curve data of any easement that will be created by reference to the certificate of survey;

~~(xv)~~ (xvi) The the dated signature and the seal of the land surveyor responsible for the survey. The ~~affixing of this seal constitutes a certification by the surveyor~~ land surveyor's signature certifies that the certificate of survey has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act. ~~act~~;

~~(xvi)~~ (xvii) A a memorandum of any oaths administered under 76-3-405, MCA;

(xviii) if applicable, the certificate of the examining land surveyor; and

~~(xvii)~~ (xix) Space space for the county clerk and recorder's filing information.

(e) Certificates of survey that do not represent a division or aggregation of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must ~~bear~~ contain a statement as to their purpose and must meet applicable requirements of this rule for form and content. If the purpose of a certificate of survey is stated as a retracement or partial retracement, and if multiple tracts of record contained within the parcel's perimeter boundary on the certificate of survey are not individually shown, then the certificate of survey does not expunge the tracts of record, unless it conforms to (1)(f)(iv) and contains the acknowledged certificate of the property owner(s), citing the applicable exemption in its entirety.

(f) Procedures for divisions of land exempted from public review as subdivisions. If one or more parcels on a certificate of survey is created by an exemption from subdivision review under 76-3-207, MCA, then, except as provided in (1)(f)(iii) and (iv), the certificate of survey must establish the boundaries of the exemption parcel(s). The certificate of survey is not required to establish, but may establish, the exterior boundaries of the remaining portion of the parent tract of land. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to identify the location and extent of the exemption parcel to be created. Unsurveyed portions of the parent tract of land must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY". The certificate of survey must contain the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and cite the applicable exemption in its entirety. Certificates The certificate of survey for divisions of land meeting the criteria set out in 76-3-207, MCA, must meet the following requirements:

~~(i)~~ (i) A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

~~(ii)~~ (i) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed, unless it bears shows or contains a signed and acknowledged recitation of the covenant in its entirety.

~~(iii)~~ (ii) If a certificate of survey invokes the exemption for ~~gifts and sales~~ gift(s) or sale(s) to members of the landowner's immediate family, the certificate of survey must indicate the name of the proposed grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee.

~~(iv)~~ (iii) If a certificate of survey invokes the exemption for the relocation of common boundary ~~lines~~ line(s):

(A) The certificate of survey must ~~bear~~ contain the signatures of all landowners whose ~~parcels~~ tracts of record will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of ~~or eliminate~~ a boundary line dividing or lines common to two or more parcels tracts of record, and must clearly distinguish the prior boundary location or locations (shown, for example, by a dashed or broken ~~line or line(s) with a notation~~) from the new boundary location or locations (shown, for example, by a solid ~~line or line(s) with a notation~~);

(B) The certificate of survey must show the boundaries of the area that is being removed from one ~~parcel~~ tract of record and joined with another ~~parcel~~ tract of record. The certificate of survey ~~may, but is not required to establish, but may establish,~~ the exterior boundaries of the resulting ~~parcels~~ tracts of record. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation; Unsurveyed portions of the tracts of record must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY"; and

(C) ~~If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel. The certificate of survey must contain the following notation: "The area that is being removed from one tract of record and joined with another tract of record is not itself a tract of record. Said area shall not be available as a reference legal description in any subsequent real property transfer after the initial transfer associated with the [certificate of survey or amended plat] on which said area is described, unless said area is included with or excluded from adjoining tracts of record."~~

(iv) If a certificate of survey invokes the exemption for aggregation of parcels or lots:

(A) The certificate of survey must contain the signatures of all landowners whose tracts of record will be altered by the proposed aggregation. The certificate of survey must show that the exemption was used only to eliminate a boundary line or lines common to two or more tracts of record, and must clearly distinguish the prior boundary location or locations (shown for example by dashed or broken line(s) with a notation) from the new perimeter boundary location or locations (shown for example by solid line(s) with a notation); and

(B) The certificate of survey must establish the perimeter boundary of the resulting tract(s) of record.

(v) A survey document that modifies lots ~~in~~ on a ~~platted and filed subdivision plat~~ and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d), ~~or (e), or (f),~~ MCA, must be entitled "amended plat of the (lot, block, and name of subdivision being amended)," but for all other purposes ~~is to be regarded as a certificate~~ must comply with the requirements for form and descriptive content of

certificates of survey contained in this rule. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.

(vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must ~~bear~~, contain or be accompanied by; a certification by the county treasurer that all real property taxes and special assessments assessed and levied on the surveyed land have been paid.

(vii) For purposes of ~~(4)(f)~~ this rule, when the parcel of land for which an exemption from a subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel land under the contract-for-deed.

(g) The land surveyor, at his or her discretion, may provide additional information on the certificate of survey regarding the survey.

~~(g)~~ (h) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Montana Subdivision and Platting Act. The divisions of land described in 76-3-201, 76-3-205, and 76-3-209, MCA, and divisions of federally owned land made by a United States U.S. government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A However, a certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule, and bears contains a certificate of all the surveyor performing the survey landowners citing the applicable exemption from the Act act in its entirety, or, when applicable, that the land surveyed is owned by the federal government. The certificate of survey must establish the boundaries of the exemption parcel(s). The certificate of survey is not required to establish, but may establish, the exterior boundaries of the remaining portion of the parent tract of land. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient as to identify the location and extent of the exemption parcel to be created. Unsurveyed portions of the parent tract of land must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY".

AUTH: 37-67-202, 76-3-403, 76-3-411, MCA

IMP: 37-67-314, 76-3-101 through 76-3-411, 76-3-403, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.183.1107 to separate the legal boundary elements and related plat content utilized by licensed professional land surveyors from the land use elements imposed during subdivision and exemption reviews by planning authorities. In 2007, the board initially considered concerns of planners, clerks and recorders, and county commissioners regarding some counties' requirement that land surveyors provide what was believed to be excessive information on the face of plats. Following extensive review and discussion, the board determined the proposed amendments are necessary to provide consistency among county governments regarding information placed on certificates of survey and subdivision plats.

The board proposed amending these two rules in late 2011, but did not amend them after receiving numerous comments and concerns. The amendments proposed now are the culmination of five months of board meetings with interested parties since that rulemaking. As well, the amendments take into consideration the concerns of the commenters in the previous rulemaking, as well as all input during the recent meetings.

Implementation and authority cites are being amended to provide the complete sources of the board's rulemaking authority and to accurately reflect all statutes implemented through these two rules.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

~~(1) A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies~~ must comply with the following requirements:

(a) the plat complies with the requirements contained in (2);

(b) the plat includes a conditions of approval sheet(s) that complies with the requirements contained in (4); and

(c) the plat is accompanied by documents listed in (5).

(2) A plat must comply with the following requirements:

~~(a) Final subdivision plats~~ A plat must be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches, overall to include a 1 1/2-inch margin on the binding side with a minimum 1/2-inch margin on all sides, or as required by the filing office.

~~(b) One signed copy on cloth-backed material or original on 3 three mil or heavier matte stable-base polyester film or equivalent and/or one signed reproducible copy original on a stable-base polyester film 24# white bond paper or equivalent must be submitted, or on such medium as required by the filing office.~~

~~(c) If more than one sheet must be used to adequately depict the land subdivided surveyed, each sheet must show the number of that sheet and the total number of sheets included. All Except as provided in (4)(b), all certifications must be placed or referred to on one sheet number one of the plat.~~

~~(d) A survey document that results in an increase in the number of lots or modifies six or more lots on a filed subdivision plat must be entitled "amended plat of (lot, block, and name of subdivision being amended)," and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d), or (e), or (f), MCA, may not be filed with the county clerk and recorder unless it meets~~ must meet the filing requirements for final subdivision plats specified in this rule.

~~(2) (e) A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information: The surveyor may, at his or her discretion, provide additional information regarding the survey.~~

~~(a) (i) A title or title block, indicating including the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition";~~

~~(b) (ii) The the name(s) of the person(s) who commissioned the survey, and the name(s) of the owner(s) of the land to be subdivided, if other than the person(s)~~

commissioning the survey, the names of any adjoining ~~platted subdivisions~~ plats, and the numbers of any adjoining certificates of survey previously filed;

~~(c)~~ (iii) A a north arrow;

~~(d)~~ (iv) A a scale bar. ~~(The scale of the plat must be sufficient to legibly represent the required information and data on the plat.);~~

~~(e)~~ (v) ~~The~~ the location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101(1)(c);

~~(i)~~ (A) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must ~~bear~~ contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set.

~~(ii)~~ (B) All monuments found during a ~~retracement~~ the survey that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c).

(C) Witness and reference monuments must be clearly shown.

~~(f)~~ (vi) ~~The~~ the location of any section ~~corners~~ corner or corners of divisions of sections that the land surveyor deems to be pertinent to the survey or was used as control in the survey;

~~(g)~~ (vii) ~~Witness and reference monuments and basis of bearings~~ bearing. For purposes of this rule, the term "basis of ~~bearings~~ bearing" means the land surveyor's statement as to the origin of the bearings shown on the plat. ~~The~~ If the basis of ~~bearings may refer~~ bearing(s) refers to a particular line between two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the plat; the line marked by the two previously monumented points must be labeled "basis of bearing," and the previously filed survey document name or number must be cited in the land surveyor's statement as to the origin of the bearing(s). If the plat shows true bearings, the basis of ~~bearings~~ bearing must describe the method by which these true bearings were determined;

~~(h)~~ (viii) ~~The~~ the bearings, distances, and curve data of all boundary lines and all control or pertinent lines used to determine the boundaries of the subdivision. If the subdivision is bounded by an irregular shoreline or a body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given;

~~(i)~~ (A) The courses along a meander line are shown solely to provide a basis for calculating the acreage area of a parcel with that has one or more riparian boundaries as the parcel existed at the time of survey.

~~(ii)~~ (B) For purposes of ~~these regulations~~ this rule, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(C) If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown and each segment must at least include distance.

~~(j)~~ (ix) ~~Data~~ data on all curves sufficient to enable the ~~re-establishment~~ reestablishment of the curves on the ground. For circular curves, ~~these~~ the data must at least include radius and arc length, and either the delta angle, radial bearings or chord bearing, and distance. All nontangent points of intersection on the

curve must show either the bearings of radial lines or chord length and bearing. For non-tangent Nontangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.;

~~(j) (x)~~ Lengths lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.;

(xi) at least one record measurement reference, if available, must be shown;

~~(k) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.~~

~~(l) (xii) All all~~ lots and blocks in the subdivision, designated by number, the dimensions bearings, distances, and curve data of each lot and block, the area of each lot, and the total acreage area of all lots. (Excepted parcels lands must be marked labeled "Not included in this subdivision NOT INCLUDED IN THIS SUBDIVISION" or "Not included in this plat, NOT INCLUDED IN THIS PLAT" as appropriate, and the bearings and lengths of these excepted boundaries must be shown.);

~~(m) (xiii) All all existing rights-of-way for streets, alleys, avenues, roads, and highways that adjoin or are within the boundaries of the subdivision; their names and widths (if ascertainable) from public records; (if ascertainable); and the bearings, distances, and area; curve data of their adjoining boundaries the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways. If the existing right(s)-of-way is contained within the boundaries of the subdivision, then the area of the portion of the right(s)-of-way within the subdivision shall be shown;~~

(xiv) all rights-of-way for streets, alleys, avenues, roads, and highways that will be created by the filing of the plat; their names, widths, bearings, distances, curve data, and area;

~~(n) (xv) The except as provided in (2)(d)(xiii) and (xiv), the location, dimensions bearings, distances, curve data, and areas of all parks, common areas, and other grounds dedicated for public use.;~~

~~(o) (xvi) The the total acreage area of the subdivision.;~~

(p) (xvii) A a narrative legal description of the subdivision as follows: The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:

(i) (A) If the parcel being land to be subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is narrative legal description may be the aliquot part or the government lot description of the parcel. land; or

(ii) (B) If the plat depicts the division of a parcel one or lot that is more parcels shown on a previously filed certificate of survey or subdivision plat, the information required by this subsection is narrative legal description may be the number or name of the previously filed certificate of survey or name of the previously filed plat and the parcel number of the parcel or lot affected by the survey. parcel(s) previously surveyed;

(C) The narrative legal description may be the metes-and-bounds description of the perimeter boundary of the subdivision;

~~(iii) (D) If the parcel surveyed narrative legal description does not fall within (2)(p)(i)(e)(xvii)(A) or (ii)(B), above, the information narrative legal description required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision; and~~

~~(iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.~~

(E) If the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the subdivision surveyed, must be labeled "Point of Beginning."

(q) (xviii) The the dated signature and the seal of the land surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor land surveyor's signature certifies that the final plat has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act act. The land surveyor's signature and certification do not include certification of the conditions of approval sheet(s);

(r) (xix) A a memorandum of any oaths administered under 76-3-405, MCA;

(s) (xx) The the dated, signed, and acknowledged consent to the subdivision of the owner of the land being to be subdivided. For purposes of this rule, when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" and "owner of the land" refers to mean the seller of the land under the contract-for-deed;

(t) (xxi) Certification certification by the governing body that the final subdivision plat is approved;

(xxii) if applicable, the landowner's certificate of dedication of streets, alleys, avenues, roads, highways, parks, playground easements, or other public improvements;

(xxiii) if applicable, or as required by subdivision regulations, the landowner(s)' certification statement(s) as follows:

(A) A statement that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval that may limit the use of the property, including the location, size, and use are shown on the conditions of approval sheet or as otherwise stated.

(B) A statement that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat, and that buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.

(C) A statement that all or part of the required public improvements have been installed and/or security requirements pursuant to 76-3-507, MCA, to secure the future construction of any remaining public improvements to be installed.

(xxiv) if applicable, a certificate of the governing body accepting any dedicated land, easements, or improvements;

(xxv) if applicable, the certificate of the examining land surveyor;

(u) (xxvi) Space space for the clerk and recorder's filing information; and

(xxvii) a minimum two-inch by four-inch blank space below the clerk and recorder's filing information for the recording numbers of the documents listed in (5).

(f) The land surveyor, at his or her discretion, may provide additional information on the plat regarding the survey.

(3) The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing certifications of final plat approval must appear on the plat or on the conditions of approval sheet as contained in (4), or recorded or filed as contained in (5) of these rules:

~~(a) If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.~~

~~(b) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.~~

~~(c) A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.~~

~~(d) Copies of any covenants or deed restrictions relating to the subdivision.~~

~~(e) If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.~~

~~(f) A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.~~

~~(g) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.~~

~~(h) If applicable, the certificate of the examining land surveyor.~~

~~(i) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.~~

~~(j) (a) The a certification of by the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.; and~~

~~(b) if applicable, certification of the local health officer having jurisdiction.~~

(4) If applicable, a sheet(s) of the plat prepared by the landowner(s) or their representative(s) depicting conformance with subdivision application approval shall be entitled "conditions of approval of [insert name of subdivision]," with a title block, including the quarter-section, section, township, range, principal meridian, county, and if applicable, city or town in which the subdivision is located, and shall contain:

(a) any text and/or graphic representations of requirements by the governing body for final plat approval, including, but not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, or the use of particular parcels;

(b) a certification statement by the landowner that the text and/or graphics shown on the conditions of approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied; and

(c) a notation stating that the information shown is current as of the date of the certification required in (4)(b), and that changes to any land use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

(5) If applicable, the following documents, as specified by local government, shall accompany the approved final plat and shall be recorded or filed with the plat as specified by the clerk and recorder, and the recording or filing number(s) for each document may be written on the plat by the clerk and recorder:

(a) a title report or certificate of a title abstractor showing the names of the owners of record of the land to be subdivided, and the names of any lien holders or claimants of record against the land, and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land;

(b) any covenants or deed restrictions relating to the subdivision;

(c) for lots less than 20 acres in size, exclusive of public roadways, a certification from the State Department of Environmental Quality stating that it has approved the plans and specifications for water supply and sanitary facilities pursuant to 76-4-104(2), MCA;

(d) if required by the governing body, for lots of 20 acres or greater in size, written documentation that the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and replacement drainfield for each lot in accordance with 76-3-604(8)(b), MCA;

(e) a copy of any security requirements, pursuant to 76-3-507, MCA, securing the future construction of any remaining public improvements to be installed;

(f) unless otherwise provided in local subdivision regulations, copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan with the certification of a professional engineer, that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed, or file them with a government official other than the clerk and recorder, or both. If the approved plans and specifications are or will be filed with a government official other than the clerk and recorder, then a document or a statement on the conditions of approval sheet that states where the plans can be obtained must be filed or recorded;

(g) if a street, alley, avenue, road, or highway created by the plat will intersect with a state or federal right-of-way, a copy of the access or encroachment permit; and

(h) any other documents satisfying the subdivision application approval required by the governing body to be filed or recorded.

AUTH: 37-67-202, 76-3-403, 76-3-411, MCA

IMP: 37-67-314, 76-3-101 through 76-3-411, ~~76-3-403~~, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., November 27, 2012.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.engineer.mt.gov. 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.

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

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

10. Ian Marquand, executive officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, PRESIDENT

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 15, 2012

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF EXTENSION OF
RULE I minimum qualification) COMMENT PERIOD ON
standards for licensees to conduct) PROPOSED ADOPTION
psychological assessments)

TO: All Concerned Persons

1. On August 23, 2012, the Board of Social Work Examiners and Professional Counselors (board) published MAR Notice No. 24-219-25 regarding the public hearing on the proposed adoption of the above-stated rule, at page 1655 of the 2012 Montana Administrative Register, issue no. 16. A public hearing was announced in the notice and subsequently held in Helena on September 18, 2012.

2. In response to public request, the board has decided to extend the public comment period to 5:00 p.m., on November 14, 2012.

3. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on November 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Cynthia Breen, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdsdp@mt.gov.

4. The rule to be adopted remains exactly as proposed and published in the original notice of public hearing, which is referenced in paragraph one above.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdsdp@mt.gov.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMETT, LCSW, PRESIDENT

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 15, 2012

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 37.85.207, 37.85.220,) PROPOSED AMENDMENT
37.85.905, 37.86.101, 37.86.104,)
37.86.105, 37.86.202, 37.86.205,)
37.86.501, 37.86.1401, 37.86.1701,)
and 37.86.3201 pertaining to primary)
care service enhanced)
reimbursement and birth attendant)
services)

TO: All Concerned Persons

1. On November 14, 2012, 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 November 7, 2012, 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:

37.85.207 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

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

(o) all gastric bypass related services (including initial bypass and revisions) all invasive medical procedures undertaken for the purpose of weight reduction such as gastric bypass, gastric banding, or bariatric surgery, including all revisions; and

(p) remains the same.

~~(3) Effective February 1, 2003, until June 30, 2003, the following services will no longer be covered for individuals age 21 and over:~~

~~(a) audiology;~~

~~(b) eyeglasses;~~

~~(c) routine eye exams provided by optometrists and ophthalmologists;~~

~~(d) hearing aids;~~

~~(e) orthotic devices;~~

- ~~(f) prosthetic devices;~~
 - ~~(g) dental, excluding emergency services for the treatment of pain; and~~
 - ~~(h) dentist.~~
- (4) remains the same, but is renumbered (3).

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-116, 53-6-131, 53-6-141, 53-6-402, MCA

37.85.220 INDEPENDENT DIAGNOSTIC TESTING FACILITIES (1) through (4) remain the same.

(5) ~~The IDTFs enrolled in the Montana Medicaid program shall also be governed by the IDTF Provider Manual dated January 2002. The department hereby adopts and incorporates by reference the IDTF Provider Manual. Copies of the IDTF Provider Manual are available upon request at the address specified in (2). The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 set forth meanings of terms commonly used by the Montana Medicaid program in implementation of the program's IDTF fee schedule.~~

(6) The Physician-Related Services Manual governing the administration of the IDTF program adopted at ARM 37.86.101 applies to independent diagnostic testing facilities.

AUTH: 53-6-113, MCA

IMP: 53-6-111, MCA

37.85.905 PHYSICIAN-ADMINISTERED DRUGS, BILLING REQUIREMENTS (1) through (1)(c)(ii) remain the same.

(iii) milliliter - ML; ~~or~~

(iv) units - UN; or

(v) milligram - ME;

(d) through (4) remain the same.

(5) Providers participating in the 340B Drug Pricing Program:

(a) ~~shall~~ must not submit an NDC for claim lines that are billed utilizing physician-administered drugs purchased under the 340B Drug Pricing Program;

(b) ~~shall~~ must submit CPT/HCPCS code(s) with all claims submitted to Montana Medicaid;

(c) ~~shall~~ must bill Montana Medicaid their actual acquisition cost; and

(d) and (6) remain the same.

(7) Providers who have registered with the Office of Pharmacy Affairs:

(a) ~~shall~~ must bill all claims as described in (1)(a) through ~~(f)~~ (e); and

(b) remains the same.

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

IMP: 53-6-101, MCA

37.86.101 PHYSICIAN SERVICES, DEFINITIONS (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the Physician-Related Services Manual governing the administration of the Physician program dated March 2012. The Physician-Related Services Manual is available for public viewing at the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and at the department's web site at <http://medicaidprovider.hhs.mt.gov/pdf/manuals/physician.pdf>.

(5) A "primary care service" for purposes of this rule means covered evaluation and management (E&M) procedure codes in the range 99201-99499 and vaccine administration codes 90460, 90461, 90471, 90472, 90473, and 90474 and their successors.

(6) A "primary care physician" for purposes of this rule means a physician with a specialty designation of family medicine, general medicine, or pediatric medicine and all subspecialties of these three specialties recognized by the American Board of Medical Specialties.

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.104 PHYSICIAN SERVICES, REQUIREMENTS (1) through (11) remain the same.

(12) Primary care physicians are required to self-attest with the department that they meet the definition of primary care physician. They will do so by enrolling as a primary care physician as defined in ARM 37.86.101(6) with Montana Medicaid.

(13) The department will confirm the self-attestation of the physician. Providers that are found to be eligible for this program are eligible to receive additional reimbursement commencing from the date of confirmation. Confirmation consists of:

(a) verification of board certification by the American Board of Medical Specialties as a primary care physician as defined in ARM 37.86.101(6); or

(b) a determination through claims review that at least 60 percent of the codes billed were primary care services as defined in ARM 37.86.101(5).

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (6) remain the same.

(7) Reimbursement for primary care services performed by confirmed primary care physicians:

(a) for E&M procedure codes and vaccine administration codes not part of the VFC program, in calendar year 2013, is the 2013 Montana Medicare reimbursement amount or the amount determined by multiplying the 2009 Medicare conversion factor by the 2013 relative value unit for Montana, whichever is greater;

(b) for vaccine administration codes for the VFC program in calendar year 2013 is the lesser of the 2013 Montana Medicare reimbursement amount or the maximum regional VFC amount;

(c) for E&M procedure codes and vaccine administration codes not part of the VFC program, in calendar year 2014, is the 2014 Montana Medicare reimbursement amount or the amount determined by multiplying the 2009 Medicare conversion factor by the 2014 relative value unit for Montana, whichever is greater; and

(d) for vaccine administration codes for the VFC program in calendar year 2014 is the lesser of the 2014 Montana Medicare reimbursement amount or the maximum regional VFC amount.

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

IMP: 53-6-101, 53-6-113, MCA

37.86.202 MID-LEVEL PRACTITIONER SERVICES, DEFINITIONS For the purpose of these rules, the following definitions will apply:

(1) remains the same.

(2) "Birth Attendant" means a person that is licensed as a direct entry midwife as defined in Title 37, chapter 27, MCA and ARM Title 24, chapter 111, subchapter 6 and is providing prenatal labor and delivery or postpartum care in a birthing center as defined in ARM 37.86.3001.

(2) through (4) remain the same, but are renumbered (3) through (5)

~~(5)~~(6) "Mid-level practitioner" means the following professionals:

(a) advanced practice registered nurse; ~~and~~

(b) physician assistant; and

(c) birth attendant.

~~(6)~~(7) "Mid-level practitioner services" means those services provided by mid-level practitioners in accord with the laws and rules defining and governing through licensing and certification the practices of advanced practice registered nurses, ~~and~~ physician assistants, and birth attendants.

(7) through (13) remain the same, but are renumbered (8) through (14).

(15) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 set forth meanings of terms commonly used by the Montana Medicaid program in implementation of the program's mid-level practitioner fee schedule.

(16) The "Physician-Related Services Manual" means the physician-related services manual adopted at ARM 37.86.101. It governs the administration of the mid-level practitioner program.

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

IMP: 53-6-101, MCA

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) through (5) remain the same.

(6) Reimbursement for immunizations, drugs which are billed under HCPCS "J" and "Q" codes, family planning services, administration of injectables, radiology, laboratory and pathology, cardiography and echocardiography services, and for clients under 21 years of age is the lower of:

(a) and (b) remain the same.

(7) A mid-level practitioner shall must submit all claims for services personally provided by the mid-level practitioner, using the mid-level practitioner's own Medicaid provider number and any appropriate modifiers, unless another provider is authorized to bill for services provided by the mid-level practitioner by administrative rule or state law.

~~(8) Reimbursement for drugs which are billed under HCPCS "J" and "Q" codes is the lower of:~~

~~(a) the usual and customary charge; or~~

~~(b) 100% of reimbursement for physicians in accordance with ARM 37.86.105.~~

(9) and (10) remain the same, but are renumbered (8) and (9).

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

IMP: 53-6-101, MCA

37.86.501 PODIATRY SERVICES, DEFINITIONS (1) through (3) remain the same.

(4) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 defines the terms commonly used by the Montana Medicaid program in implementation of the program's podiatry fee schedule.

(5) The "Physician-Related Services Manual" means the physician-related services manual adopted at ARM 37.86.101. It governs the administration of the Podiatry program.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

37.86.1401 CLINIC SERVICES, DEFINITIONS (1) through (6) remain the same.

(7) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois adopted at ARM 37.86.101 sets forth meanings of terms commonly used by the Montana Medicaid program in implementation of the program's public health clinic fee schedule.

(8) The "Physician-Related Services Manual" means the physician-related services manual adopted at ARM 37.86.101. It governs the administration of the Public Health Clinic program.

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

IMP: 53-6-101, 53-6-141, MCA

37.86.1701 FAMILY PLANNING SERVICES (1) and (2) remain the same.

(3) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 defines the terms commonly used by the Montana Medicaid program in implementation of the program's family planning clinic fee schedule.

(4) The "Physician-Related Services Manual" means the physician-related services manual. It governs the administration of the Family Planning Clinic program.

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

IMP: 53-6-101, 53-6-141, MCA

37.86.3201 NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REQUIREMENTS (1) through (3) remain the same.

(4) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 defines the terms commonly used by the Montana Medicaid program in implementation of the program's nonhospital laboratory and radiology (x-ray) fee schedule.

(5) The "Physician-Related Services Manual" adopted at ARM 37.86.101 governs the administration of the Nonhospital Laboratory and Radiology (X-ray) program.

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.207, 37.85.220, 37.85.905, 37.86.101, 37.86.104, 37.86.105, 37.86.202, 37.86.205, 37.86.501, 37.86.1401, 37.86.1701, and 37.86.3201 pertaining to primary care service enhancement reimbursement and birth attendant services. These rule amendments will enhance reimbursement for primary care services performed by primary care physicians; allow for the reimbursement of birth attendant services in a birthing center; incorporate provider manuals and current procedural terminology (CPT) guidance requirements into ARM for physicians, mid-levels, podiatrists, laboratories, independent diagnostic testing facilities (IDTFs), public health clinics and family planning clinics; update the name of the noncovered service "gastric bypass" to "invasive medical procedures undertaken for the purpose of weight reduction;" update the physician administered drug rule to include new units of service; and rephrase the mid-level practitioner services rules to provide clarity, additional information, and remove redundancy.

ARM 37.86.101, 37.86.104, and 37.86.105

The proposed amendments to these rules are needed due to Section 2303(a)(2) of the Affordable Care Act, Public Law 111-148 (March 23, 2010), that requires primary care physicians receive enhanced reimbursement when performing primary care services. These rule amendments will be used to define primary care physicians, primary care services, and set reimbursement levels.

ARM 37.86.202

The department is proposing to amend ARM 37.86.202. This amendment is needed due to the Affordable Care Act requirement for state Medicaid agencies to reimburse "birth attendants" when performing services at a birthing center. The definition of "birth attendant" would be added to this rule as a mid-level provider.

ARM 37.85.220, 37.86.101, 37.86.104, 37.86.105, 37.86.202, 37.86.501, 37.86.3201, 37.86.1401, and 37.86.1701

The department is proposing amendments to these rules to incorporate the provider manual into the rule specific to that provider type. This is needed to support the department's position whenever an administrative review or fair hearing is requested by a provider or client.

ARM 37.86.202, 37.86.501, 37.86.3201, 37.85.220, 37.86.1401, and 37.86.1701

The department is proposing amendments to these rules to incorporate current procedural terminology (CPT) into the rule specific to that provider type. This is needed to support the department's position whenever an administrative review or fair hearing is requested by a provider or client.

ARM 37.85.207

The department is proposing to amend this rule as it is needed to update the term used for the noncovered service "gastric bypass" to "invasive medical procedures undertaken for the purpose of weight reduction." Additional procedures are now available involving invasive weight reduction procedures that were not available when this rule was originally adopted. This change will more clearly explain which procedures are not parts of the Medicaid benefit plan.

ARM 37.85.905

The department is proposing to amend this rule as it is needed to add the unit of measure "milligram" to the list of items that may be included as a measure of the amount of drugs administered by a physician. This is necessary to correct the inadvertent omission of the unit from the rule.

ARM 37.86.205

The department is proposing to amend this rule to remove redundancies concerning mid-level reimbursement.

Fiscal Impact and Entities Affected

Because of the Affordable Care Act, reimbursement to primary care physicians performing primary care services will increase. These additional costs will be borne by the federal government. The federal government will pay 100% of the costs greater than the Montana fee set as of July 1, 2009. This will result in a cost savings for Montana. Vaccine administrations for the Vaccines for Children Program will also see an increase in reimbursements due to the increase in the amount known as the regional maximum amount. These additional costs will be borne by the federal government. Cost savings will be realized due to the new restriction that fees will be limited to the lesser of the regional maximum amount or the Medicare amount. Formerly fees were set at the regional maximum amount. ARM 37.85.406 reflects the fiscal impact.

The other rule amendments will have no fiscal impacts.

The estimated cumulative fiscal impact of these rules is:

	Federal Match	State General Fund	Total Cost
SFY 2013	\$1,027,274	(\$66,792)	\$960,482
SFY 2014	\$2,054, 548	(\$133,584)	\$1,920,964

These rule amendments are estimated to impact 13,400 Medicaid providers and 106,000 Medicaid clients.

5. The department intends the proposed rule changes to be applied effective January 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., November 23, 2012.

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
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 15, 2012.

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 37.34.2301 and repeal of) PROPOSED AMENDMENT AND
37.34.2302, 37.34.2306, 37.34.2307,) REPEAL
37.34.2308, and 37.34.2309)
pertaining to residential facility)
screening)

TO: All Concerned Persons

1. On November 14, 2012, at 1:30 p.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 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 November 7, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.34.2301 RESIDENTIAL FACILITY SCREENING: PURPOSE

~~(1) These rules govern the screening of persons being considered for commitment into residential facilities. The rules provide the procedures and criteria for determining whether a person is seriously developmentally disabled. The commitment of a person to the Montana Development Center as a person with a serious developmental disability in need of the services of that residential facility or commitment under a community treatment plan is subject to statutory procedures and requirements of Title 52, chapter 20, part 1, MCA, inclusive of the formal residential facility screening team process. The Manual for the Screening of Persons Being Considered for Civil Commitment to the Montana Development Center or to a Community Treatment Plan, effective August 28, 2012, sets forth further requirements and criteria that govern the residential facility screening team.~~

(2) The department adopts and incorporates by reference the Manual for the Screening of Persons Being Considered for Civil Commitment to the Montana Development Center or to a Community Treatment Plan, effective August 28, 2012.

(3) A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-20-133, MCA

IMP: 53-20-102, ~~53-20-106~~, 53-20-110 ~~53-20-112~~, 53-20-116, ~~53-20-124~~, 53-20-125, ~~53-20-127~~, 53-20-128, 53-20-129, 53-20-133, MCA

4. The department proposes to repeal the following rules:

37.34.2302 RESIDENTIAL FACILITY SCREENING: DEFINITIONS, is found on page 37-7639 of the Administrative Rules of Montana.

AUTH: 53-20-133 MCA

IMP: 53-20-102, 53-20-106, 53-20-112, 53-20-116, 53-20-121, 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-133, MCA

37.34.2306 RESIDENTIAL FACILITY SCREENING: ADMINISTRATION AND COMPOSITION OF SCREENING TEAM, is found on page 37-7643 of the Administrative Rules of Montana.

AUTH: 53-20-133, MCA

IMP: 53-20-133, MCA

37.34.2307 RESIDENTIAL FACILITY SCREENING: RESPONSIBILITIES OF DEVELOPMENTAL DISABILITIES PROFESSIONALS AND QMRP'S, is found on page 37-7643 of the Administrative Rules of Montana.

AUTH: 53-20-133, MCA

IMP: 53-20-112, 53-20-116, 53-20-128, 53-20-129, 53-20-133, MCA

37.34.2308 RESIDENTIAL FACILITY SCREENING: RESPONSIBILITIES OF THE SCREENING TEAM, is found on page 37-7644 of the Administrative Rules of Montana.

AUTH: 53-20-133, MCA

IMP: 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-133, MCA

37.34.2309 RESIDENTIAL FACILITY SCREENING: DETERMINATION OF SCREENING TEAM, is found on page 37-7645 of the Administrative Rules of Montana.

AUTH: 53-20-133, MCA

IMP: 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-133, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes the amendment of ARM 37.34.2301, and to repeal ARM 37.34.2302, 37.34.2306, 37.34.2307, 37.34.2308, and 37.34.2309 pertaining to residential facility screening. The department intends to adopt and incorporate by reference the Manual for the Screening of Persons Being Considered for Civil Commitment to the Montana Developmental Center or to a Community Treatment Plan (the manual), effective August 28, 2012. This subchapter specifically governs the process used by the department to conduct civil commitments of persons with developmental disabilities to the residential facility in Montana, the Montana Developmental Center (MDC), and it is necessary to bring the rules into accordance with those processes and with current Montana statutes.

In previous legislative sessions, several statutes were passed that changed the commitment process. Most notably, the current definition of seriously developmentally disabled has been changed to remove reference to total care needs and near total care needs. In order for a person to meet the current criteria for commitment to Montana Developmental Center (MDC) or a community treatment plan, a person must meet the definition of seriously developmentally disabled. Additional changes in the statute include the option for imposing a court-ordered community services treatment plan instead of a commitment to MDC or amending a commitment to MDC to a community treatment plan.

Another change to the commitment law involves criminal sentencing to the custody of the director of the department and subsequently to MDC through a criminal proceeding. Persons committed through this process must meet the criteria of having a developmental disability that rendered the person unable to appreciate the criminality of their behavior or to conform the person's behavior to the requirements of law, 46-14-311(1) MCA. This type of commitment is referenced in the manual but the residential facility screening team does not review this type of commitment.

ARM 37.34.2301

The department proposes to amend ARM 37.34.2301 to adopt and incorporate the manual, effective August 28, 2012 into the administrative rule. The department believes persons with developmental disabilities, their families, case managers, and state staff will find the manual more readily manageable when information about the process is being sought. The manual incorporates the purpose statement for the subchapter; therefore, in order to prevent repetition, it is necessary to remove the purpose statement from this rule.

The Manual

The department developed the manual to serve as a comprehensive guide for the civil commitment process to the Montana Developmental Center (MDC) and details the process and necessary steps when there is a petition for commitment to MDC or a community services treatment plan. Included in the manual is the purpose statement, definitional criteria for civil commitments, information pertaining to the

composition and responsibilities of the residential facility screening team, the certification process for persons seeking to become certified developmental disabilities professionals, the process for civil commitments including terms, assessments, the purpose for treatment, documentation required, and the appeal process.

ARM 37.34.2302, 37.34.2306, 37.34.2307, 37.34.2308, and 37.34.2309

The department is proposing to repeal these rules. This action is necessary because the manual proposed to be adopted and incorporated in ARM 37.34.2301 now contains the purpose, definitions, processes, and fair hearing information described in these rules and is more detailed and current. Furthermore, the manual contains additional processes and information that is not currently set forth in these rules.

The department considered the option of placing the procedures into the rule along with making the manual available to the public; however, the department determined that the best option in this case is to adopt the manual into rule and then amend the rule when a new version of the manual is needed and subsequently developed to eliminate potential confusion and conflict which could result from citing two versions.

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., November 23, 2012.

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, apply and have been fulfilled. The primary bill sponsor was contacted by a letter of notification on August 28, 2012.

/s/ Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 15, 2012.

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 37.78.102 pertaining to) PROPOSED AMENDMENT
incorporating TANF manual)

TO: All Concerned Persons

1. On November 14, 2012, at 3:00 p.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 rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 7, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) The TANF program shall be administered in accordance with the requirements of federal law governing temporary assistance for needy families as set forth in Title IV of the Social Security Act, 42 USC 601 et seq. (2012).

(2) The "Montana TANF Cash Assistance Manual" dated ~~June 8, 2012~~ January 1, 2013 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-601, MCA

4. STATEMENT OF REASONABLE NECESSITY

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective June 8, 2012. The Department of Public Health and Human

Services (the department) proposes to make revisions to this manual that will take effect on January 1, 2013. The proposed amendment to ARM 37.78.102 is necessary to incorporate into the Administrative Rules of Montana the revisions to the policy manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 8225 TANF recipients, which is the average of the total number of recipients between July 2011 and April 2012.

Following is a brief overview of the TANF manual sections with substantive changes related to the above ARM changes.

TANF 0-3 Introduction - TANF Philosophy and Programs

This section was updated to include some key elements of the department's expectations for customer service for the TANF and Work Readiness Component (WoRC) program. The department is updating this section to provide guidance to Office of Public Assistance staff and WoRC contractors in providing quality customer service to each applicant or participant of the TANF program.

TANF 303-1 Furnishing a Social Security Number

This section was updated to clarify that a good cause exception will not be granted to participants who fail to provide a social security number as required by federal regulation 45 CFR 205.52. The department received clarification from the Administration for Children and Families (ACF) stating that a good cause exception cannot be granted to individuals that refuse to obtain a social security number.

Removed references to TEAMS and TEAMS coding/processing as this system will be obsolete in 2013.

TANF 402-1 Countable and Excluded Resources

The department is incorporating by reference TANF Bulletin 74 to reflect changes in countable resources. All life estates will be excluded as a resource. Language was added to "Contract for Deed" stating it is excluded if "the value of the contract does not include provisions for the contract to end or for payments to be forgiven or terminated at any point other than for payment in full or foreclosure by the contract owner."

The department is updating TANF resource policy to align policy with the Supplemental Nutrition Assistance Program (SNAP) and Medicaid programs. The Health and Community Services Division is moving to a "service first model" intended for providing services to participants and applicants. Policy alignment is a key element of this model.

Removed references to TEAMS and TEAMS coding/processing as this system will be obsolete in 2013.

TANF 501-1 Unearned Income

The department incorporated TANF Bulletin 75 to reflect changes in countable income. Vendor payments made directly to landlords or mortgagees through County or BIA General Assistance will be countable income.

The department is updating the vendor payment policy to align policy with the SNAP and Medicaid programs. The Health and Community Services Division is moving to a "service first model" intended for providing services to participants and applicants. Policy alignment is a key element of this model.

The department removed "Work Support Payments" as a type of income from this section because TANF no longer provides Work Support Payments.

Removed references to TEAMS and TEAMS coding/processing as this system will be obsolete in 2013.

TANF 1510-1 Case File Retention/Archive/Destruction

The department updated this section to change the records retention period from three years to seven years. The department received clarification from the TANF Federal Program Specialist, Administration for Children and Families, regarding the start date of the three-year retention period. Based on this clarification the department determined all TANF documents related to eligibility will need to be retained for seven federal fiscal years.

Removed references to TEAMS and TEAMS coding/processing as this system will be obsolete in 2013.

Fiscal Impact

No fiscal impact is anticipated due to this rule change.

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., November 23, 2012.

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/ GERALYN DRISCOLL
Rule Reviewer

/s/ ANNA WHITING SORRELL
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 15, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.11.301, 42.11.305, 42.11.306,	)	PROPOSED AMENDMENT AND
42.11.307, 42.11.309, and 42.11.310,	)	REPEAL
and the repeal of ARM 42.11.308)	
relating to operating agency liquor)	
stores)	

TO: All Concerned Persons

1. On November 15, 2012, at 10:30 a.m., a public hearing will be held in the Fourth Floor East Conference Room of the Sam W. Mitchell Building, in Helena, Montana, to consider the amendment and repeal of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana, and check in at the third floor reception desk.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., November 5, 2012, 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 department complied with 16-2-303, MCA, and convened a negotiated rulemaking committee to draft the proposed amendments to the administrative rules related to the operation of agency liquor stores contained in this proposal notice. The committee was comprised of agency liquor store owners and department staff. Additional department staff assisted with the negotiated rulemaking process as business resources.

Introducing detailed explanations and examples into the department's existing administrative rules will add transparency to a complex process and create better understanding. The department recognizes the hard work put into this process and would like to thank those involved.

The department believes current Montana laws concerning the commission structure for agency liquor stores are in need of a thorough review and study by the Legislature. The current written law contains serious deficiencies and thus creates inequities for agency liquor store owners and state fiscal management. Evolutions impacting state liquor stores were not predicted during the privatization legislation enacted in 1995. Therefore, the department would encourage state legislators to review the law and work towards a viable solution for the future.

The proposed amendments to current administrative rules seek to increase the public's and agency liquor store owners' understanding and eliminate any

potential confusion of the existing laws which affect the operation of agency liquor stores in Montana.

Clear and concise definitions are the foundation of the rules which help the public and agents understand the terminology being used. Proposed new and amended definitions seek to enhance understanding of the rule content for agency liquor store owners and the public.

The department is proposing to clarify the number of agency liquor stores that may be located in a community. Clarification is being added by using examples showing the population and the number of stores that may be allowed.

The proposed amendments will improve the transparency of the department's process regarding commission percentage discount rate reviews that occur every three years. As amended, the rules will provide agency liquor store owners and the public with examples pertaining to the commission percentage discount rates received by agents.

Finally, the department is proposing to amend the rules to ensure the public is clearly informed on the process of selecting an agent and that the process is fair, consistent, and nonpartisan.

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

42.11.301 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Adult" means a person 21 years of age or older.

~~(1)~~(2) "Agency liquor store" means a liquor store operated by an agent.

~~(2)~~(3) "Agent" means a person, ~~partnership, or corporation~~ or entity that markets liquor on a commission basis under an agency agreement with the department and provides all the resources, including personnel and store premises, needed to market liquor under the agreement.

~~(3)~~(4) "Average commission percentage" means the simple average of the commission percentage of agents with similar gross sales volumes. ~~This percentage is calculated by adding the commission percentages of all agents with similar gross sales volumes and dividing by the number of agents with similar gross sales volumes.~~

(5) "Base year" means the first year of the three-year commission rate review period as it applies in 16-2-101, MCA. For example, the base year is 2010 for the commission rate review that will be conducted in 2013.

(6) "Commission percentage discount rate" means a specific percentage discount rate granted to an agent operating an agency liquor store. The percentage rate may be adjusted for the term of the franchise agreement.

~~(4)~~(7) "Community boundary" means:

(a) in the case of an incorporated city or town, the city or town limits; and

(b) in other communities, ~~the generally recognized and commonly accepted outer edge of the community~~ the area identified by the United States Census Bureau as a community for census purposes.

~~(5)~~ "Gross sales volume" means an agency liquor store's purchases at posted price as defined in 16-1-106, MCA.

(8) "Invoice date" means the date an agent receives their liquor order in the agency liquor store.

~~(6)~~(9) "Minimum qualified petitioners" means the number of adults who reside in the community, which number equals 5 percent of the community population as determined in the most recently available census estimate for the community or 20 adults who reside in the community if 5 percent of the community population is less than 20.

~~(7)~~(10) "New state agency liquor store" means a state an agency liquor store that begins operation in a community that has not had a state an agency liquor store in operation for one or more years or is eligible for an additional agency liquor store.

(11) "Public hearing" is a public meeting to solicit public comments and is not an administrative adjudication between opposing parties.

(12) "Required documents" means, but is not limited to:

(a) tax returns and schedules for the agency liquor store;

(b) if combined with other operations, a separate income or profit and loss statement with allocated percentages of the labor operation;

(c) a copy of one month's utility statement;

(d) copies of rental or lease contracts or agreements;

(e) copies of health insurance premium statements;

(f) copies of liability insurance premiums; and

(g) copies of quarterly federal forms 941.

~~(8)~~(13) "Sales band" means a group of agents with similar gross sales volumes.

(14) "Sales volume" means an agent's purchases from the department at posted price for the applicable calendar or fiscal year.

(15) "Top 25 items" means the top 25 liquor items (SKUs) sold by agency liquor stores in the state of Montana, based on the highest quantity of cases sold in the previous calendar year.

(16) "Volume of sales discount" means a percentage discount received by an agent, based on the total fiscal year purchases at posted price from the previous fiscal year, based on invoice date.

AUTH: 16-1-303, MCA

IMP: 16-2-101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.301 to include definitions of terms that are used in other rules contained in Chapter 11, and to enhance the definitions of existing terms for better clarity and understanding.

42.11.305 OPENING A NEW STATE AGENCY LIQUOR STORE (1) The number of state agency liquor stores that may be located in a community will vary with the population in a community. The number of agency liquor stores that may be located in a community may vary as prescribed in 16-2-109, MCA. For example, there may be no more than:

(a) one agency liquor store if the population is 0 – 12,000;

(b) two agency liquor stores if the population is 12,001 – 52,000;

(c) three agency liquor stores if the population is 52,001 – 92,000;
(d) four agency liquor stores if the population is 92,001 – 132,000; or
(e) five agency liquor stores if the population is 132,001 – 172,000; and
(f) one additional agency liquor store within increments of population of 40,000 inhabitants above 172,000.

(2) A new ~~state~~ agency liquor store will be operated by an agent.

(3) The department ~~will~~ may conduct a public hearing to open a new ~~state~~ agency liquor store in a community when all of the following conditions are met:

(a) The department receives a petition signed by at least the minimum qualified petitioners to open a new state agency liquor store in the community. The petition must clearly state that its purpose is to have the department open a new state agency liquor store in the community which will be operated by an agent under contract with the department. The petition must show the printed name, mailing address, and signature of each person signing the petition.

(b) The department receives a letter from a person willing to submit a proposal or bid to operate a new state agency liquor store in the community. This person must control or expect to control a building in the community that could be used as the new state agency liquor store location.

(c) The number of ~~state~~ agency liquor stores currently operating in the community does not exceed the limit in 16-2-109, MCA.

(d) The nearest community with an operating ~~state~~ agency liquor store is more than 35 miles, as measured from the nearest community boundaries along the shortest route on a paved road between the two communities, unless the new agency liquor store is to be located in a community eligible for more than one agency liquor store pursuant to 16-2-109, MCA.

(e) The department has not solicited for an agent in the community within the previous three years.

(f) The petition identified in ~~(3)~~(a) and the letter from a potential agent in ~~(3)~~(b) must be received within six months of each other.

(4) When all of the conditions in (3) are met, the department ~~will~~ may hold a public hearing ~~in the community~~ to receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a new agency liquor store agent. The procedures concerning the to determine if a public hearing will be held, and if so, the location of the public hearing are:

(a) ~~The~~ the department will publish a notice to the public that will contain the following:

(i) ~~the date, time and place in the community where the public hearing will be conducted~~ department's intent to open a new agency liquor store and the community it intends to open it in; and

(ii) ~~provide the name and address of the hearing officer appointed by the department to conduct the hearing.~~ an outline of how the public can provide written protests; and

(b) Notice notice of the ~~public hearing~~ department's intent will be advertised twice during a two-week period in the legal section of:

(i) the nearest daily newspaper in general circulation for the affected area; and

(ii) in the local community newspaper, if there is one.

~~(c) The hearing will be conducted no less than 14 days but no more than 20 days following the last publication of the notice in the newspapers.~~

~~(d) The hearing officer will preside over the hearing and collect the information presented by all persons. The hearing will be directed to the following:~~

~~(i) whether the department should proceed with its intention to advertise for proposals or bids for a liquor store agent for the community;~~

~~(ii) whether any limitations or restrictions on the location and operation of the agency should be considered; and~~

~~(iii) whether any other issues directly related to the operation of the proposed store in the community or its possible effects on the community should be considered in the determination of whether to proceed with its intention to advertise for proposals or bids for a liquor store agent for the community.~~

~~(e) Within one week following the public hearing, the hearing officer will submit a report to the department. This report will provide the following:~~

~~(i) identify all of the issues raised at the hearing;~~

~~(ii) recommend whether proceeding with the advertisement for proposals or bids for a liquor store agent is in the best interest of the state, and the community; and~~

~~(iii) recommend whether any limitations or restrictions on the location and operation of the agency should be considered.~~

~~(f) One week following receipt of the hearing officer's report, the department will decide what action will be taken in response to the hearing officer's recommendations.~~

~~(5) Notice of the department's decision will be mailed to all parties who signed the petition and gave a mailing address or who attended the public hearing and gave a mailing address If the department receives no written public protests from residents in the county or adjoining counties, the department may solicit to open a new agency liquor store in the proposed community without holding a public hearing.~~

~~(6) If the decision is to proceed with the advertisement for request for proposals or invitation for bids for a liquor store agent, the process to select an agent will be conducted in accordance with ARM 42.11.310 department receives at least one written public protest from residents in the county or adjoining counties, the department shall schedule a public hearing to determine whether the protest presents sufficient cause to deny the request.~~

~~(7) If the department receives a specified number of written public protests from residents in the county or adjoining counties, the public hearing will be held in the community in which the new agency liquor store is proposed. The specified number of written public protests from residents shall equal:~~

~~(a) a quantity greater than 25 percent of the number of all-beverage licenses determined for that quota area according to 16-4-201, MCA; and~~

~~(b) no less than two.~~

~~(8) If the provisions in (7) are not met, the hearing will be held in Helena.~~

~~(7)(9) If no proposals or bids are received in response to a request for proposals or invitation for bids, or none of the proposals or bids received meet the minimum requirements specified in the request for proposals or the invitation for bids, the department will make no further solicitation for an agent in the community~~

for three years. If the conditions in (3) and (4) are met after the three-year period, the department will begin the process again. However, if the department determines that the petition required in (3)(a) was not generated in good faith, the department may waive the three-year limitation. If the need for a public hearing is determined, all qualified protesters will be notified of:

(a) the date, time, and place where the public hearing will be conducted; and

(b) the name and address of the hearing officer appointed by the department to conduct the hearing.

(10) The hearing officer will preside over the hearing, which is not a contested case proceeding as defined in 2-4-102, MCA, and collect the information presented. The hearing will address the following:

(a) whether the department should proceed with its intention to advertise for proposals or bids for a new agency liquor store for the community;

(b) whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered; and

(c) whether any other issues directly related to the operation of the proposed new agency liquor store in the community or its possible effects on the community should be considered in the department's determination of whether to proceed with its intention to advertise for proposals or bids for a new agency liquor store in the community.

(11) Within six weeks following the public hearing, the hearing officer will submit a report to the department. This report will:

(a) identify all of the issues raised at the hearing;

(b) recommend whether proceeding with the advertisement for proposals or bids for a new agency liquor store is in the best interest of the state and the community; and

(c) recommend whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered.

(12) One week following receipt of the hearing officer's report, the department will decide what action will be taken in response to the hearing officer's recommendations.

(13) Notice of the department's decision will be mailed to all parties who signed the petition, submitted a written protest, or attended the public hearing and provided a mailing address.

(14) If the decision is to proceed with advertising for requests for proposals or invitations for bids for a new agency liquor store, the process to select an agent will be conducted in accordance with ARM 42.11.310.

(15) If no proposals or bids are received in response to a request for proposals or invitation for bids, or none of the proposals or bids received meet the minimum requirements specified in the request for proposals or the invitation for bids, the department will make no further solicitation for a new agency liquor store in the community for three years. If the conditions in (3) and (4) are met after the three-year period, the department will begin the solicitation process to open a new agency liquor store in the community.

AUTH: 16-1-303, MCA

IMP: 2-4-102, 16-2-101, 16-2-109, 16-4-201, MCA

REASONABLE NECESSITY: The department is proposing to retitle and amend several sections of ARM 42.11.305 to remove the term "state" when referencing an agency liquor store, to enhance the public's understanding. The term, when used, potentially creates confusion in that it can be perceived that these stores are operated by the state, when in fact, they are not.

Section (1) is proposed to be amended to increase the public's understanding of the population requirements needed in order to open an agency liquor store in a community. This section includes examples of the number of agency liquor stores that can exist based on population. The amendment is proposed to reduce confusion that has existed on the part of the public and department.

Section (3) is proposed to be amended to only require a public hearing when the department receives written protests. In addition, the amendment removes the language that the public hearing will be held in the community of the proposed location and allows the option of holding the public hearing in an alternative location when the interest is minimal. If, as determined in new (7), there is minimal opposition to opening a new agency liquor store in a community, it is in the best interest, due to the size of the state and limited resources, to not conduct the hearing within the proposed community.

Sections (4) through (15) are proposed to be amended to increase the public's knowledge of the process for determining whether or not a new agency liquor store should be advertised for proposal or bid. Several portions of the existing language were stricken and relocated within the rule to enhance readability.

As part of this, new (7) is being proposed to specifically address the requirements for the hearing to be held in the community of the proposed location. To create consistency, the requirements will mirror those for other department liquor hearings. If the department receives at least two protests from residents in excess of 25 percent of the number of all-beverage licenses determined for that particular community, the hearing will be held in the community. The department believes this is a fair ratio of the population to determine if there is more than minimal opposition.

Also within these amended sections is new (10), which is being proposed to add clarification to enhance the public's knowledge that the hearing is not conducted under the Montana Administrative Procedure Act (MAPA).

42.11.306 COMMISSION PERCENTAGE DISCOUNT RATE REVIEW

(1) The department shall review the commission percentage paid to discount rate received by agents that have operated under a continuous franchise agreement for at least three years pursuant to the requirements of 16-2-101, MCA.

(2) Section 16-2-101, MCA, establishes the date to determine the commission percentage discount rates. The original commission percentage discount rate was established on July 1, 1998, and either party may request a review every three years thereafter. The department may examine agent stores with similar gross sales volumes to determine commission rate adjustments adjust the agent's commission percentage discount rate received during the remaining term of the agency franchise agreement, or at the next time the commission percentage discount rate is reviewed, to a commission percentage discount rate that is equal to the average commission percentage discount rate received by agents with similar

sales volumes, if the agent's commission percentage discount rate is less than the average.

(3) Except as otherwise provided, sales information from the two most recent calendar years based on invoice dates will be used when determining the sales volumes.

(4) An agent's sales volumes can be distorted by closure of a business other than for holidays, weekends, inventory, or other temporary closures which occur in the ordinary course of business. This distortion could potentially result in the agent being placed in a sales band which does not accurately reflect their sales volumes. Such misplacement of an agent within a sales band would also affect the average commission percentage discount rate determination within the band.

(5) The department may, if sufficient data exists, project an agent's sales volume from a period of less than the two most recent calendar years as a representation of the agent's two-year sales volumes.

(6) Similar sales volumes will be established by using bands of seven agency liquor stores when available. Each agency liquor store will be placed in its own band with the next three agency liquor stores with greater sales volumes and the next three agency liquor stores with lesser sales volumes. When less than seven agency liquor stores are available, the following will apply:

(a) The agency liquor store with the highest sales volume will be placed in a band with the next three agency liquor stores with lesser sales volumes. The agency liquor store with the second highest sales volume will be placed in a band with the one agency liquor store with greater sales volume and the next three agency liquor stores with lesser sales volumes. The agency liquor store with the third highest sales volume will be placed in a band with the two agency liquor stores with greater sales volumes and the next three agency liquor stores with lesser sales volumes.

(b) The agency liquor store with the lowest sales volume will be placed in a band with the next three agency liquor stores with greater sales volumes. The agency liquor store with the second lowest sales volume will be placed in a band with the one agency liquor store with lesser sales volume and the next three agency liquor stores with greater sales volumes. The agency liquor store with the third lowest sales volume will be placed in a band with the two agency liquor stores with lesser sales volumes and the next three agency liquor stores with greater sales volumes.

(7) The average commission percentage discount rate for each band will be established by adding the band's agency liquor stores' commission percentage discount rates together and dividing by the number of agency liquor stores in the band. Each agency liquor store's current commission percentage discount rate will be used in the calculation unless the agency liquor store's current commission percentage discount rate reflects an adjustment through ARM 42.11.309 in any previous review period. In that circumstance, and for the purpose of calculating the band average only, the lesser of the agency liquor store's current commission percentage discount rate or the agency liquor store's band average from the last review period will be used.

(a) Example 1: An agency liquor store has a current commission percentage discount rate of 9.75 percent and it does not reflect an adjustment through ARM

42.11.309 in any previous review period. The rate used for the banding calculation will be 9.75 percent. The band's average for the current review period is calculated to be 9.35 percent. In this example, this agency liquor store's commission percentage discount rate going forward will continue to be 9.75 percent because it is higher than the band average.

(b) Example 2: An agency liquor store has a current commission percentage discount rate of 9.75 percent and it does reflect an adjustment through ARM 42.11.309 in a previous review period. This agency liquor store's band average from the last review period is 9.25 percent. The rate used for the banding calculation will be the lesser of the agency liquor store's current commission percentage discount rate or the agency liquor store's band average from the last review period. In this example, 9.25 percent will be used for banding calculation purposes. The band's average for the current review period is calculated to be 9.35 percent. In this example, this agency liquor store's commission percentage discount rate going forward will continue to be 9.75 percent, because it is higher than the band average.

(c) Example 3: An agency liquor store has a current commission percentage discount rate of 9.75 percent and it does reflect an adjustment through ARM 42.11.309 in a previous review period. This agency liquor store's band average from the last review period is 9.25 percent. The rate used for the banding calculation will be the lesser of the agency liquor store's current commission percentage discount rate or the agency liquor store's band average from the last review period. In this example, 9.25 percent will be used for banding calculation purposes. The band's average for the current review period is calculated to be 9.80 percent. In this example, this agency liquor store's rate would change from 9.75 percent to 9.80 percent, and their commission percentage discount rate would no longer reflect the adjustment through ARM 42.11.309, because the average of the band it is in is more than the adjusted amount.

(8) The new effective commission percentage discount rate for each agent will be the higher of their band average or their current rate. If the agent qualifies for an adjustment, the adjustment will be effective July 1 following the review period.

(9) The sales bands with the new average commission percentage discount rates for each band will be sent to the agency liquor stores on or before March 1 following the review period.

(10) Public copies of the sales bands may be obtained by contacting:

Department of Revenue
Liquor Control Division
Liquor Distribution Bureau
P.O. Box 1712
Helena, MT 59624-1712

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASONABLE NECESSITY: The department proposes to retitle ARM 42.11.306, from Commission Percentage Review, to Commission Percentage Discount Rate Review, to reflect the actual terminology used to describe the action.

Sections from ARM 42.11.307, 42.11.308, and 42.11.309 have been combined and added to this section to increase continuity and decrease confusion. The new title and sections are consistent with the process described in this amended rule.

Section (1) is proposed to be amended to use language that increases public awareness and better reflects the process because, as currently written, the rule is vague. New language identifies that only those under a continuous franchise agreement for three years will be considered for a review.

Section (2) is proposed to be amended to enhance the public's understanding of the commission percentage discount rate review process by adding language to help identify when the review process will occur, and by relocating language from ARM 42.11.307 to this section because it is part of the review process and will add continuity.

The department proposes to add new (3) to relocate language from ARM 42.11.307 into this rule in order to add clarification by including a reference to the invoice date. This reference will reduce confusion and increase agents' understanding of the commission percentage review.

The department proposes to add new (4) and (5) to more appropriately place relevant language from ARM 42.11.308, which the department is proposing to repeal, within this rule for clarity.

Section (6) is proposed new language to make the review process clear and understandable to the agents. The rules proposed in this section are a step-by-step guide on how an agency liquor store will be grouped with other agency liquor stores that have similar sales. Subsections (a) and (b) describe in detail the steps that will be taken to group agency liquor stores together.

Section (7) is proposed new language to make the commission discount rate review process clear and understandable to agents. The rules proposed in this section describe the commission percentage discount rate used to calculate an agency liquor store's band average. Examples are included to help agents understand the process.

The department proposes to add new (8) to relocate relevant portions of language being stricken in proposed amendments to ARM 42.11.309 and to add continuity to the review process covered in this rule. The proposed language defines what commission percentage discount rate will be given to an agency liquor store and when it will be effective.

The department proposes to add new (9) to relocate relevant portions of language being stricken in proposed amendments to ARM 42.11.307, and to add continuity to the review process covered in this rule. The proposed language also gives a concrete date of when the agents will be mailed the sales bands information.

The department proposes to add new (10) to relocate relevant portions of language being stricken in proposed amendments to ARM 42.11.307. This proposed language identifies how and where an agent can obtain sales band information.

~~42.11.307 DETERMINATION OF SIMILAR GROSS SALES VOLUMES
VOLUME OF SALES DISCOUNT RATE REVIEW (1) An agent's commission
percentage may be adjusted to the average commission percentage of agents with
similar gross sales volumes as prescribed in The department shall review the~~

volume of sales discount rate received by agents that have operated under a continuous franchise agreement for at least three years pursuant to the requirement of 16-2-101, MCA. Under 16-2-101, MCA, on July 1 of each year:

(a) agency liquor stores, with a sales volume of \$560,000 or more based on their invoice dates in the previous fiscal year, will receive a volume of sales discount rate of 0.875 percent; and

(b) agency liquor stores, with a sales volume of less than \$560,000 based on their invoice dates in the previous fiscal year, will receive a volume of sales discount rate of 1.5 percent.

(2) Except as otherwise provided, sales information from the two most recent calendar years will be used when determining the gross sales volumes. The department shall use an inflation factor to adjust the previous year's base to determine the new dollar volume of sales cutoff based on the top 25 liquor items (SKUs) with the highest quantity of cases sold in the previous calendar year. The posted price, excluding any temporary price reductions offered by the vendor, for the top 25 liquor items will be taken on January 1 and December 1 of the previous calendar year to determine the difference in the posted price for each item. This difference will be used to calculate a percentage increase or decrease for each item. The average percentages will be considered the inflation factor. This inflation factor may be positive or negative. This percentage is then multiplied by the previous year's volume of sales base.

(3) The department will apply standard statistical measures to establish the sales bands. The agents will be divided into six sales bands. The sales bands will be proportioned using a standard bell curve. Copies of the volume of sales worksheet will be available by April 1 of each year. Copies may be obtained by contacting:

Department of Revenue
Liquor Control Division
Liquor Distribution Bureau
P.O. Box 1712
Helena, MT 59624-1712

(4) The proposed sales bands with corresponding proposed average commission rates for each band will be made available to the public for comment 60 days prior to the commencement of the review period.

(5) Copies of the sales bands with corresponding proposed average commission rates for each band may be obtained by contacting the Department of Revenue, Liquor Distribution, P.O. 1712, Helena, MT 59624-1712.

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASONABLE NECESSITY: The department is proposing to retitle ARM 42.11.307, from Determination of Similar Gross Sales Volumes, to Volume of Sales Discount Rate Review, to better reflect the content of the rule. Language relative to commission percentage discount rate averaging that the department proposes to

strike from ARM 42.11.306, is also being incorporated into this rule for better clarity and flow.

Section (1) is proposed to be amended to increase agents' understanding of the necessary requirements to be considered eligible for a volume of sales discount review. The department proposes the addition of new (a) and (b) to add clarity by referencing the volume of sales discount rates to be received, based on the store's volume of sales, as provided for in statute. The proposed new rule language supports amendments to 16-2-101, MCA, as enacted by the 2009 Legislature.

Section (2) is proposed to be amended to enhance the agents' knowledge of how the cutoff amount in the volume of sales is adjusted based on an inflation factor by describing the calculation process used.

Section (3) is proposed to be amended to enhance agents' knowledge of the time frame for which the volume of sales information will be available and to create an easy reference point of the department's address for agents to request the information.

42.11.309 COMMISSION ADJUSTMENT AGENT REQUESTED COMMISSION PERCENTAGE DISCOUNT RATE REVIEW (1) An agent's commission percentage who has been open for business on a regular and continuous basis for the three most recent calendar years may be increased to average petition the department for an increase to their commission percentage discount rate within the sales band if that agent's commission percentage is less than the average in that sales band by sending a completed application and required documentation to the department by May 1, 2013, and by May 1 of every succeeding three years thereafter. Upon review of the application, including any additional information requested, such as the agency liquor store's financial records and supporting documentation, the department may increase the agent's commission percentage discount rate.

(2) An agent's commission percentage may be increased to a percentage greater than the The average commission percentage within the sales band discount rate received under ARM 42.11.306 will apply, if it is established to the satisfaction of the department that the following criteria are met:

(a) the agent has experienced increased expenses an increase in the average two-year allowable costs compared to the base year in operating the business for the two most recent calendar years including. Allowable costs include but are not limited to:

(i) increased labor costs; commensurate with statutory wage and benefits provided for state employees. Labor costs include but are not limited to:

(A) wages;

(B) employer portion of Social Security and Medicare;

(C) unemployment insurance;

(D) workers compensation insurance; and

(E) retirement plans;

(ii) rental, or lease, or real estate costs commensurate with retail standards for rent or lease costs that have been established using local/market area retail space rent data provided to the department for property assessment by local business entities. If this data is not available for a specific community, then rent for

retail space in similar market areas will be used. If market conditions in a local area experience a dramatic change, the agent may provide current rental listings and/or current rental lease agreements from the immediate market area. The department will review this new data provided by the agent to determine an allowable increase to rental or lease costs;

(iii) utilities for the designated agency liquor store premises only;
(iv) health, comprehensive general liability, property, and liquor liability insurance premiums; and

(v) increased utilization of the case lot discount;

(vi) phone services;

(vii) city/county services;

(viii) regulatory fees; and

(ix) taxes and governmentally mandated fees.

(b) the agent has incurred the allowable cost continuously through the three calendar years of the review period. Agent's allowable costs can be distorted by changes which occur in the ordinary course of business. This distortion could potentially result in allowable costs which do not accurately reflect their costs. If extenuating or unique circumstances occur in the ordinary course of business, the department may, if sufficient data exists, estimate the allowable cost for the base year;

~~(b)~~(c) the agent considered all reasonable mitigation measures; and

~~(c)~~(d) the average commission percentage would be insufficient to yield net income agent's average two-year net income is not commensurate with the net income experienced in the two most recent calendar years base year. Net income, as it applies to this rule, equals the agent's gross sales of liquor, less liquor cost of goods sold, less allowed costs. Liquor cost of goods sold equals the beginning inventory of liquor, plus the liquor purchases at cost by invoice date, less the ending inventory of liquor.

(3) If the agent meets all the requirements in (1) and (2), the department will determine the lesser of:

(a) the base year net income less the average two-year net income; or

(b) the average two-year allowable costs less the base year allowable costs.

~~(3)~~(4) All agency liquor stores that qualify under (2) above are eligible for a review. The agency store shall file an application and the required documentation by May 1 of each period. In order to qualify for the review, the agency store must open its books to the department A percentage is then calculated by dividing the lesser dollar amount in (3) by the agent's average two-year gross sales reported.

(5) The agent's commission percentage discount rate received according to ARM 42.11.306, is then subtracted from the percentage in (4). If the difference is:

(a) greater than zero, the difference is added to the agent's commission percentage discount rate according to ARM 42.11.306; or

(b) less than zero, the agent does not receive a commission percentage discount rate adjustment under this rule.

~~(4)~~(6) If the agency store agent qualifies for an adjustment, the adjustment will be effective on July 1, or retroactive to July 1, of the year of application following the review period for each period except for the first review period, which is retroactive to January 1, 1999.

AUTH: 16-1-303, MCA

IMP: 16-2-101, MCA

REASONABLE NECESSITY: The department proposes to retitle ARM 42.11.309 from Commission Adjustment, to Agent Requested Commission Percentage Discount Rate Review, for clarity.

Section (1) is proposed to be amended to enhance the agents' knowledge of the commission requirements relative to who can petition for a commission review, when the review takes place, and what is needed for the review process.

Section (2) is proposed to be amended to match the process used by the department and eliminate outdated language that may be confusing to agents.

Proposed amendments to (a) are to enhance the agents' understanding of allowable cost documentation required and provide transparency and clarity to the review process.

Proposed amendments to (a)(i) are to increase the agents' understanding of the acceptable labor costs to eliminate confusion.

Proposed amendments to (a)(ii) are to increase the agents' understanding of how the department will establish rental, lease, or real estate costs for the purpose of the commission percentage discount rate review and provide transparency to the review process.

Proposed amendments to (a)(iii) through (ix) are to enhance the agents' understanding of the documents requested by the department and to help eliminate confusion within an existing complex process.

The proposed addition of new (b) is to address situations where an agent may have experienced extenuating or unique circumstances that are not reflected across a three-year period. This will allow for the department to estimate costs if data doesn't exist.

Proposed amendments to (d) are to define net income as it applies to this rule and increase the agents' understanding of how the department determines net income.

Section (3) is proposed to be amended to increase the agents' understanding of the review process and provide continuity in the rules as proposed.

Section (4) is proposed to be amended to eliminate language that has been moved to other sections and add language that helps the agents' understanding of how the commission percentage discount rate is calculated. This will provide transparency to the process used by the department.

The department proposes to add new (5) to help agents understand the methods used to calculate the commission percentage discount rate and provide transparency to the process and help eliminate confusion.

The department proposes to amend newly numbered (6) by striking old language that is no longer relevant and adding new language to provide for reviews that take longer than the effective due date, in an effort to help eliminate confusion.

42.11.310 SELECTION OF AGENT (1) The agent for an agency liquor store will be selected according to competitive procedures under the Montana Procurement Act, 18-4-121 through 18-4-407, MCA.

(2) ~~For The United States Census Bureau's last decennial final census count will be used to establish population statistics used in the selection of agency liquor stores in communities with less than a population of 3,000 population according to the Federal Bureau of the Census' last decennial final census count or less. However, in the interim between censuses, the department will use the most recent population estimates published by the United States Census Bureau. The following will apply for that selection:~~

(a) an agent will be selected according to procedures for competitive sealed proposals as defined in ARM 2.5.602; and

(b) the agent's commission percentage discount rate will be initially established at 10 percent of ~~adjusted gross sales~~.

(3) ~~For The United States Census Bureau's last decennial final census count will be used to establish population statistics used in the selection of agency liquor stores in communities with a population of 3,000 or more according to the Federal Bureau of the Census' last decennial final census population count. However, in the interim between censuses, the department will use the most recent population estimates published by the United States Census Bureau. The following will apply for that selection:~~

(a) an agent will be selected according to procedures for competitive sealed bids as defined in ARM 2.5.601; and

(b) the agent's commission percentage discount rate will be initially set at the percentage bid by the lowest ~~responsible and responsive~~ bidder.

AUTH: 16-1-303, MCA

IMP: 16-2-101, 16-2-109, 16-2-407, 18-4-303, 18-4-304, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.310 to enhance the public's knowledge that the process in which an agent is selected to operate an agency liquor store is determined by the community's population. As amended, the rule will clarify that the department will use the United States Census Bureau's most recent population estimates for years in between censuses. The department is proposing additional amendments to the language in (2), to make it consistent with the current language in (3).

5. The department proposes to repeal the following rule:

42.11.308 QUALIFICATIONS FOR COMMISSION RATE REVIEW which can be found on page 42-1145 of the Administrative Rules of Montana.

AUTH: 16-1-303, MCA

IMP: 16-2-101, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.11.308 and move relevant language to ARM 42.11.306. This repeal and relocation of the language will consolidate the commission percentage discount rate review process into a single location to enhance the agents' understanding of the review process.

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: 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 November 26, 2012.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" 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.

9. 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. Such written request may be mailed or delivered to the person in 6 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of House Bill 656, L. 2009, Representative Wayne C. Stahl, was notified by regular mail on August 14, 2012.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to the Secretary of State on October 15, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VII, amendment of	)	PROPOSED ADOPTION,
ARM 42.18.122, 42.18.124, 42.18.128,	)	AMENDMENT, AND REPEAL
42.20.106, and 42.22.1304, and repeal)	
of ARM 42.18.106, 42.18.109,)	
42.18.112, 42.18.115, and 42.22.1314)	
relating to the Montana reappraisal)	
plan)	

TO: All Concerned Persons

1. On November 19, 2012, at 3 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., November 5, 2012, 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 rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I PURPOSE OF THE 2015 REAPPRAISAL PLAN (1) The purpose of the reappraisal plan is to ensure that taxable property in the state of Montana is classified and valued for tax purposes as accurately and uniformly as possible in accordance with the law and the Montana Constitution. This plan seeks to do all things necessary within the resources and information available to the department to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. The plan requires the same methods of appraisal and assessment to be used in each county of the state and those valuations be equalized prior to being placed on the tax rolls as of January 1, 2015.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, 15-7-112, 15-9-101, MCA

REASONABLE NECESSITY: New Rule I is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The rule explains the purpose of the 2015 reappraisal plan and emphasizes uniformity and equity as required by the Montana Constitution and applicable laws.

NEW RULE II SPECIFIC OBJECTIVES OF THE 2015 REAPPRAISAL

- (1) Specific objectives for the 2015 reappraisal include but are not limited to:
- (a) attaining statewide equalization of property values in accordance with the law;
 - (b) continually improving the collection of information concerning the characteristics of property and encouraging taxpayers to help update property characteristic information used for reappraisal;
 - (c) maintaining the high standard of accuracy of market values for residential and commercial property achieved in the 2009 reappraisal;
 - (d) continuing to conduct its mass appraisals in accordance with the most current uniform standards of professional appraisal practices, which encompasses and includes the mass appraisal standards of the International Association of Assessing Officers (IAAO);
 - (e) expanding, more widely and uniformly across the state, the use of the income method of valuing commercial property whenever the information necessary to do so is available;
 - (f) maintaining the high standard of scientific objectivity of the productivity valuation systems for agricultural and forest land valuation attained in the 2009 cycle and continuing to refine those systems as improved data, including objective data concerning local conditions affecting land productivity, becomes available;
 - (g) improving written and electronic communications to property owners concerning the reappraisal process, through enhanced electronic services;
 - (h) expanding information available concerning property tax assistance programs; and
 - (i) maintaining staff training on personal communications and taxpayer rights to achieve productive and respectful relationships with the citizens of Montana.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-9-101, MCA

REASONABLE NECESSITY: New Rule II is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The rule identifies the specific objectives of the 2015 reappraisal plan.

NEW RULE III ADDITIONAL RULES TO SUPPLEMENT REAPPRAISAL

PLAN (1) The department may promulgate additional rules prior to January 1, 2015, to guide classification and valuation in cases involving facts or circumstances of particular complexity or challenges in terms of achieving uniform treatment of property across the state. The department will adopt additional rules for manuals to be used in the 2015 reappraisal, to respond to recommendations of advisory councils and to address other relevant topics that may arise prior to the

implementation of new values on January 1, 2015.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-9-101, MCA

REASONABLE NECESSITY: New Rule III is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The rule points out that the department will be promulgating additional rules as the new cycle approaches, to increase uniformity and equalization of property values.

NEW RULE IV 2015 MONTANA GENERAL REAPPRAISAL PLAN (1) The Montana reappraisal plan implements the Legislature's cyclical reappraisal program set forth in 15-7-111, MCA, using mass appraisal standards and techniques.

(2) The Montana reappraisal plan provides for the valuation of:

- (a) residential property;
- (b) commercial property; and
- (c) agricultural and forest land property.

(3) CAMA, as defined in ARM 42.18.128, is used to assist in the valuation process. The department determines a new appraised value for each:

- (a) parcel of land;
- (b) residential improvement;
- (c) commercial improvement; and
- (d) agricultural improvement.

(4) The electronic CAMA record is the official record of the department's data with regard to individual property characteristics and valuation.

(5) New appraised values will be entered on the tax rolls for tax year 2015.

(6) The department will develop a reappraisal communications plan that includes the appeals process to improve taxpayer understanding, how reappraisal affects them and how it affects their appeal opportunities and rights. The plan will include both general communications provided to the public as well as communications with individual property owners.

(7) The methods used for appraising industrial properties are contained in ARM Title 42, chapter 22, subchapter 13.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, 15-44-103, MCA

REASONABLE NECESSITY: New Rule IV is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. This rule provides information for the public explaining the general process the department will utilize during the next reappraisal cycle, as required by statute.

The new rule also provides terms used to reference the current property tax system and provides information where taxpayers can locate the methodology for appraising industrial properties.

NEW RULE V 2015 RESIDENTIAL AND COMMERCIAL REAPPRAISAL PLAN (1) The department will implement its reappraisal plan to include procedures

throughout the process that accomplish the statewide equalization of values. The reappraisal of class four residential and commercial property improvements consists of:

- (a) field reviews, as appropriate, including:
 - (i) determining accuracy of existing information in CAMA, and on the property record card (PRC);
 - (ii) observing condition;
 - (iii) reviewing quality of construction and depreciation assignment; and
 - (iv) collecting additional data as needed.
- (b) collection, verification, and analysis of sales information;
- (c) collection, verification, and analysis of income and expense information;
- (d) data entry in CAMA, including:
 - (i) correcting, updating, or adding property data;
 - (ii) reviewing edit reports; and
 - (iii) adding supplementary data, including outbuildings.
- (e) development and review of land valuation models to be entered into CALP tables, as CALP is defined in ARM 42.18.128;
- (f) development of sales models/benchmarking;
- (g) development of income and expense models/benchmarking;
- (h) collection of construction and building material costs;
- (i) generation and review of property record card (PRC), comparable sales sheets, and income and expense valuation sheets;
- (j) a statewide equalization review; and
- (k) final determinations of value.

(2) Multiple field reviews of each property will be kept to an absolute minimum.

(3) The collection, verification, analysis, and data entry of cost information, sales information, and income and expense information is an important component of CAMA. The department shall formulate procedures for collection, verification, and validation of cost information, sales information, and income and expense information. Accuracy of cost information, sales information, and income and expense information is critical to the development of:

- (a) accurate land valuation;
- (b) benchmarking;
- (c) accurate cost models;
- (d) accurate sales comparison models;
- (e) accurate income and expense models;
- (f) individual property final value determinations; and
- (g) defense of final value estimates.

(4) Residential and commercial lots and tracts are valued through the use of land valuation models. Homogeneous areas within each county are geographically defined as neighborhoods. The land valuation models reflect January 1, 2014, land market values, and consist of a land valuation method dependent upon the market data available within the neighborhood and deemed comparable. The method(s) the department may utilize for the valuation of land are listed below:

- (a) sales comparison approach;
- (b) multiple regression analysis (MRA);

- (c) abstraction/extraction; and
- (d) allocation.

(5) The development of cost models, sales comparison models, income and expense models, and regression models using CAMA is a requirement for property valuation during the reappraisal cycle. While separate models may be used for separate neighborhoods and market areas, the methodologies underlying the models must be uniform across the state.

(a) Cost information is used to determine the replacement cost new less depreciation (RCNLD) of class four buildings and improvements. The replacement cost new (RCN) reflects how much it would cost today to build a building similar to the taxpayer's building(s) due to age, physical conditions, and/or other forms of depreciation. The value of the taxpayer's building(s) and land are added together to establish the total value of the taxpayer's property.

(b) For the sales comparison models, the key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. The department may develop separate sales comparison models and separate income and expense models for each neighborhood and/or market area. If the taxpayer's property has different characteristics, for example, a different quality of construction or square footage than any of the comparable sales properties (comps), the department adjusts the value of the comps. The adjustments reflect how much each of the differences in characteristics affects the value of a property. The adjustments are made based upon information obtained from the market. Once the values of the comps have been adjusted to account for the differences in characteristics, the comps' values are used to value the subject property.

(c) The income and expense information is compiled to create local and statewide income models that allow the department to estimate typical net incomes for various types of commercial properties. The net income streams are capitalized to determine the present value of the future benefits of the property.

(d) Regression models are developed for specifically identified market areas. The models identify how much value each property characteristic contributes to a property's total value. The taxpayer's property (subject property) value is determined by summing up the values identified by the model for each of the subject property's characteristics. The value of the taxpayer's building(s) and land are added together to establish the total value of the taxpayer's property.

(6) Property record card (PRC) and comparable sales sheets and income and expense valuation sheets are generated and reviewed by appraisal staff. These sheets include:

- (a) physical characteristics and component information;
- (b) sales information;
- (c) income and expense information; and
- (d) valuation information.

(7) The PRC review consists of analyzing and collecting component information such as quality of construction and condition of improvements. This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review results in updating CAMA data.

(8) Final determinations of value are conducted once all required field and program needs of CAMA are met. The appraised value for residential and commercial property may include the applicable indicators of value using the:

- (a) cost approach;
- (b) sales comparison approach; or
- (c) income approach.

(9) The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

(10) This rule applies to tax years January 1, 2015, through December 31, 2021.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, 15-44-103, MCA

REASONABLE NECESSITY: New Rule V is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The rule provides information for the public explaining the process to be followed by the department during the next reappraisal cycle as it applies to residential and commercial properties in Montana, as required by statute.

This new rule combined the previous residential and commercial rules into one. The 2003 and 2009 reappraisal plans separated each of these property types into their own rule even though each rule contained much of the same information.

The new rule also updates terms used to reference the property tax system. The department no longer calls this system "PVAS" or "property valuation and assessment system;" it is a computer assisted mass appraisal system or "CAMAS."

Additionally, "CALP" is the acronym for "computer assisted land pricing" and a tool that CAMAS uses to value land; it is not a land model as the current rules reflect. These terms, and others, are being defined in amendments to ARM 42.18.128 and ARM 42.20.106.

NEW RULE VI 2015 AGRICULTURAL AND FOREST LANDS

REAPPRAISAL PLAN (1) For agricultural and forest lands, the review will consist of reviewing productivity information on agricultural and forest lands and the land use type. Class three agricultural and forest lands are valued in accordance with ARM Title 42, chapter 20. Use changes are updated annually on both agricultural and forest lands. For agricultural lands the valuation methodology and agricultural lands valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values will reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA.

(2) The reappraisal of agricultural and forest land improvements consists of:

- (a) field reviews, as appropriate, including:
 - (i) determining accuracy of existing information in CAMA, and on the property record card (PRC);
 - (ii) observing condition;
 - (iii) reviewing quality of construction and depreciation assignment; and

- (iv) collecting additional data as needed;
- (b) multiple field reviews of each property will be kept to an absolute minimum;
- (c) collection, verification, and analysis of agricultural and forest lands property data;
- (d) data entry in CAMA includes:
 - (i) correcting, updating, or adding property data;
 - (ii) reviewing edit reports; and
 - (iii) the addition of supplementary data, including outbuildings.
- (3) This rule applies to tax years January 1, 2015, through December 31, 2021.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, 15-44-103, MCA

REASONABLE NECESSITY: New Rule VI is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The rule provides information for the public explaining the process to be followed by the department during the next reappraisal cycle for agricultural and forest lands, as required by statute.

The new rule updates terms used to reference the property tax system. The department no longer calls this system "PVAS" or "property valuation and assessment system;" it is a computer assisted mass appraisal system or "CAMAS." Additionally, "CALP" is the acronym for "computer assisted land pricing" and a tool that CAMAS uses to value land; it is not a land model as the current rules reflect. As stated above, these terms are being defined in the definitions rules in this notice.

NEW RULE VII 2015 INDUSTRIAL PROPERTY REAPPRAISAL

- (1) Industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate department field office. Each industrial property is reappraised annually.
- (2) The reappraisal plan provides for industrial property to be valued as an entity; that is to say, the valuation includes both real and personal property valuation components. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. The department will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.
- (3) This rule applies to tax years January 1, 2015, through December 31, 2021.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: New Rule VII is necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. This rule provides information for the public explaining the process the department will utilize when appraising industrial property during the next reappraisal cycle, as

required by statute.

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

42.18.122 MONTANA APPRAISAL MANUAL - RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL (1) and (2) remain the same.

(3) If the 2008 Montana Appraisal Manual does not provide information necessary to value a specific property, the department shall use other construction cost manuals with a publication date as close to the 2008 Montana Appraisal Manual as possible, such as Marshall Valuation Service; Richardson Engineering Services, Inc., or R.S. Means Company, Inc. The cost base schedules set out in those publications will be considered to reflect ~~July 1, 2008~~ January 1, 2014, cost information.

(4) through (7) remain the same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.122 are necessary for the department to comply with the requirements of 15-7-111, MCA to promulgate a reappraisal plan. The proposed amendments adopt the applicable date for the cost base schedules for the 2015 reappraisal cycle.

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) For the taxable years from January 1, 2003, through December 31, 2008, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2002.

(b) For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of ~~July 1, 2008~~ January 1, 2014.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-134, 15-7-103, 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.124 are necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The proposed amendments adopt the applicable closing date of when property will be valued for the 2015 reappraisal cycle.

42.18.128 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "CALP" means a computer assisted land pricing ~~model~~ system and refers to the property valuation system program which provides the user with the ability to input the various land pricing parameters for use in the valuation of residential and commercial property.

(2) "CAMA" means Computer Assisted Mass Appraisal (System), which is the computer software the department uses to administer and value real property.

(2) and (3) remain the same, but are renumbered (3) and (4).

~~(4) "PVAS" means the department's property valuation assessment system.~~

(5) remains the same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-139, 15-9-101, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.128 are necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The department is proposing to remove a definition that is no longer used in the reappraisal plan process. The definition of CALP is being amended to expand on the term as it applies to land pricing parameters. The department's computer software used to administer the appraisal system is referred to as the CAMA system and this definition is not found in any of the current rules. This definition provides the correct title of this acronym.

42.20.106 DEFINITIONS The following definitions apply to this subchapter:

(1) "Abstraction" also referred to as extraction, means a method of estimating land value in which the depreciated cost of the improvements on the improved property is estimated and deducted from the total sale price to arrive at an estimated sale price for land.

(2) "Allocation" means a method of estimating land value in which sales of improved properties are analyzed to establish a typical ratio of site value to total property value and this ratio is applied to the property being appraised or the comparable sale being analyzed.

~~(4)~~(3) "Attached" as it applies to a manufactured or mobile home means being bolted or cable anchored to the permanent foundation in accordance with Housing and Urban Development standards.

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

~~(3)~~(5) "Comparable properties" means properties that have similar utility, use, function, and are of a similar type as the subject property. Comparable properties must be influenced by the same set of economic trends, and physical, economic, governmental, and social factors as the subject property. Comparable properties must have the potential of a similar use as the subject property. For any property that does not fit into this definition, the department will rely on the definition of comparable property contained in 15-1-101, MCA.

(a) Within the definition of comparable property, the following types of property are considered comparable:

(i) single-family residences with ancillary improvements are comparable to other single-family residences with ancillary improvements;

(ii) multifamily residences are comparable to other multifamily residences;

(iii) mobile homes are comparable to other mobile homes;

(iv) residential city and town lots are comparable to other residential city and town lots;

(v) commercial city and town lots are comparable to other commercial city

and town lots;

(vi) residential tract land is comparable to other residential tract land;

(vii) commercial tract land is comparable to other commercial tract land;

(viii) improvements and outbuildings necessary to the operation of a qualified agricultural property are comparable to other improvements and outbuildings on qualified agricultural properties;

(ix) one-acre sites beneath improvements on land classified as nonqualified agricultural or forestland are comparable to residential tract land;

(x) condominiums are comparable to other condominiums;

(xi) townhomes are comparable to other townhomes;

~~(xii)~~(xii) industrial improvements are comparable to other industrial improvements;

~~(xii)~~(xiii) industrial land is comparable to other industrial land; and

~~(xiii)~~(iv) manufactured homes are comparable to other manufactured homes.

(4) and (5) remain the same, but are renumbered (6) and (7).

(8) "Cost approach" means the value of a taxpayer's building(s) is/are developed using construction cost information obtained from across the state.

(6) and (7) remain the same, but are renumbered (9) and (10).

(11) "Income approach" means the value of a taxpayer's building(s) is/are developed by using income and expense information obtained from commercial businesses across the state.

(12) "Mass Appraisal" is the process of valuing a group of properties as of a given date, using standardized methods, employing common data, and allowing for statistical testing.

(13) "Mass Appraisal Model" is a mathematical expression of how supply and demand factor interact in a real property market.

(14) "Multiple Regression Analysis (MRA)" means the value of a property is determined using statistical analysis. The statistical analysis helps to define the relationship between the various characteristics of sold properties and those properties' sale prices.

(8) through (11) remain the same, but are renumbered (15) through (18).

(19) "Sales comparison approach" means that a property's value is developed by comparing sale prices of similar properties (comps) to the taxpayer's property (subject property).

(12) remains the same but is renumbered (20).

(21) "Subject property" is the property being appraised.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-101, 15-7-111, 15-7-112, 15-7-304, 15-7-306, 15-9-101, 15-24-1501, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.20.106 are necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The proposed amendments are necessary to include definitions for terminology used in the reappraisal plan.

42.22.1304 VALUATION OF INDUSTRIAL IMPROVEMENTS (1) All

industrial improvements shall be valued by the use of the 2002 Montana Appraisal Manual.

(2) remains the same.

(3) Upon the determination of the property's effective age, it shall be depreciated on an age/life basis according to the internal program schedules of the 2002 Montana Appraisal Manual.

(4) If the reproduction cost of the property is not listed, or is not accurately listed in the 2002 Montana Appraisal Manual for the specific property being appraised, then the department may use other appropriate cost manuals such as "Means" or "Marshall Valuation Service" to obtain the best estimate of reproduction cost. This reproduction cost would be depreciated on an age/life basis to arrive at market value for assessment purposes.

(5) remains the same.

AUTH: 15-1-201, MCA

IMP: 15-6-134, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.22.1304 are necessary for the department to comply with the requirements of 15-7-111, MCA, to promulgate a reappraisal plan. The proposed amendments remove the year reference to the Montana Appraisal Manual as a housekeeping change.

5. The department proposes to repeal the following rules:

ARM 42.18.106 2003 MONTANA REAPPRAISAL PLAN which can be found on page 42-1805 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.18.106, because the rule is specific the 2003 property reappraisal cycle and is no longer necessary.

42.18.109 2003 RESIDENTIAL REAPPRAISAL PLAN which can be found on page 42-1807 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.18.109, because the rule is specific the 2003 property reappraisal cycle and is no longer necessary.

42.18.112 2003 COMMERCIAL REAPPRAISAL PLAN which can be found on page 42-1810 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.18.112, because the rule is specific the 2003 property reappraisal cycle and is no longer necessary.

42.18.115 2003 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL which can be found on page 42-1814 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-201, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.18.115, because the rule is specific the 2003 property reappraisal cycle and is no longer necessary.

42.22.1314 2003 INDUSTRIAL PROPERTY REAPPRAISAL which can be found on page 42-2265 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.22.1314, because the rule is specific the 2003 property reappraisal cycle and is no longer necessary.

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: 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 November 26, 2012.

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

8. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking 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.

9. 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. Such written request may be mailed or delivered to the person in 6 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State October 15, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and amendment of ARM	)	ADOPTION AND AMENDMENT
42.13.201, 42.13.203, and 42.13.401)	
relating to product approval for beer,)	
wine, and hard cider products)	

TO: All Concerned Persons

1. On November 15, 2012, at 3 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., November 5, 2012, 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 department is proposing to adopt a new rule and amend current rules in order to protect the public's health and safety by creating a product approval process for beer, wine, and hard cider products. Alcoholic beverages are a mature product category and therefore should be marketed in an appropriate and responsible manner. In order to protect the public health and safety, it is necessary to have clear, concise rules to prevent unwarranted products from entering the market.

The proposed new rule is specific to wineries and wine importers who desire to introduce a new wine product into the state of Montana. This new rule will enhance wineries and wine importers knowledge of the label approval process and clarify when label and packaging information is required.

The labeling and packaging requirements in ARM 42.13.201 are proposed to protect the public's health and safety. For generations, alcoholic beverages were distinct and recognizably different from nonalcoholic beverages; however, new innovative products are being introduced that blur this distinction. New flavors, packaging types, and advertising methods are making it more difficult for an individual to differentiate an alcoholic product from a nonalcoholic product. The amendments in ARM 42.13.201 will help ensure that these products are not introduced into the state of Montana.

The proposed amendments to ARM 42.13.203 mirror the requirements in New Rule I but are specific to brewers and beer importers. The proposed rule also

addresses the requirements for beer over 8.75 percent alcohol by volume. The proposed amendments are made to enhance the industry's knowledge of the beer approval process and to enhance the readability of the rule.

The department is proposing to amend ARM 42.13.401 to ensure wineries and wine importers are aware of the product approval process.

4. 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 WINE LABEL APPROVALS (1) Each product a winery or wine importer desires to sell in the state of Montana must conform to the provisions of ARM 42.13.201.

(2) The department must receive picture copies of the label and packaging, from the winery or wine importer, in order to consider the product for approval.

(a) Changes to the label or packaging that requires TTB approval must be approved by the department prior to making the product available for sale in the state of Montana.

(b) A winery or wine importer that desires to sell wine that is subject to the labeling requirements administered by the U.S. Food and Drug Administration (FDA) must also supply copies of that label and packaging for approval to the department. Such products are wine beverages containing less than 7 percent alcohol by volume, including hard cider.

(3) The department will process the request and provide approval or denial to the winery or wine importer in writing within 30 days of receipt of all required information.

AUTH: 16-1-303, MCA

IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, 16-4-107, MCA

REASONABLE NECESSITY: The department is proposing New Rule I to enhance wineries' and wine importers' knowledge of the labeling and packaging requirements in ARM 42.13.201. It further coordinates the department's approval process with the requirements for products regulated by the FDA. This language will reduce confusion and increase the understanding of the approval process for the industry.

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

42.13.201 LABELING AND PACKAGING REQUIREMENTS (1) ~~No~~ As a condition of holding a retail license, no retail licensee shall sell, offer for sale, or deliver ~~provide any liquor (distilled spirits beer, wine, or malt beverages)~~ hard cider unless the containers thereof label and packaging are marked, branded, or labeled in conformity with this rule and ARM 42.13.221.

(2) ~~Alcohol content by volume must be noted on the labels of all packaged malt beverages sold or manufactured in Montana, with an alcohol content of more~~

than 8.75% alcohol by volume. Alcoholic beverage products are a mature product category, restricted by law to only consumers age 21 and older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a beer, wine, or hard cider label or package that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling, packaging, and/or containers that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

- (i) aerosol cans;
- (ii) gelatin cups;
- (iii) hollow candies; or
- (iv) mason jars that contain fruit;

(b) uses flavors that are most commonly associated with underage persons, such as:

- (i) cotton candy; or
- (ii) bubble gum; or
- (c) contains graphics or elements that:
 - (i) are most commonly associated with underage persons;
 - (ii) minimizes, fails to identify, or disguises the product's alcohol content; or
 - (iii) alludes to or suggests irresponsible, excessive, or underage

consumption.

(3) The department will notify the winery, wine importer, brewer, or beer importer of any products that do not conform to the requirements in (2). The winery, wine importer, brewer, or beer importer must remove the product from the Montana market within 60 days of being notified by the department.

AUTH: 16-1-303, MCA

IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.201 to protect the public health, welfare, and safety of the people of Montana from beer, wine, and hard cider products that emphasize features normally associated with nonalcoholic products, minimize the alcohol content, appeal to underage consumers, or allude to irresponsible consumption.

The department is proposing to amend the title to add the words "and packaging," because more information is needed than the label in approving products from a health and safety perspective. Containers and advertising methods are evolving beyond what was used in the past to attract new customers, and some labels and packaging can cause a product to be particularly attractive to persons who are specifically prohibited by law from acquiring or consuming the product. These features also make it more difficult for individuals to determine an alcoholic product from a nonalcoholic product.

The stricken language in (2) is being transferred to ARM 42.13.203, as that rule specifically mentions the requirement for beer containing more than 8.75 percent alcohol by volume. The new language in (2), including (2)(a) through (2)(c) is being proposed to protect the public health, welfare, and safety of Montana

citizens. Alcoholic beverages are unique products that require high standards in the way they are marketed. The provisions set forth in this rule are several of the same philosophies found in both the Wine Institute's Code of Advertising Standards and the Beer Institute's Advertising and Marketing Code. In addition, the proposed amendments in (2) are similar to rules that already exist for liquor products as specified in ARM 42.11.402.

The new language in (3) is proposed to enhance the industry's knowledge of the process by which the department will undertake for products found in the market place that do not meet the proposed requirements.

42.13.203 BEER LABEL APPROVALS (1) Each product a brewer or beer importer desires to sell in the state of Montana must conform to the provisions of ARM 42.13.201.

~~(2) Except as provided in (a), a brewer or beer importer who wishes to sell beer in the state must provide labels for each brand to the department for approval prior to selling or distributing beer within the state the department must receive picture copies of the label and packaging, from the brewer or beer importer, in order to consider the product for approval. All label changes must be preapproved for both in-state and out-of-state brewers or importers.~~

~~(a) A brewer or beer importer of malted beverages who is not subject to the labeling provisions in the regulations of the Tobacco Tax and Trade Bureau (TTB), United States Department of the Treasury as set forth in 27 CFR, as revised on April 1, 2009, has an annual nationwide production of less than 10,000 barrels is not required to provide the department with labels copies of the label and packaging.~~

~~(b) Changes to the label or packaging that require Tobacco Tax and Trade Bureau (TTB) approval must be approved by the department prior to making the product available for sale in the state of Montana.~~

~~(c) A brewer or beer importer that desires to sell beer that is subject to the labeling requirements administered by the U.S. Food and Drug Administration (FDA) must also supply copies of that label and packaging to the department for approval. Such products are a fermented beverage that qualifies as a beer under the Internal Revenue Code (other than sake or similar products) but that is made without both malted barley and hops.~~

~~(2)(3) Beer containing more than 8.75% percent but not more than 14 percent alcohol by volume must:~~

~~(a) be approved by the department prior to being sold or distributed within the state.; Beer containing more than 8.75% alcohol by volume must~~

~~(b) be made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain, in which the sugars used for fermentation of the alcoholic beverage are at least 75% percent derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients; and~~

~~(c) note the alcohol content by volume on the label.~~

~~(3)(4) To obtain approval from the department for all beer or formula changes that meet the criteria in (2)(3), the following documents are required:~~

~~(a) The brewer or beer importer must file a form, BeerSS, a sworn statement supplied by the department, attesting that the formula meets the requirements in~~

~~(2)~~(3).

(b) If the brewer or beer importer is required by federal law or regulations to file its formula with TTB, the brewer or beer importer is also required to send a copy of the formula filed with the TTB to the department.

(c) At the department's request and sole discretion, brewers or beer importers must file a formula for verification of its compliance with Montana statutes.

(d) All formulas filed with the department are protected by the privacy act and will not be released by the department unless otherwise required by law or by court order.

~~(4) A cover letter requesting approval of the labels and formulations shall be sent to the Liquor Control Division, P.O. 1712, Helena, MT 59624.~~

(5) The department will process the request and provide approval or denial in writing within 30 days of receipt of all required information.

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-4-105, MCA

REASONABLE NECCESITY: The department is proposing to amend ARM 42.13.203 to enhance brewers' and beer importers' knowledge of the labeling and packaging requirements in ARM 42.13.201.

Section (2) is being amended to indicate that copies of labels and packaging are needed as it is a component of the approval process. This coincides with the requirements in ARM 42.13.201 and creates continuity between the rules. The amendment to (2)(a) provides an exemption to the labeling requirements for small brewers with production of less than 10,000 barrels.

The language in (3) is being amended by reorganizing the language to enhance the readability of the rule. In addition, the language in (3)(c) was transferred from ARM 42.13.201 as it applies to beer with an alcohol content of more than 8.75 percent alcohol by volume.

The language in (4)(a) is being amended to remove the specific name of the form. This amendment will reduce any confusion, if the form happens to change names in the future.

The current language in (4) is being stricken as a cover letter is not needed during the approval process. In addition, the form supplied by the department includes a mailing address where the applicable information is to be sent.

The language in (5) is being amended to enhance the industry's knowledge that a decision will not be made until all required information is submitted to, and approved by, the department.

42.13.401 IMPORTATION OF WINE (1) Each winery or importer desiring to ship table wines to licensed distributors within the state must submit an application for registration to the department as specified in 16-4-107, MCA. Each application must be accompanied by a the applicable registration fee applicable shown in (2) ~~and a copy of each product label the winery or importer intends to ship into the state. Approval will be granted by the department annually on or before October 1. The department must be notified in writing of any changes, additions, or deletions in product line prior to distribution in Montana.~~ Each product the winery or importer desires to ship must

conform to the provisions of ARM 42.13.201.

- (2) The registration fee shall be as follows:
 - (a) 0-60 cases no charge;
 - (b) 61-500 cases = \$25;
 - (c) 501-1000 cases = \$50;
 - (d) 1001-1500 cases = \$100;
 - (e) 1501-2000 cases = \$200; or
 - (f) 2001 + cases = \$400.
- (3) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-4-107, MCA

REASONABLE NECCESITY: The department is proposing to amend ARM 42.13.401 to enhance wineries' and wine importers' knowledge of the product approval requirements in ARM 42.13.201. The stricken language in (1) pertains to the product approval process which is part of New Rule I.

The proposed amendments in (2) are for format purposes only.

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: 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 November 26, 2012.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" 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.

9. 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. Such written request may be mailed or delivered to the person in 6 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State October 15, 2012

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.10.202, 4.10.205 relating to)
the Aerial Applicator)

TO: All Concerned Persons

1. On August 23, 2012 the Department of Agriculture published MAR Notice No. 4-14-207 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1652 of the 2012 Montana Administrative Register, Issue Number 16.

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

3. No comments or testimony were received.

/s/ Cort Jensen _____
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State October 15, 2012

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.87.1303, 37.87.1333, and	)	REPEAL
37.87.1335 and the repeal of)	
37.87.1305, 37.87.1306, 37.87.1307,)	
37.87.1321, 37.87.1325, and)	
37.87.1331 pertaining to home and)	
community-based services (HCBS))	
for youth with serious emotional)	
disturbance)	

TO: All Concerned Persons

1. On July 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-596 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1514 of the 2012 Montana Administrative Register, Issue Number 14. On September 6, 2012, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment and Repeal at page 1735 of the 2012 Montana Administrative Register, Issue No 17. The purpose of the amended notice was to clarify some questions regarding high fidelity wraparound facilitation services and reimbursement rates. The rules remained as proposed.

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

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

COMMENT #1: Several commenters expressed concern about the proposed unit and rate for wraparound facilitation (proposed "encounter" unit of 50 minutes minimum with only one unit allowable per day and proposed encounter rate that allows billing only for face-to-face time working with the youth and family). The commenters noted this unit does not allow for the time flexibility facilitators need to do their work and does not allow billing for non-face-to-face care coordination and paperwork which are required when providing wraparound facilitation.

RESPONSE #1: The department has changed the unit of service for wraparound facilitation back to a 15-minute unit and will allow some specific non-face-to-face care coordination activities to be billable. The policy manual has been updated to reflect these changes and to include a table of billable activities. Paperwork activities will still not be billable as paperwork time was included in calculation of the unit rate.

COMMENT #2: Several comments noted concern about the setting of an encounter rate for in-home therapy with the encounter unit being a minimum of 50 minutes face-to-face care, given that youth and families referred for these services may not be able to sit through a session of that length. Commenters requested a return to a 15-minute unit and rate to allow needed flexibility for providers of this service for this population and suggested that some non-face-to-face time be billable as well, such as telephone support in crises.

RESPONSE #2: The department considered work-related components (including non-face-to-face components) in the rate as part of the rate-setting process. The unit will remain an encounter with a minimum of 50 minutes with the assumption that in-home therapy is a scheduled service (for the therapy itself), which the practice model for licensed mental health professionals is providing mental health therapy. The in-home therapist may bill one encounter per day unless they attend a wraparound team meeting for the same youth on the same day, in which case they can bill for both. The billing code will be the same for the encounter and the wraparound team meeting, but an informational modifier will be added to the code to denote the team meeting. The department did not include a separate unit and rate of reimbursement for an in-home therapist who may respond to a crisis. The department remains open to further evaluation and consideration of the type of unit for the in-home therapy service.

COMMENT #3: Several comments noted concern about the requirement that in-home therapists provide crisis response during and after work hours and suggested that a way be provided to bill for that requirement.

RESPONSE #3: If a provider responds to a crisis in person and spends 50 or more minutes working with the youth or family, the provider may bill for an encounter if they have not provided therapy for the youth/family on the same day. Non-face-to-face crisis responses are not billable. As noted above, non-face-to-face activities were considered in the setting of the rate for this service. Family teams generally have crisis plans that include the therapist as one of a number of potential responders, not the only one. The department remains open to discussion and consideration about more clearly defining this expectation.

COMMENT #4: One commenter noted that requiring therapy be provided in the home is not always clinically appropriate and the family may not want it to occur in their home.

RESPONSE #4: The department agrees and notes that the language in the policy manual does indicate the therapy will be provided "in the youth's residence at times convenient for the youth and family." The department's intent was to convey that the therapy would be provided at places and times convenient for the youth and family, including in the home. The department will consider amending this language at the next opportunity to address this concern.

COMMENT #5: A commenter asked whether the requirement that the in-home therapist develop and write an individual treatment plan meant that it should be a separate plan from the wraparound plan and if so stated that it defeats the purpose of having one plan for the family based on need. The commenter suggested that perhaps instead the therapist could stipulate specific interventions in the wraparound plan relating to the therapy.

RESPONSE #5: The individual treatment plan for therapy is developed by the therapist with the youth and family based on their needs and is directly integrated with the wraparound plan. Specific interventions relating to therapy can be included in the wraparound plan.

COMMENT #6: A comment was received asking for the rationale behind the new peer-to-peer rate and requesting consideration of increasing the peer-to-peer rate to be closer to the family support specialist rate.

RESPONSE #6: The department's rate setting process and analysis does not support a rate higher than the proposed rate. The department is willing to ask providers to participate in time studies for further analysis of rates for services when there are provider concerns about adequacy of the rates.

COMMENT #7: A comment was received requesting that the requirement for peer-to-peer specialist services remove the criterion that the peer-to-peer specialist be an adult who also received mental health services as a youth.

RESPONSE #7: The policy manuals have been amended to reflect that a person providing peer-to-peer services to a parent/legal guardian does not have to have received mental health services as a youth.

COMMENT #8: A comment was received requesting clarification of the requirement that the family support specialist (FSS) works under the guidance of the in-home therapist, given that there is no guidance about who supervises the FSS. The commenter also requests consideration of allowing the provider agency that employs the FSS to provide a licensed therapist to provide the guidance, rather than obligating the in-home therapist to do it.

RESPONSE #8: The provider agency is required to provide clinical supervision for the FSS. It is assumed that the provider agency supervises the FSS. The department welcomes further discussion about this matter. At this time, the requirement will remain the same given the need for close alignment of the work of the in-home therapist and the FSS.

COMMENT #9: A comment was received recommending that the department strike the requirement that respite providers be employees of an agency given that it is cost prohibitive for agencies to employ respite providers.

RESPONSE #9: The department will keep the requirement that respite providers be employed by an agency at this time. Provider agencies may offset administrative costs by paying respite providers a portion of the billed amount for the service. The department welcomes further discussion on this issue, as access to respite is a significant need of the youth and families, as noted by the commenter.

COMMENT #10: A question was received requesting guidelines for agencies to follow to determine whether respite providers are physically and mentally qualified.

RESPONSE #10: The department does not have guidelines for this determination. The department welcomes provider input and discussion on this issue.

COMMENT #11: A comment was received requesting the department consider allowing the in-home therapist and wraparound facilitator to work for the same agency, at family's request, to allow for family voice and choice. The commenter noted this exclusion may restrict access of rural families to in-home therapy where there are few providers.

RESPONSE #11: Centers for Medicare and Medicaid Services (CMS) requires strong safeguards against conflict of interest in service provision. The safeguards must be written into the application for home and community-based services. The department must keep the current language.

COMMENT #12: Several commenters noted that the department has been advised the fees for services are inadequate, the fees structure will not attract new providers, and current providers will not be able to continue to afford to provide services. The commenters request that the department consider seeking input from providers about the cost to provide the services and areas that the fee structure can be adjusted to support adequate rates for certain services.

RESPONSE #12: The department will continue to seek and welcome input from providers about the cost to provide services and the costs that could be adjusted to support rate changes. The department did seek provider input during the recent rate-setting process and will continue to welcome input from providers on the cost of providing these services.

COMMENT #13: A comment was received asking why time wasn't considered in a rate for travel and asking the department to consider removing the restriction of "25 miles or greater" from the "geographical factor" and to consider increasing the rate for the factor to help defray cost of travel time away from the office or to consider adding a fee to cover travel time.

RESPONSE #13: The department will keep the current rate and requirements for the geographical factor the same at this time. Travel time was considered in the setting of the rates for each service. The geographical factor is designed to assist providers willing to serve youth and families who live more than 25 miles from the

provider's usual business location. The department welcomes additional input and discussion on this matter.

COMMENT #14: Several commenters stated that in appendix A of the policy manuals there is language indicating that the therapist and other providers can only bill for face-to-face time with the youth present. The language is "Total time billed using one or multiple procedure codes may not exceed the total actual time spend with the Medicaid youth."

RESPONSE #14: It is the department's intent that the services are to be provided related to the youth's needs and the family's needs in support of the youth. The youth will not be present every time a service is provided. Family therapy can occur with parents or legal representatives without the youth present.

COMMENT #15: A commenter asked where the money comes from for the bridge waiver, why the billing process changed for the bridge waiver as well as for the 1915(i)(MAR 37-595), and asked why billing issues with regard to an atypical NPI number have not been resolved yet.

RESPONSE #15: The funding for bridge waiver services comes from federal Medicaid dollars and state general fund match. Funding for administration of the program comes from sustainability funding related to the PRTF waiver plus state general fund match. Sustainability funding also supports some of the capacity building for wraparound facilitation and peer-to-peer services. The department continues to work with Xerox (formerly ACS) to address persistent billing difficulties for atypical providers. Currently Xerox is working on plans for an updated system.

COMMENT #16: A commenter expressed concern about the nonmedical transportation service because families are supposed to be focused on natural supports and an agency is required to provide the service but in some cases cannot afford to provide it. The commenter requests an example when this service would apply.

RESPONSE #16: Please refer to the description of the service in the policy manuals for examples of when the service may be used.

COMMENT #17: A comment was received noting a few concerns about the service of respite care, including the suggestion that providers could bill for training and developing specialized skills respite providers develop and not be required to employ respite providers.

RESPONSE #17: The department appreciates the suggestion but will continue to require that respite providers be employed by an agency.

COMMENT #18: A commenter asked for information about outcomes from the PRTF waiver. The commenter also inquired about the paradox of requiring families to participate in the PRTF waiver and now the 1915(i) in MAR 37-595, with respect

to the issue of family choice. The commenter wanted to know whether CMHB adequately researched statewide the service models already available before implementing the PRTF waiver and what CMHB's stance is in regard to models of service outside the current PRTF waiver being able to meet the needs of and appropriately serve youth currently enrolled in the PRTF waiver, if the proposed rule changes do not go through.

RESPONSE #18: The department considers the above comments outside the scope of the proposed rules changes.

COMMENT #19: A comment was received that there is no evidence to support the proposed rule change to implement the bridge waiver as the youth currently enrolled may continue services through qualified providers who provide community and home based services steeped within the wrap philosophy of care.

RESPONSE #19: The proposed rule changes to implement the bridge waiver are necessary for youth currently enrolled in the PRTF waiver to have continuity of care in the services they have been receiving under the authority of the PRTF waiver despite the change in federal authority for the services. Disruption of these services would not be in the best interest of the youth and their families.

4. The department intends to apply these rules retroactively to October 1, 2012. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Cary B. Lund
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 15, 2012.

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
Rules I through IV pertaining to)
alternatives to out-of-state placement)
for at-risk youths)

TO: All Concerned Persons

1. On September 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-598 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1737 of the 2012 Montana Administrative Register, Issue Number 17.

2. The department has adopted New Rule I (37.87.1601), II (37.87.1602), III (37.87.1604), and IV (37.87.1606) as proposed.

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

COMMENT #1: A commenter suggested to add "qualified providers" to the list of entities that may place treatment plans on the department-approved data management system. The commenter stated that this would be a benefit to all providers and encourage wraparound services.

RESPONSE #1: In an effort to safeguard the protected health information (PHI) of at-risk youth, the department determined it is prudent to limit, at this time, who will post treatment plans of youth who are out-of-state or are at risk of going out-of-state. The department's limits on who has the ability to post PHI will allow the department to better monitor proper medical information releases have been signed to allow for authorized postings. Acute care hospitals are a very limited pool, and as they are the primary provider when youth are at risk of being sent out-of-state, the department determined they will have the option of posting this information. The department will continue to monitor and revise the data management system as input is received and suggestions brought forth to improve this communication tool.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State October 15, 2012.

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 June 30, 2012. This table includes those rules adopted during the period July 1, 2012, through September 30, 2012, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 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 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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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 September 2012 appear. Vacancies scheduled to appear from November 1, 2012, through January 1, 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 October 1, 2012.

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 SEPTEMBER 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board (Labor and Industry)			
Dr. Christine White Deeble Missoula Qualifications (if required): naturopathic physician	Governor	Beeson	9/1/2012 9/1/2016
Board of Crime Control (Justice)			
Ms. Tara Jensen Helena Qualifications (if required): public representative	Governor	Matteucci	9/17/2012 1/1/2015
Board of Nursing (Labor and Industry)			
Ms. Heather O'Hara (Onstad) Helena Qualifications (if required): registered nurse and an educator	Governor	reappointed	9/19/2012 7/1/2016
Ms. Tammy Talley Missoula Qualifications (if required): licensed practical nurse	Governor	Hayden	9/19/2012 7/1/2016
Board of Psychologists (Labor and Industry)			
Rep. Linda L. Holden Valier Qualifications (if required): public representative	Governor	Holden	9/1/2012 9/1/2017
Family Support Services Advisory Council (Public Health and Human Services)			
Mr. Verne Beffert Livingston Qualifications (if required): special education representative	Governor	reappointed	9/12/2012 4/9/2014

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Laura Copp Bozeman	Governor	McGennis	9/12/2012 4/9/2014
Qualifications (if required): representative for the School for the Deaf & Blind			
Ms. Sylvia Danforth Miles City	Governor	reappointed	9/12/2012 4/9/2014
Qualifications (if required): provider representative			
Ms. Lucy Hart-Paulson Missoula	Governor	reappointed	9/12/2012 4/9/2014
Qualifications (if required): language therapist			
Mr. Ronald Herman Helena	Governor	reappointed	9/12/2012 4/9/2014
Qualifications (if required): agency representative			
Ms. Beverly Hertweck Helena	Governor	reappointed	9/12/2012 4/9/2014
Qualifications (if required): agency representative			
Ms. Elizabeth Jones Kalispell	Governor	Miller	9/12/2012 4/9/2014
Qualifications (if required): parent representative			
Ms. McKee Laura Billings	Governor	not listed	9/12/2012 4/9/2014
Qualifications (if required): parent			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Novelene Martin Miles City Qualifications (if required): parent representative	Governor	reappointed	9/12/2012 4/9/2014
Ms. Danni McCarthy Helena Qualifications (if required): agency representative	Governor	reappointed	9/12/2012 4/9/2014
Ms. Brittany McKenzie Hamilton Qualifications (if required): Head Start/Early Head Start representative	Governor	Standaert	9/12/2012 4/9/2014
Ms. Dawn Piazzi Helena Qualifications (if required): agency representative	Governor	reappointed	9/12/2012 4/9/2014
Rep. Jean Price Great Falls Qualifications (if required): legislator	Governor	not listed	9/12/2012 4/9/2014
Ms. Cristin Volinkaty Missoula Qualifications (if required): provider representative	Governor	reappointed	9/12/2012 4/9/2014
Ms. Norma Zelzer Great Falls Qualifications (if required): family support specialist	Governor	Halcro	9/12/2012 4/9/2014

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Statewide Independent Living Council (Public Health and Human Services)			
Mr. Tom Osborn	Governor	Becker	9/17/2012
Black Eagle			12/1/2013
Qualifications (if required): representative of independent living centers			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Adjutant General of the Department of Military Affairs (Labor and Industry) General John Walsh, Helena Qualifications (if required): none specified	Governor	1/1/2013
Alternative Livestock Advisory Council (Fish, Wildlife and Parks) Ms. Linda Nielsen, Nashua Qualifications (if required): representative of the Board of Livestock	Governor	1/1/2013
Mr. Ron Moody, Lewistown Qualifications (if required): representative of the Board of Livestock	Governor	1/1/2013
Board of Aeronautics (Transportation) Rep. Ted Schye, Fort Peck Qualifications (if required): member of the Montana Pilots Association	Governor	1/1/2013
Mr. Fred Leistiko, Kalispell Qualifications (if required): representative of the Montana Airport Managers Association	Governor	1/1/2013
Ms. Tricia McKenna, Bozeman Qualifications (if required): representative of the Montana Chamber of Commerce	Governor	1/1/2013
Mr. Roger Lincoln, Gildford Qualifications (if required): member of the Montana Aerial Applicators Association	Governor	1/1/2013
Mr. Bill Hunt Jr., Shelby Qualifications (if required): attorney and member of the Montana League of Cities and Towns	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Chiropractors (Labor and Industry) Dr. Cathleen Fellows, Billings Qualifications (if required): practicing chiropractor with at least one year experience	Governor	1/1/2013
Board of Crime Control (Justice) Mr. Harold F. Hanser, Billings Qualifications (if required): public representative	Governor	1/1/2013
Chief Lyndon Erickson, Glasgow Qualifications (if required): local law enforcement representative	Governor	1/1/2013
Mr. James R. Cashell, Bozeman Qualifications (if required): local law enforcement representative	Governor	1/1/2013
Mr. Steve McArthur, Butte Qualifications (if required): community corrections representative	Governor	1/1/2013
Ms. Mikie Hajek, Great Falls Qualifications (if required): community organization representative	Governor	1/1/2013
Commissioner Mike Anderson, Havre Qualifications (if required): public member	Governor	1/1/2013
Mayor Pamela B. Kennedy, Kalispell Qualifications (if required): local government representative and the Youth Justice Council representative	Governor	1/1/2013
Mr. Nickolas C. Murnion, Jordan Qualifications (if required): local law enforcement representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Attorney General Steve Bullock, Helena Qualifications (if required): representative of state law enforcement	Governor	1/1/2013
Commissioner Laura Obert, Townsend Qualifications (if required): local government representative	Governor	1/1/2013
Board of Environmental Review (Environmental Quality) Mr. Marvin Miller, Butte Qualifications (if required): background or expertise in environmental science	Governor	1/1/2013
Mr. William Rossbach, Missoula Qualifications (if required): attorney	Governor	1/1/2013
Ms. Robin Shropshire, Helena Qualifications (if required): background or expertise in hydrology	Governor	1/1/2013
Mr. Joseph Whalen, Miles City Qualifications (if required): background or expertise in local government planning	Governor	1/1/2013
Mr. Larry Anderson, Great Falls Qualifications (if required): attorney	Governor	1/1/2013
Board of Horseracing (Livestock) Sen. Dale Mahlum, Missoula Qualifications (if required): industry representative	Governor	1/20/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Horseracing (Livestock) cont. Ms. Susan Austin, Kalispell Qualifications (if required): resident of District 5	Governor	1/20/2013
Mr. Charles (Al) Carruthers, Butte Qualifications (if required): industry representative	Governor	1/20/2013
Mr. Shawn Real Bird, Garryowen Qualifications (if required): resident of District 2	Governor	1/20/2013
Mr. Ray "Topper" Tracy, Stevensville Qualifications (if required): industry representative	Governor	1/20/2013
Mr. Ralph Young, Columbus Qualifications (if required): industry representative	Governor	1/20/2013
Board of Housing (Commerce) Ms. Audrey Black Eagle, Lodge Grass Qualifications (if required): public representative	Governor	1/1/2013
Mr. J.P. Crowley, Helena Qualifications (if required): public representative	Governor	1/1/2013
Mr. Jeff Rupp, Bozeman Qualifications (if required): public representative	Governor	1/1/2013
Ms. Elizabeth Scanlin, Red Lodge Qualifications (if required): an attorney	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Investments (Commerce)		
Mr. David E. Ageson, Gilford Qualifications (if required): representative of the agriculture community	Governor	1/1/2013
Mr. Patrick McKittrick, Great Falls Qualifications (if required): representative of the Public Employees' Retirement Board	Governor	1/1/2013
Mr. James Turcotte, Helena Qualifications (if required): representative of the Teachers' Retirement Board	Governor	1/1/2013
Rep. Mark E. Noennig, Billings Qualifications (if required): business person	Governor	1/1/2013
Mr. Jack Prothero, Great Falls Qualifications (if required): representative of the financial community	Governor	1/1/2013
Mr. Bob Bugni, East Helena Qualifications (if required): representative of the Public Employees	Governor	1/1/2013
Board of Labor Appeals (Labor and Industry)		
Mr. Ed Logan, Billings Qualifications (if required): public representative	Governor	1/1/2013
Mr. Norman Grosfield, Helena Qualifications (if required): attorney	Governor	1/1/2013
Mr. Brian Boland, Great Falls Qualifications (if required): public representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Lynn Yocom, Anaconda Qualifications (if required): licensed occupational therapist</p>	Governor	12/31/2012
<p>Ms. Sue Furey, Missoula Qualifications (if required): public representative</p>	Governor	12/31/2012
<p>Board of Oil and Gas Conservation (Natural Resources and Conservation) Sen. Linda Nelson, Medicine Lake Qualifications (if required): landowner with minerals</p>	Governor	1/1/2013
<p>Mr. Donald D. Bradshaw, Fort Benton Qualifications (if required): oil and gas industry representative</p>	Governor	1/1/2013
<p>Mr. Wayne Smith, Valier Qualifications (if required): oil and gas industry representative</p>	Governor	1/1/2013
<p>Mr. Jay A. Gunderson, Billings Qualifications (if required): public member</p>	Governor	1/1/2013
<p>Board of Pardons and Parole (Corrections) Rep. John Ward, Helena Qualifications (if required): education/experience in criminology, education, psychiatry, law, social work, or sociology</p>	Governor	1/1/2013
<p>Ms. Teresa McCann O'Connor, Billings Qualifications (if required): an attorney</p>	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Pardons and Parole (Corrections) cont. Mr. Samuel Lemaich, Missoula Qualifications (if required): auxiliary member</p>	Governor	1/1/2013
<p>Board of Personnel Appeals (Labor and Industry) Mr. Jay Reardon, Helena Qualifications (if required): full-time employee of a labor union or an association recognized by the board</p>	Governor	1/1/2013
<p>Mr. Quint Nyman, Helena Qualifications (if required): full-time employee of a labor union or an association recognized by the board</p>	Governor	1/1/2013
<p>Ms. Karla Stanton, Billings Qualifications (if required): management representative with collective bargaining experience</p>	Governor	1/1/2013
<p>Board of Public Assistance (Public Health and Human Services) Mr. Scott Sorensen, Whitefish Qualifications (if required): resident of Montana</p>	Governor	1/1/2013
<p>Ms. Amy D. Christensen, Helena Qualifications (if required): resident of Montana</p>	Governor	1/1/2013
<p>Board of Social Work Examiners and Professional Counselors (Labor and Industry) Mr. John Lynn, Missoula Qualifications (if required): licensed counselor</p>	Governor	1/1/2013
<p>Ms. Treasa Glinnwater, Ronan Qualifications (if required): licensed social worker</p>	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Social Work Examiners and Professional Counselors (Labor and Industry) cont. Mr. Henry Pretty On Top, Crow Agency Qualifications (if required): licensed social worker	Governor	1/1/2013
Ms. Linda Crummett, Billings Qualifications (if required): licensed social worker	Governor	1/1/2013
Capital Investment Board (Commerce) Ms. Ellen Feaver, Helena Qualifications (if required): financial expert	Governor	1/1/2013
Mr. Robert Pancich, Great Falls Qualifications (if required): financial expert	Governor	1/1/2013
Mr. Lawrence A. Anderson, Great Falls Qualifications (if required): financial expert	Governor	1/1/2013
Children's Trust Fund (Public Health and Human Services) Rep. Rosalie "Rosie" Buzzas, Missoula Qualifications (if required): public representative	Governor	1/1/2013
Ms. Betty Hidalgo, Great Falls Qualifications (if required): public representative	Governor	1/1/2013
Ms. Mary Gallagher, Qualifications (if required): agency representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Children's Trust Fund (Public Health and Human Services) cont. Ms. Nancy Wikle, Helena Qualifications (if required): agency representative	Governor	1/1/2013
Ms. JoAnn Eder, Red Lodge Qualifications (if required): public representative	Governor	1/1/2013
Ms. Deborah Hansen, Helena Qualifications (if required): agency representative	Governor	1/1/2013
Coal Board (Commerce) Mayor John Williams, Colstrip Qualifications (if required): experience in public administration and planning and a resident of an impact area	Governor	1/1/2013
Mr. Dan Dutton, Belfry Qualifications (if required): representative from business and resident of District 1	Governor	1/1/2013
Mr. Gerald Navratil, Sidney Qualifications (if required): resident of District 2	Governor	1/1/2013
Mr. Chad Fenner, Hardin Qualifications (if required): experience in public administration and planning and a resident of an impact area	Governor	1/1/2013
Commissioner of the Department of Labor and Industry (Labor and Industry) Director Keith Kelly, Helena Qualifications (if required): none specified	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Council Member of the Northwest Power and Conservation Council Ms. Rhonda Whiting, Qualifications (if required): none specified</p>	Governor	1/1/2013
<p>Council on Developmental Disabilities (Commerce) Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): university program representative</p>	Governor	1/1/2013
<p>Sen. Carol Williams, Missoula Qualifications (if required): legislator</p>	Governor	1/1/2013
<p>Ms. Diana Tavary, Helena Qualifications (if required): advocacy program representative</p>	Governor	1/1/2013
<p>Rep. Tim Furey, Milltown Qualifications (if required): legislator</p>	Governor	1/1/2013
<p>Ms. Marla Swanby, Helena Qualifications (if required): agency representative</p>	Governor	1/1/2013
<p>Mr. Bob Norbie, Great Falls Qualifications (if required): advocacy program representative</p>	Governor	1/1/2013
<p>Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks) Rep. Bob Ream, Helena Qualifications (if required): resident of District 1</p>	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks) cont. Mr. Shane Colton, Billings Qualifications (if required): resident of District 5	Governor	1/1/2013
Mr. Ron Moody, Lewistown Qualifications (if required): resident of District 3	Governor	1/1/2013
Hard Rock Mining Impact Board (Commerce) Commissioner Ed Tinsley, Fort Harrison Qualifications (if required): public representative and a resident of District 2	Governor	1/1/2013
Ms. Mary Ellen Cremer, Big Timber Qualifications (if required): representative of major financial institution in Montana and a resident of District 1	Governor	1/1/2013
Mr. Joe Michaletz, Helena Qualifications (if required): representative of the hard-rock mining industry and a resident of District 2	Governor	1/1/2013
Human Rights Commission (Labor and Industry) Mr. Dustin J. Hankinson, Missoula Qualifications (if required): public representative	Governor	1/1/2013
Ms. Maria E. Beltran, Worden Qualifications (if required): public representative	Governor	1/1/2013
Ms. Linda Minich, Jefferson City Qualifications (if required): public representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Judicial Nomination Commission (Justice) Ms. Monica Conrad Paoli, Missoula Qualifications (if required): public representative	Governor	1/1/2013
Livestock Loss Reduction and Mitigation Board (Livestock) Mr. James Cross, Kalispell Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission	Governor	1/1/2013
Mr. Brad Radtke, Drummond Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission	Governor	1/1/2013
Ms. Whitney Wankel, Bozeman Qualifications (if required): public member	Governor	1/1/2013
Mr. Michael Leahy, Bozeman Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission	Governor	1/1/2013
Mr. John Herman, Hot Springs Qualifications (if required): nominee from the Board of Livestock	Governor	1/1/2013
Lottery Commission (Administration) Sheriff Craig Anderson, Glendive Qualifications (if required): representaitve of law enforcement	Governor	1/1/2013
Mr. Wilbur Rehmann, Helena Qualifications (if required): public member	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Milk Control Board (Livestock) Mr. Gary Parker, Fort Shaw Qualifications (if required): public representative and a Democrat</p>	Governor	1/1/2013
<p>Mr. Larry Van Dyke, Bozeman Qualifications (if required): public representative and a Republican</p>	Governor	1/1/2013
<p>Mr. Hubert Abrams, Wibaux Qualifications (if required): public representative</p>	Governor	1/1/2013
<p>Montana Alfalfa Seed Committee (Agriculture) Mr. Tim Wetstein, Joliet Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2012
<p>Mr. John Wold, Laurel Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2012
<p>Montana Committee for the Humanities (Committee for the Humanities) Mr. Bruce Whittenberg, Helena Qualifications (if required): public representative</p>	Governor	1/1/2013
<p>Mr. James Shanley, Poplar Qualifications (if required): public representative</p>	Governor	1/1/2013
<p>Ms. Ruth Towe, Billings Qualifications (if required): public representative</p>	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Committee for the Humanities (Committee for the Humanities) cont.		
Ms. Sidney Armstrong, Helena Qualifications (if required): public representative	Governor	1/1/2013
Ms. Diana Tavary, Helena Qualifications (if required): advocacy representative	Governor	1/1/2013
Ms. PJ Rismon-Beckley, Kalispell Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Barbara Olind, Baker Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Melissa Clark, Great Falls Qualifications (if required): primary consumer representative	Governor	1/1/2013
Ms. Jan Wenaas, Great Falls Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Lisa Hathaway, Bozeman Qualifications (if required): primary consumer representative	Governor	1/1/2013
Mr. Shawn Parker, Box Elder Qualifications (if required): primary consumer representative	Governor	1/1/2013
Montana Council on Developmental Disabilities (Commerce)		
Ms. Brenda Walters, Shepherd Qualifications (if required): secondary consumer representative	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Developmental Disabilities (Commerce) cont. Ms. Keogh Duffy, Missoula Qualifications (if required): primary consumer representative	Governor	1/1/2013
Mr. Don Berryman, Anaconda Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Nanette Whitman-Holmes, Helena Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Ms. Debra Ekblom, Boulder Qualifications (if required): secondary consumer representative	Governor	1/1/2013
Mr. Isaiah Devereaux, Glasgow Qualifications (if required): primary consumer representative	Governor	1/1/2013
Mr. Rudy Shriner, Helena Qualifications (if required): primary consumer representative	Governor	1/1/2013
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Sonny Obrecht, Turner Qualifications (if required): grazing district preference holder	Governor	1/1/2013
Northwest Power and Conservation Council Rep. Bruce Measure, Kalispell Qualifications (if required): none specified	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Public Safety Officer Standards and Training Council (Justice) Mr. Harold F. Hanser, Billings Qualifications (if required): Board of Crime Control representative</p>	Governor	1/1/2013
<p>Sheriff Tony Harbaugh, Miles City Qualifications (if required): Sheriff</p>	Governor	1/1/2013
<p>Captain Dennis McCave, Billings Qualifications (if required): detention center representative</p>	Governor	1/1/2013
<p>Mr. Steve Barry, Helena Qualifications (if required): Department of Corrections representative</p>	Governor	1/1/2013
<p>Mr. Raymond Murray, Missoula Qualifications (if required): public representative</p>	Governor	1/1/2013
<p>Mr. Robert M. McCarthy, Butte Qualifications (if required): public representative</p>	Governor	1/1/2013
<p>Sergeant Greg Watson, Whitehall Qualifications (if required): state government law enforcement representative</p>	Governor	1/1/2013
<p>Sgt Alex Betz, Helena Qualifications (if required): state government law enforcement representative</p>	Governor	1/1/2013
<p>Rail Service Competition Council (Transportation) Mr. Michael V. O'Hara, Fort Benton Qualifications (if required): farm commodity producer</p>	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Rail Service Competition Council (Transportation) cont. Mr. Doug Miller, Troy Qualifications (if required): knowledge of transportation for mineral industry	Governor	1/1/2013
Mr. John DeMichiei, Roundup Qualifications (if required): knowledge of transportation for coal industry	Governor	1/1/2013
Mr. Jerry Jimison, Glendive Qualifications (if required): knowledge of class I railroads	Governor	1/1/2013
Respiratory Care Practitioners (Labor and Industry) Rep. Eileen Carney, Libby Qualifications (if required): public representative	Governor	1/1/2013
Mr. Tony Jay Miller, Joplin Qualifications (if required): respiratory care practitioner	Governor	1/1/2013
Mr. Leonard Bates, Great Falls Qualifications (if required): respiratory care practitioner	Governor	1/1/2013
Mr. Rusty Davies, Billings Qualifications (if required): respiratory care practitioner/pulmonary function speciality	Governor	1/1/2013
Small Business Health Insurance Pool Board (State Auditor) Ms. Betty Beverly, Helena Qualifications (if required): consumer	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Small Business Health Insurance Pool Board (State Auditor) cont. Ms. M. Katherine Buckley-Patton, Helena Qualifications (if required): management level individual with knowledge of Medicaid services</p>	Governor	1/1/2013
<p>State Employee Group Benefits Advisory Council (Administration) Ms. Mary Dalton, Helena Qualifications (if required): representing executive branch agencies</p>	Director	12/31/2012
<p>Mr. Steve Barry, Helena Qualifications (if required): representing executive branch agencies</p>	Director	12/31/2012
<p>Mr. Russ Hill, Helena Qualifications (if required): ex-officio member representing the Department of Administration</p>	Director	12/31/2012
<p>Mr. John McEwen, Helena Qualifications (if required): representing retired state employees</p>	Director	12/31/2012
<p>Mr. Richard Cooley, Helena Qualifications (if required): representing executive branch agencies</p>	Director	12/31/2012
<p>Sen. Jim Keane, Butte Qualifications (if required): representing executive branch agencies</p>	Director	12/31/2012
<p>Ms. Amy Sassano, Helena Qualifications (if required): representing executive branch agencies</p>	Director	12/31/2012
<p>Ms. Kelly DaSilva, Helena Qualifications (if required): representing legislative branch agencies</p>	Director	12/31/2012

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont.		
Mr. Quint Nyman, Helena Qualifications (if required): representing state employees and labor organization	Director	12/31/2012
Mr. Brian Ehli, Missoula Qualifications (if required): representing state employees and labor organization	Director	12/31/2012
Ms. Erin Ricci, Helena Qualifications (if required): representing state employees and labor organization	Director	12/31/2012
Ms. Jenny Kaleczyc, Helena Qualifications (if required): representing executive branch agencies	Director	12/31/2012
State Tax Appeals Board (Administration)		
Ms. Kelly Flaherty-Settle, Canyon Creek Qualifications (if required): public representative	Governor	1/1/2013
Mr. Douglas A. Kaercher, Havre Qualifications (if required): public representative	Governor	1/1/2013
Statewide Independent Living Council (Public Health and Human Services)		
Ms. June Hermanson, Billings Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Ms. Peggy Williams, Helena Qualifications (if required): designated state unit representative	Governor	12/1/2012

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Independent Living Council (Public Health and Human Services) cont.		
Mr. Robert Bushing, Billings Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Ms. Michelle Williamson, Pablo Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Mr. Gerald Hutch, Helena Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Mr. Jim Brown, Billings Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Mr. Peter Dupree, Poplar Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Transportation Commission (Governor)		
Ms. Barb Skelton, Billings Qualifications (if required): resident of District 5 and identifies herself as a Democrat	Governor	1/1/2013
Mr. Rick Griffith, Butte Qualifications (if required): resident of District 2 and identifies himself as a Democrat	Governor	1/1/2013
Ms. Diann Seymour-Winterburn, Helena Qualifications (if required): resident of District 3 and identifies herself as an Independent	Governor	1/1/2013

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2012 THROUGH JANUARY 1, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services)		
Dr. J. Bradley Pickhardt, Missoula Qualifications (if required): representative of the Western Region Trauma Advisory Council	Governor	11/2/2012
Dr. Freddy Bartoletti, Anaconda Qualifications (if required): representative of the Montana Medical Association	Governor	11/2/2012
Ms. Lauri Jackson, Great Falls Qualifications (if required): representative of the Central Region Trauma Care Advisory Committee	Governor	11/2/2012
Mr. Bradley Von Bergen, Billings Qualifications (if required): representative of the Eastern Region Trauma Advisory Council	Governor	11/2/2012
Mr. Jonathan Weisul, Missoula Qualifications (if required): representative of the Montana Hospital Association	Governor	11/2/2012
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Mr. Ian Elliot, Billings Qualifications (if required): brain injury survivor	Governor	1/1/2013
Mr. James Hunt, Helena Qualifications (if required): advocate brain injured	Governor	1/1/2013
Dr. James Wright, Butte Qualifications (if required): advocate of brain injured	Governor	1/1/2013