

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-43-466 (Public Employees' Retirement Board) Notice of Proposed Amendment - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan. No Public Hearing Contemplated. 2332-2334

LABOR AND INDUSTRY, Department of, Title 24

24-101-259 Notice of Public Hearing on Proposed Adoption - Registration for Out-of-State Volunteer Professionals. 2335-2337

24-159-76 (Board of Nursing) Notice of Public Hearing on Proposed Amendment and Repeal - Nurses' Assistance Program. 2338-2346

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-158 (Board of Land Commissioners and the Department) Notice of Public Hearing on Proposed Adoption and Amendment - Establishment of Lease Rental Rates, Lease Assignments, and Sale Procedures for State Cabinsites. 2347-2355

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-568 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Montana Child Support Guidelines. 2356-2381

37-569 Notice of Public Hearing on Proposed Amendment - Emergency Medical Services (EMS). 2382-2391

RULE ADOPTION SECTION

ADMINISTRATION, Department of, Title 2

2-59-463 Notice of Adoption and Amendment - Renewal Fees for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators - Table Funding. 2392

TRANSPORTATION, Department of, Title 18

18-131 (Transportation Commission) Notice of Transfer - Motorist Information Signs. 2393-2394

CORRECTIONS, Department of, Title 20

20-7-49 Corrected Notice of Amendment - Expansion of Existing Center. 2395

JUSTICE, Department of, Title 23

23-6-221 Notice of Amendment - Removal of a Member of the Tow Truck Complaint Resolution Committee - Removing References to the Public Service Commission and Satellite Operations - Clarifying Requirements Regarding Insurance - Requirements for Safety Certification of Tow Trucks - Extending the Time Period for Safety Certification of Tow Trucks. 2396

LABOR AND INDUSTRY, Department of, Title 24

24-114-33 (Board of Architects and Landscape Architects) Notice of Amendment - Landscape Architect Applications, Education, and Experience. 2397

24-141-35 (State Electrical Board) Notice of Amendment and Adoption) - Fee Schedule - Nonroutine Applications. 2398-2399

24-207-32 (Board of Real Estate Appraisers) Notice of Amendment - Qualifying Education Requirements for Licensed Real Estate Appraisers - Residential Certification. 2400

LABOR AND INDUSTRY, Continued

24-207-33 (Board of Real Estate Appraisers and the Department)
Notice of Amendment and Adoption - Renewal Dates and
Requirements - Fees - Definitions - Appraisal Management. 2401-2413

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-151 Notice of Amendment - Land Banking Program. 2414-2415

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-557 Notice of Amendment - Medicaid Pharmacy Reimbursement. 2416-2418

37-560 Notice of Amendment - Low Income Energy Assistance
Program (LIEAP). 2419

PUBLIC SERVICE REGULATION, Department of, Title 38

38-3-211 Notice of Amendment and Repeal - Regulation of Motor
Carriers. 2420-2424

REVENUE, Department of, Title 42

42-2-868 Notice of Adoption - Issuing Tax Certificates to LLCs
Following Administrative Dissolution. 2425-2426

SECRETARY OF STATE, Office of, Title 44

44-2-172 Notice of Adoption - Processes and Procedures for Early
Preparation of Absentee Ballots. 2427

44-2-173 Notice of Amendment - Elections. 2428

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2429-2430

How to Use ARM and MAR. 2431

Accumulative Table. 2432-2442

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

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.3502 pertaining to the)	AMENDMENT
investment policy statement for the)	
Defined Contribution Retirement Plan)	NO PUBLIC HEARING
and ARM 2.43.5102 pertaining to the)	CONTEMPLATED
investment policy statement for the)	
457 Deferred Compensation Plan)	

TO: All Concerned Persons

1. On December 23, 2011, the Public Employees' Retirement Board (PER Board) proposes to amend the above-stated rules.

2. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on November 14, 2011, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail dhelman@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~July 8, 2010~~ August 11, 2011.

(2) and (3) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation) Investment Policy Statement approved by the board on ~~July 8, 2010~~ August 11, 2011.

(2) and (3) remain the same.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

REASON: The PER Board, as administrator of the Defined Contribution Retirement Plan (DCRP) of the Public Employees' Retirement System and the State of Montana Deferred Compensation Plan (457 Plan), adopted the original investment policy statement for each plan by reference in 2002.

Upon recommendation of the Employee Investment Advisory Council the PER Board determined on August 11, 2011 to amend the two investment policy statements (IPS) to add target retirement date asset allocation funds as an additional investment alternative in an effort to make sufficient investment choices available to meet each participant's personal needs, as required by each IPS.

Because the PER Board determined to adopt the original investment policy statements by reference, 2-4-307(3), MCA, requires that changes to those statements also be adopted by reference. Therefore, it is necessary to amend the administrative rules that adopt the statements by reference.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendments in writing to Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov and must be received no later than 5:00 p.m., December 8, 2011.

5. If persons who are directly affected by the proposed amendments 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 they have to Dena Helman at the above address no later than 5:00 p.m., December 8, 2011.

6. If the PER Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; 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 1,011 persons based on approximately 2,018 participants in the Defined Contribution Retirement Plan and 8,090 participants in the Deferred Compensation Plan as of December 2010, for a total 10,108 participants.

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

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists 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/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

Certified to the Secretary of State October 31, 2011.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I registration for out-of-state) PROPOSED ADOPTION
volunteer professionals)

TO: All Concerned Persons

1. On December 1, 2011, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 25, 2011, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Business Standards Division, Attn: Darcee Moe, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2327; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2313; e-mail damoe@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I REGISTRATION FOR OUT-OF-STATE VOLUNTEER PROFESSIONALS (1) As provided in 10-3-118, MCA, a volunteer professional may practice in Montana when a state of emergency or disaster, as defined in 10-3-103, MCA, is in effect.

(2) A volunteer professional shall not accept remuneration for services provided during a state of emergency or disaster as a volunteer professional.

(3) A professional volunteer shall successfully register with the appropriate licensing agency in Montana. To register, a volunteer professional shall hold an active, unrestricted license in another state.

(4) An applicant for registration shall submit a completed, signed department registration form, to include the following:

- (a) applicant's full name;
- (b) applicant's complete mailing address;
- (c) applicant's e-mail address;
- (d) applicant's correct social security number;
- (e) applicant's birth date;
- (f) occupation(s) for which the applicant holds a current license;
- (g) state or states in which the applicant holds or has ever held a professional license;

(h) an affirmation that the applicant currently holds an active, unrestricted license in another state(s); and

(i) an affirmation that the statements contained in the form are true and accurate to the best of the applicant's knowledge.

(5) A volunteer professional must practice within the scope and standards of the professional's license and in compliance with the licensing statutes and administrative rules of Montana governing the profession.

(6) A volunteer professional is subject to administrative sanctions for unprofessional conduct as described in 37-1-316, MCA, and the specific professional licensing board's administrative rules.

AUTH: 10-3-120, MCA

IMP: 10-3-118, 10-3-119, MCA

REASON: The 2009 Montana Legislature enacted Chapter 63, Laws of 2009 (House Bill 114), an act that provided for the recognition of licensure and the registration of out-of-state volunteer professionals when a disaster or emergency is in effect in Montana. The bill became effective on October 1, 2009, and is codified in Title 10, chapter 3, part 1, MCA. The department is adopting New Rule I to coincide with the legislative changes and further implement the registration of out-of-state volunteer professionals.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Labor and Industry, Business Standards Division, Attn: Darcee L. Moe, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2313, or by e-mail to damoe@mt.gov, and must be received no later than 5:00 p.m., December 9, 2011.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. 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 department 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 Department of Labor and Industry, Business Standards Division, Attn: Darcee Moe,, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2313; e-mailed to damoe@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 19, 2011, by electronic mail.

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

/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 31, 2011

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

In the matter of the amendment of)
ARM 24.159.2001, 24.159.2002,)
24.159.2003, 24.159.2004,)
24.159.2010, 24.159.2011,)
24.159.2012, 24.159.2013,)
24.159.2020, 24.159.2021, and the)
repeal of ARM 24.159.2022 and)
24.159.2023, all related to the nurses')
assistance program)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On December 5, 2011, at 10:30 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 Nursing (board) no later than 5:00 p.m., on December 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Cari Harris, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2011 Montana Legislature enacted Chapter 122, Laws of 2011 (House Bill 25), an act that revised laws relating to certain licensing boards' medical assistance programs. The bill was signed by the Governor on April 7, 2011, and became effective on October 1, 2011. Additionally, the National Council of State Boards of Nursing (NCSBN) recently published a manual and guidelines for nursing boards' alternative and disciplinary monitoring programs. The board established a committee that reviewed the nurses' assistance program rules. Following the committee's recommendations, the board determined it is reasonably necessary to amend the rules in subchapter 20 to align with the NCSBN publications and implement the new legislation.

The board is also amending the rules to eliminate outdated, redundant, and unnecessary provisions, and to align terminology with current national trends, curricula, industry usage, and standards. Other changes replace out-of-date terminology for current board and department processes, and amend both rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. Punctuation and rule numbering is amended to comply with ARM formatting

requirements. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.159.2001 INTRODUCTION OF THE NURSES' ASSISTANCE PROGRAM

(1) The Board of Nursing's medical assistance program shall be called the Nurses' Assistance Program (NAP), also referred to as the program. The program shall be based upon the concept that early identification, intervention, and referral to treatment are paramount to promoting public health, safety, and welfare in that it decreases the time between the nurse's acknowledgement of a substance use disorder or mental health problem or chronic physical illness and the time treatment is received. ~~The nurses' assistance program (NAP)~~ NAP is a specially designed program that shall be available to assist ~~Montana~~ all licensed nurses under the jurisdiction of the board whose ~~competency~~ judgment or ability to practice may be impaired due to ~~the abuse of~~ habitual intemperance, excessive use of addictive drugs, or alcohol, or any other drug or substance, by mental illness, or chronic physical illness. The purpose of the program is to protect the public by putting processes in place for nurses with problems with substance use or mental illness to maintain an ongoing recovery and to provide monitoring of nurses in the program.

(2) The NAP will have two tracks:

(a) the disciplinary monitoring track; and

(b) ~~the nondisciplinary~~ alternative monitoring track.

~~(2)~~ (3) The NAP will monitor the nurses' rehabilitation process to ensure public safety safe practice. ~~Information that relates to the abuse of addictive drugs, alcohol, or any other drug or substance, may be reported by the licensee to the NAP in lieu of reporting to the board.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is amending this rule to set forth the program's purpose and underlying premise, as it was clear during the 2011 legislative session that many people are not familiar with the program.

The board is amending the rule to revise the names of the two tracks, after concluding that people do not realize that nurses are subject to the same requirements and level of monitoring regardless of the track they are in, and that participants in the alternative monitoring track could still be subject to discipline if the board felt it was necessary.

The board determined it is reasonably necessary to delete the provision for licensees reporting substance use issues to the program instead of the board. The board notes that while it is true that a licensee may self-report to the program, any and all criminal charges and convictions must be reported to the board and cannot be reported to the program in lieu of the board. Furthermore, with the changes to ARM 24.159.2020, the board will have access to all program participant information, so no participants are anonymous to the board.

24.159.2002 ADMINISTRATION OF THE PROGRAM (1) ~~The NAP will be under the jurisdiction of the board. The board may contract with a consultant to administer the NAP~~ shall be administered so that it is transparent and accountable to the public.

(2) The NAP program director shall ensure that the program has adequate resources and staffing to implement policies and procedures and all requirements of the contracts the program has with the department and with each program participant.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is amending (1) as it unnecessarily repeats 37-8-202, MCA, and to clarify that the department holds the authority to contract. The board is also amending (1) to specify the board's intent that the program is administered with transparency, as that was a concern raised during the 2011 Legislature. The board is adding (2) to clarify that the director must ensure there is adequate staff to administer the program to align with amendments proposed to ARM 24.159.2003.

24.159.2003 CONSULTANT PROGRAM DIRECTOR REQUIREMENTS

(1) The program director shall oversee the operation of the program and shall be responsible for ensuring that the program adheres to the contract entered into with the department.

(2) To be qualified, a consultant the program director must have be able to demonstrate the following:

~~(a) an unencumbered license as a registered nurse in Montana with a minimum of a baccalaureate degree in nursing;~~

~~(b) a state level certification appropriate for chemical dependency counseling;~~

~~(c) a minimum of three years nursing experience;~~

~~(d) two years previous experience related to monitoring health care professionals with substance abuse/dependency;~~

~~(e) education in identification, treatment, intervention, and rehabilitation of nurses with substance abuse/dependency; and~~

~~(f) two years employment experience in a recognized treatment program for chemical dependency.~~

(a) the education, experience, and knowledge necessary to gather, read, and understand reports from licensed professional staff, in order to sufficiently monitor the program participants;

(b) the ability to demonstrate an understanding of issues particular to licensed professional healthcare workers;

(c) the ability to identify participant noncompliance with the program participant contract and policies and procedures in a timely manner; and

(d) the ability to adhere to policies regarding reporting noncompliances to the board.

(3) The program director shall ensure that the individuals contracted or employed by the program must include, but are not limited to:

(a) the program director;

(i) the program director cannot directly assess nurse program participants without staff input.

(b) a RN or APRN who holds a current and active license with no pending or current discipline, and has experience treating healthcare professionals;

(c) a licensed addiction counselor who holds a current and active license with no pending or current discipline, and has experience treating healthcare professionals;

(d) a licensed mental health practitioner who holds a current and active license with no pending or current discipline, and has experience treating healthcare professionals;

(e) a medical doctor with a current and active license with no pending or current discipline; and

(f) a monitor who serves as the consultant to the board;

(i) the monitor cannot directly assess or treat nurse program participants; and

(ii) the program director can serve as the monitor.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: To coordinate with the department's recent request for bids for assistance programs, the board is amending the rule to clearly set forth the qualifications and responsibilities of the program director. The board concluded that since the program will employ a nurse and a licensed addiction counselor, it is not necessary for the director to have those credentials, and that the director may also serve as the program monitor. To avoid conflicts of interest, the board is clarifying that the program director cannot directly assess program participants without staff input, and the monitor cannot directly assess or treat program participants.

24.159.2004 CONSULTANT ACTIVITIES DIRECTOR DUTIES (1) A
~~consultant~~ director shall:

(a) ~~carry out all decisions mandated by the board~~ develop a policy and procedure manual;

(b) submit quarterly activity/statistical reports as defined by the board to the board;

(c) submit quarterly progress reports on licensees enrolled in the ~~disciplinary track of the NAP;~~

(d) report licensees in the ~~nondisciplinary track of the NAP~~ to the board who do not comply with the NAP requirements and/or for whom there is reasonable suspicion they may not be able to practice safe nursing;

(e) and (f) remain the same.

(g) recommend admissions and discharges of participants in the NAP to the board as appropriate; ~~and~~

(h) provide documentation of the monitoring of all NAP participants;

(i) maintain complete and accurate participant files;

- (j) cooperate with board audits; and
- (k) abide by all provisions of the contract entered into with the department.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: In setting forth the program director's duties, the board is removing the differentiation between disciplinary and alternative monitoring participants, as the board concluded that the director must report all participants who are out of compliance with NAP requirements.

24.159.2010 DISCIPLINARY MONITORING TRACK (1) Participation in the NAP may be mandated as a part of disciplinary action by the board ~~or if a complaint against the licensee has been submitted to the board.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is striking unnecessary language from this rule, since the board cannot take disciplinary action until a complaint is filed.

24.159.2011 ADMISSION CRITERIA - DISCIPLINARY MONITORING TRACK (1) A licensee may be admitted to the NAP disciplinary monitoring track if:

~~(a) the licensee has violated the statutes or rules related to nursing practice which involved alcohol and/or drugs and/or a mental illness or chronic physical illness, and whom the board has stipulated the NAP ordered into the program as a part of disciplinary action;~~

~~(b) the licensee agrees to abide by the terms of the NAP; or~~

~~(c) the nurse is from another state, has applied for a nursing license in Montana, and is mandated by final order of that state board of nursing to attend a NAP program.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

24.159.2012 PROGRAM REQUIREMENTS - DISCIPLINARY TRACK

(1) The program requirements of the NAP ~~disciplinary track~~ are that the licensee shall:

(a) agree to evaluations and testing necessary to determine treatment and monitoring needs while a part of the NAP;

(b) sign a contract with the NAP and comply with said contract and all requirements as indicated in the NAP participant handbook; and

(c) remains the same.

~~(2) The NAP shall be responsible for:~~

~~(a) submitting quarterly reports to the board;~~

~~(b) reporting to the board any violations of the NAP contract or any reasonable suspicion that the licensee may not be able to practice safe nursing.~~

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is deleting the reference to the disciplinary track from (1), since the requirements for both program tracks are the same. The board is amending this rule to specify that participants must agree to recommended testing, because certain tests, such as urinalysis testing, are a primary component of monitoring. The board is deleting (2) as program responsibilities are set forth in ARM 24.159.2004.

24.159.2013 DISCHARGE CRITERIA - DISCIPLINARY TRACK (1) The licensee shall be discharged from the NAP ~~disciplinary track~~ when the licensee has:
(a) ~~successfully completed the NAP and complied with the final order of the board. The board will be notified of successful completion;~~
(b) failed to comply with the NAP contract. The NAP will submit a report of failure to comply ~~to the board~~ in the form of a complaint; or
(c) voluntarily withdrawn from the NAP. The NAP will submit a report in the form of a complaint to the board.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is deleting the reference to the disciplinary track, because discharge criteria are the same for both program tracks. The board is deleting the requirement of compliance with a board order from (1)(a), because NAP participants may be discharged for fulfilling their NAP contract terms, but still have terms to meet pursuant to board order, that are outside the purview of the NAP. The board is deleting the provision on reporting successful completions to the board, as completions are included in the statistical reports mandated in ARM 24.159.2004. The board is specifying in (1)(b) and (c) that NAP must submit complaints when participants fail to comply with or voluntarily withdraw from the NAP, to avoid confusion that only statistical reports would be filed.

24.159.2020 NONDISCIPLINARY ALTERNATIVE MONITORING TRACK
(1) The ~~nondisciplinary alternative monitoring~~ track of the NAP is open to:
(a) any licensee who identifies a drug/alcohol problem substance use disorder or mental health problem or chronic physical illness and requests admission to the NAP and meets the admission criteria of ARM 24.159.2021; or
(b) those licensees referred by the board.
(2) Licensees With the exception of criminal charges and convictions, licensees may be reported by employers directly to the NAP in lieu of a formal complaint to the board. ~~The identity of participants in the nondisciplinary track of the NAP will remain unknown to the board unless there is a failure to enroll or comply with the requirements of the NAP.~~ Failure to enroll or comply with the NAP will result in a formal complaint to the board by the NAP.
(3) remains the same.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is amending (2) to clarify that someone may be reported to the NAP in lieu of the board only if they have had no criminal charges or convictions. The board intends that this exception apply only to employers reporting their employee nurses, because employers would have to be involved in the employees' participation with the NAP.

Finally, the board is amending the rule to no longer keep participants in the alternative monitoring track unknown to the board. In an effort to establish and maintain full transparency between the program and the board, and to enhance public safety, the board concluded that names of all program participants should be known to the board, regardless of what track they are in.

24.159.2021 ADMISSION CRITERIA - NONDISCIPLINARY ALTERNATIVE MONITORING TRACK (1) A licensee may be admitted to the NAP ~~nondisciplinary alternative monitoring~~ track if the licensee is ~~a~~:

~~(a) licensed nurse or previously licensed nurse in the state of Montana who requests admission;~~

~~(b) licensed nurse is from another state who and has applied for a nursing license in Montana and is enrolled in and compliant with a similar monitoring program in another state;~~

~~(c) licensee is without a previous disciplinary action from any licensing board;~~

~~(d) licensee against whom no notice of proposed board action or similar notice issued by a licensing board is does not have a disciplinary or other adverse action pending; or~~

~~(e) licensee who has successfully completed the NAP or similar monitoring program when enrolled.~~

(2) A licensee ~~whose nursing practice has involved death or significant harm to a patient is not eligible for the nondisciplinary track. is not eligible for admission to the alternative monitoring track without board review if the licensee:~~

~~(a) is not eligible for licensure in the jurisdiction;~~

~~(b) has previously been unsuccessfully discharged from a professional monitoring or assistance program;~~

~~(c) has caused known provable harm to a patient;~~

~~(d) has engaged in behavior that has high potential to cause patient harm such as diverting drugs by replacing the drug with another drug; or~~

~~(e) has diverted controlled substances; and~~

~~(f) has while under a NAP contract, returned to use of a prohibited or proscribed substance on three or more separate occasions.~~

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is amending this rule to clarify that a nurse who is in another similar program in another state is eligible for alternative monitoring under Montana's program only if the nurse is and remains compliant with the other's state's program. The board is amending (2) to delineate various situations where an individual may be eligible for the alternative track, but would first require board review.

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

24.159.2022 PROGRAM REQUIREMENTS - NONDISCIPLINARY TRACK
found at ARM page 24-16796.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is repealing this rule since the requirements for both program tracks are the same and are specified in ARM 24.159.2012.

24.159.2023 DISCHARGE CRITERIA - NONDISCIPLINARY TRACK found
at ARM page 24-16796.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board is repealing this rule because the discharge criteria for both program tracks are the same and are set forth in ARM 24.159.2013.

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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., December 13, 2011.

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.nurse.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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to nurse@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, apply and have been fulfilled. The primary bill sponsor was contacted on May 16, 2011, by regular mail.

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

BOARD OF NURSING
KATHY HAYDEN, LPN, 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 31, 2011

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I through VI and the amendment)
of ARM 36.25.1011 pertaining to the)
establishment of lease rental rates,)
lease assignments, and sale procedures)
for state cabinsites)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION
AND AMENDMENT

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings at 7:00 p.m. on the following dates to consider the adoption and amendment of the above-stated rules:

December 6, 2011, at the Hampton Inn, 1140 Highway 2 West, Kalispell, Montana; and

December 7, 2011, at the Seeley Lake Community Hall, 3248 Highway 83, Seeley Lake, Montana.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on November 21, 2011, to advise the department of the nature of the accommodation that you need. Please contact Jeanne Holmgren, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, P.O. Box 201601, Helena, Montana, 59620-1601; telephone (406) 444-3844; fax (406) 444-2684; or e-mail jholmgren@mt.gov.

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

NEW RULE I COMPETITIVE BIDDING (1) Subject to all the provisions of [New Rule I] through [New Rule VI] and 36.25.1009, except as provided in (8), the department shall use a process of open competitive bidding to issue a lease upon a cabinsite upon unleased state lands; or when the cabinsite lessee initiates the competitive bid process under this rule; or upon renewal of a cabinsite lease.

(2) In consideration of the board's constitutional fiduciary responsibility to prudently attain full market value and to act in the best financial interests of the affected beneficiary institution, the department may, in its sole discretion, determine the number of cabinsites to be offered for competitive bidding at a given time in a given area, and the duration of the marketing period for each vacant cabinsite to be bid. The department shall determine the timing and duration of the marketing of a vacant cabinsite within 180 days from the date the cabinsite becomes vacant.

(3) When the department solicits offers to lease the premises of a cabinsite through an open competitive bidding process the initial minimum bid shall be two percent of value of the cabinsite premises as established by the most recent Montana Department of Revenue (DOR) statewide periodic appraised value.

(a) There shall be no preference right granted to a former lessee to meet the high bid.

(b) If no bids are received within 180 days of the board's solicitation of offers to lease a cabinsite through open competitive bidding that meet or exceed the minimum bid set by the board, the board may reduce the minimum bid incrementally until a bid is received.

(4) If the former lessee and the new lessee have not reached an agreement to permanently transfer possession or ownership of the cabinsite lease improvements and cannot agree upon the value of any improvements affixed to any cabinsite lease premises to be acquired by the new lessee within 120 days of the department's acceptance of the new lessee's lease bid, the value of those improvements to be paid to the former lessee by the new lessee shall be established according to the standards and procedures set out in 77-1-208(4), MCA and ARM 36.25.1005.

(5) Provided that the lessee is in compliance with the terms and conditions of its lease, and the department determines it is in the best interests of the affected trust beneficiary to renew the lease, a lessee whose lease is set for renewal may either:

(a) request to have the lease competitively bid as provided in this rule; or

(b) apply to the department to have the lease renewed for 15 years with terms and conditions, including the lease fee specified therein, consistent with ARM 36.25.1001 through 36.25.1013.

(6) Where a lessee requests that the lease be competitively bid, that request will result in a change of the lease fee calculation methodology to that specified in [New Rule III]. The competitive bidding for an existing cabinsite lease will occur during the period from April 1 through September 30 of each year. The number of leases available for bid statewide is at the discretion of the board, but shall be consistent with 77-1-235 and 77-1-236, MCA. The department may use the following standards to determine how many lease lots are available for bid.

(a) In any given neighborhood a maximum of three lease lots or ten percent of the total number of lease lots in that neighborhood, whichever is greater, may be available for competitive bid when the lessee requests that the lease be competitively bid.

(i) If ten percent of the lease lots in a neighborhood is a fractional number, the number shall be rounded down to the nearest whole number. After applying these criteria, if the requests to put lease lots out for bid exceeds ten percent or three of the total number of lots in a neighborhood, whichever is greater, the bid requests will be selected by a random drawing.

(7) When a lease is competitively bid:

(a) the lessee will not have a preference right to match the high bid;

(b) the existing lease agreement will remain in effect until a new lease agreement is completed or the lease is cancelled:

(i) the lessee must be current on its payment of the annual lease fee prior to, and during the competitive bidding process, or the lease may be cancelled; and

(ii) if the lease agreement is cancelled during the competitive bidding process, the department may terminate or continue the bidding process, in its sole discretion;

(c) the department will notify any individual or entity that has filed a security interest in the cabinsite lease or improvements with the department. Lessees must notify any individual or entity that holds a security interest. The lease will not be put up for competitive bidding without approval from all security interest holders; and

(d) the lease offered to the winning bidder will be for a term of 15 years. The department may provide to the winning bidder a lease with a term longer than 15 years only as provided for under (8).

(8) The department may issue a lease for a term greater than 15 years for loan security purposes as provided in ARM 36.25.1010(1). However, any lease issued at a lease rental rate under this rule shall be limited to a 15 year term. A lease issued for longer than 15 years may only specify the terms and conditions provided in ARM 36.25.1001 through ARM 36.25.1013, including the lease fee stipulated therein. A new lease whose term is longer than 15 years may be issued by the department during the term of an existing lease or at renewal. During the term of an existing lease, the department may issue a new lease to a lessee requiring a lease term greater than 15 years for loan security purposes.

(9) For the renewal of an existing lease that is competitively bid, including leases where the lessee initiates the competitive bid process under this rule, the lease rate established by competitive bidding will apply at the date of the renewal of the lease.

(10) For a new lease, the lease rate established by the winning competitive bid shall apply at the date the lease is issued.

(11) The results of the competitive bidding for all cabinsites will be posted on the department web site annually.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: Chapter 401 of the 2011 Montana Session Laws (codified in part as 77-1-235 and 77-1-236, MCA) requires the state Board of Land Commissioners to adopt rules to implement the provisions of this act. Section 77-1-235(3), MCA, directs that:

"[b]y January 1, 2012, the board shall adopt rules to ensure that:

(a) the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value; and

(b) the information used to determine the rental market percentage pursuant to this section is posted on the department's website and periodically updated."

Section 77-1-236(3), MCA, also directs that:

(3) By January 1, 2012, the board shall adopt rules for the orderly transition for cabinsite lessees or licensees who have chosen the lease option pursuant to subsection (1) that is consistent with the board's constitutional fiduciary duty of attaining full rental market value."

New Rule I implements the competitive bidding procedures directed by Chapter 401 of the 2011 Montana Session Laws, and is reasonably necessary to effectuate the purposes of that legislative act. The competitive bidding procedures were written to be as consistent as possible with existing cabinsite leasing rules and contract provisions, yet were written to allow for a transition to a different rental payment, as provided in Chapter 401 of the 2011 Montana Session Laws.

NEW RULE II ROLLING NEIGHBORHOOD AVERAGE LEASE RATE

(1) By October 31 of each year, the department will establish a rolling neighborhood average lease rate for each neighborhood, or geographic location, to be used for the next billing cycle that begins January 1 of the following year. For the purposes of [New Rule I] through [New Rule V], two types of neighborhoods shall exist in the land area administered by each unit office of the department within the northwest, southwest, and central areas of the department, and the land area administered by each area office within the northeast, southern, and eastern areas of the department:

(a) one neighborhood for cabinsites which are adjacent to water such as lakes, rivers, and streams; and

(b) one neighborhood for cabinsites which lack access to water such as lakes, rivers, and streams.

(2) A minimum of three winning bids are necessary to establish a rolling neighborhood average lease rate. The rolling neighborhood average lease rates will be determined as follows:

(a) the department will document the bid amounts for every successful cabinsite that is competitively bid;

(b) the rolling neighborhood average lease rate for a given billing cycle will be calculated using the competitive bid amounts from cabinsites in that neighborhood for the most recent three calendar years, or as of January 1, 2012, if three years have not yet elapsed from the effective date of these rules; and

(c) the winning bid amount for every cabinsite that is successfully bid will be divided by the most recent appraised value from the DOR for that cabinsite. The resulting rates will then be averaged together by neighborhood to determine the neighborhood rolling average lease rate for the next billing cycle.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule II implements the requirements found in Section two of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-

236, MCA), which requires that current lessees be offered a process for determining their state cabinsite lease rental rates according to rental market percentages in distinct geographic locations. Rule II is reasonably necessary to effectuate the purposes of Section two of Chapter 401 of the 2011 Montana Session Laws. The department chose to limit a "geographic location" or a "neighborhood" under New Rule II to lands with water or without water under the jurisdiction of each unit office of the department in the western half of the state and in area offices of the eastern half of the state. The use of unit offices and area offices to determine the "rolling neighborhood average" was utilized to provide administrative convenience and to provide sufficient numbers of leases to quickly implement the concept of the "rolling neighborhood average".

NEW RULE III LEASE FEE FOR BID CABINSITE LEASES UNDER [NEW RULE I] (1) At the conclusion of the term of any cabinsite lease existing prior to May 12, 2011, the lessee of that cabinsite lease may either choose to place the cabinsite lease up for open competitive bidding under [New Rule I], or the lessee may choose to renew the lease with a standard rental rate as provided in ARM 36.25.1001 through 36.25.1013.

(2) Where the lessee of a lease existing prior to May 12, 2011 chooses to place the lease up for competitive bidding under [New Rule I], the annual lease fee for the first year will equal the bid amount.

(a) However, in subsequent years, the annual lease fee for that lease will equal the most recent appraised value of the cabinsite as determined by the DOR multiplied by the rolling neighborhood average lease rate effective for that year, plus an annual adjustment equal to the previous year's lease fee multiplied by the annual percentage change in the consumer price index (CPI) as provided in ARM 36.25.1001(9).

(b) The department will not add a CPI adjustment to the annual lease fee for the first annual billing following release of a new appraised value.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: Rule III implements the transition requirements found in Sections two and four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which require that current lessees be offered a process for determining their state cabinsite lease rental rates according to rental market percentages in certain geographic locations. New Rule II is reasonably necessary to effectuate the purposes of Section two of Chapter 401 of the 2011 Montana Session Laws.

NEW RULE IV SUBLEASING AND ABANDONMENT OF IMPROVEMENTS

(1) Lessees may sublease their improvements if they are in compliance with the terms and conditions of their lease agreement, provided that the lessees must notify the department of their intent to sublease their improvements prior to subleasing.

(2) Where permanent improvements are placed upon a cabinsite lease after the effective date of these rules and the cabinsite lease is canceled, terminated, or abandoned for a period of three years, the title to all such improvements will automatically vest in the department without representation or warranty.

(a) If the department receives value for the improvements through a sale, the department will transfer the proceeds to the previous lessee, at the last address of record.

(b) If the previous lessee cannot be reached at the last address of record, the department will deposit the proceeds into the permanent trust account.

(3) When selling improvements left upon the cabinsite lease for more than three years:

(a) the department may conclude the sale, disposal, or removal of the improvements in any expedient manner, or it may direct the removal or demolition of the improvements;

(b) the department may keep a portion of the value received for improvements to compensate the department for necessary costs incurred, such as, but not limited to:

(i) marketing of the improvements;

(ii) demolition;

(iii) disposal fees;

(iv) repairs; and

(v) maintenance; and

(c) any moveable personal property remaining on the cabinsite three years after the date a cabinsite lease is cancelled, terminated, abandoned, or otherwise ends shall become the property of the department to keep, sell, or dispose of at the department's discretion without compensation or reimbursement to the previous lessee.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule IV implements the assignment requirements found in Section three of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which requires that current licensees and lessees be authorized to assign or rent their improvements. New Rule IV is reasonably necessary to effectuate the purposes of Section three of Chapter 401 of the 2011 Montana Session Laws. The department chose to require the removal or sale of personal property left upon the cabinsite lease premises after the end of the cabinsite lease because the abandonment or desertion of personal property interferes with the prompt assignment of a lease and the stream of lease revenue to the trust beneficiary.

NEW RULE V SALE OF CABINSITE LANDS (1) Cabinsites may be sold as provided in Article X of the Montana Constitution and 77-1-204, 77-2-301, and 77-2-318, MCA.

(a) The sale of cabinsites under the land banking program will be conducted using the procedures set out in ARM 36.25.801 through 36.25.817.

(b) The board may in its sole discretion designate that the proceeds from the sale of certain cabinsites be deposited within the permanent fund for the affected trust beneficiary.

(2) The board or the department may nominate a cabinsite for sale at any time.

(3) A cabinsite lessee may nominate the sale of the lease premises:

(a) during the fifteenth year of any 15-year cabinsite lease that was established through the open competitive bidding process;

(b) through the transition process provided for in 77-1-236, MCA; or

(c) pursuant to 77-2-318(4), MCA, or any other time.

(4) The sale of cabinsites shall be conducted in a manner consistent with the procedures set out in 77-2-363(2) through (5), MCA. The minimum bid must be equal to the full market value of the premises, which must be determined by a Montana-licensed and Montana-certified appraiser. The department may determine the timing and the number of cabinsite lots to be offered for sale, and the conditions of the sale, based upon, but not limited to, the following factors:

(a) how many lots are currently available for competitive bidding;

(b) current real estate market conditions;

(c) the time available to market a cabinsite before the bid closing date and season/time of year;

(d) the administration of other cabinsites; and

(e) valuing, selling, repairing, or removing existing improvements on cabinsites.

(5) Should no qualified bid be received by the department, or if the board determines that it is not in the best interest of the affected trust beneficiary to accept any bid, the sale shall be rejected, and the existing cabinsite lease may be renewed to the former lessee at the previous lease terms.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule V implements the requirements found in Section four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-318, MCA), which requires that current lessees be offered the opportunity, in the last year of their state cabinsite lease, to nominate the lands described in the lease premises for sale. Rule V is reasonably necessary to effectuate the purposes of Section four of Chapter 401 of the 2011 Montana Session Laws.

NEW RULE VI APPLICABILITY OF CABINSITE RULES (1) Cabinsite leases issued under [New Rule I] shall be not be subject to ARM 36.25.1003, 36.25.1009(8), and 36.25.1012.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule VI implements the requirements found in Section one of Chapter 401 of the 2011 Montana Session Laws to allow a cabinsite

lessee to elect to place its lease up for competitive bid or to retain the terms of its current lease, and the method described therein for determining the lease rental rate. Because some lessees will choose to place their leases up for competitive bid, while others will choose to retain their current lease terms and rental rate method, New Rule VI is reasonably necessary to effectuate the purposes of Section four of Chapter 401 of the 2011 Montana Session Laws to describe what rules are not applicable to cabinsite leases competitively bid under New Rule I.

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

36.25.1011 RENEWAL OF CABINSITE LEASE AND PREFERENCE RIGHT

(1) A current cabinsite lessee shall be sent an application to renew the cabinsite lease if all rentals due are paid. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, applications for renewal will only be accepted after December 1 of the year preceding the expiration of the lease and must be postmarked on or before January 28 of the year of expiration of the lease. Failure to submit a renewal application postmarked on or before January 28 will result in an unleased tract, and the tract will be subject to the requirements for leasing an unleased tract under ARM 36.25.115.

(2) A current cabinsite lessee that seeks to renew a lease using the competitive bid process shall follow the dates and processes described in [New Rule I] and [New Rule III].

~~(2) A cabinsite lease is not subject to bids upon renewal if the lessee continues the lease and the lessee has paid all rentals and the lease is in good standing. The lease shall be renewed at the rental according to 36.25.1003.~~

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: The amendment of ARM 36.25.1011 implements the requirements found in Section four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-318, MCA), which requires that current lessees be offered the opportunity, in the last year of their state cabinsite lease, to nominate the lands described in the lease premises for sale. The department is proposing to repeal ARM 36.25.1011(2), which allowed leases to be renewed without competitive bidding, because it is inconsistent with the competitive bidding or neighborhood average concepts for determining full market value for cabinsite leases.

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 Jeanne Holmgren, Real Estate Management Bureau, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-3844; fax (406) 444-2684; e-mail jholmgren@mt.gov, and must be received no later than 5:00 p.m. on December 8, 2011.

6. Jeanne Holmgren, Department of Natural Resources Real Estate Management Bureau, has been designated to preside over and conduct the public hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Adoption and Amendment is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Adoption and Amendment conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. A meeting was held with the bill sponsor on September 26, 2011.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
Tommy Butler
Rule Reviewer

Certified to the Secretary of State on October 31, 2011.

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

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I and II, the amendment of)	PROPOSED ADOPTION,
ARM 37.62.102, 37.62.103,)	AMENDMENT, AND REPEAL
37.62.106, 37.62.108, 37.62.110,)	
37.62.111, 37.62.114, 37.62.123,)	
37.62.126, 37.62.134, 37.62.140,)	
37.62.148, 37.62.2121, and the)	
repeal of ARM 37.62.136, 37.62.138,)	
and 37.62.146 pertaining to Montana)	
child support guidelines)	

TO: All Concerned Persons

1. On November 30, 2011, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 21, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

RULE I DETERMINATION OF INCOME FOR CHILD SUPPORT (1) Income for child support includes actual income, imputed income as set forth in ARM 37.62.106, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.

(a) Parents are presumed to be capable of earning income from full-time employment; full-time employment is presumed to be 40 hours per week but may be more or less depending upon the parent's profession and/or the employer's policies.

(b) In the absence or near absence of actual income, the value of a parent's assets may be considered for child support.

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions,

periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. Income also includes capital gains net of capital losses. To the extent the net gains result from recurring transactions, they may be averaged over a period of at least three years. If the net gains are attributable to a single event or year, they may be used to represent income over one or more years;

(b) gross receipts minus reasonable and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Specifically:

(i) straight line depreciation for vehicles, machinery, and other tangible assets may be deducted from income if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal Revenue Service rules apply to determine expected life of assets;

(ii) if expenses are not required for the production of income, the expenses are not allowable deductions; if business expenses include a personal component, such as personal use of business vehicles, only the business component is deductible;

(iii) a net loss in the operation of a business or farm may not offset other income. If a parent has more than one business and the businesses are related, however, the total losses of the businesses may be offset against (deducted from) the total profits. An artist, for example, whose principal income source is the sale of paintings in her gallery may also own a company that publishes calendars and other commercial uses of her paintings as a marketing tool. A loss in the operation of the publishing company may be offset against the profit in the gallery business because the two enterprises are related; and

(iv) investment losses outside the normal course of business may not reduce other income.

(c) the value of noncash benefits, including but not limited to in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.;

(d) grants, scholarships, third-party contributions, and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payment intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support; and

(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursement of actual employment expenses may not be considered income for purposes of these rules.

(3) Income for child support does not include:

(a) income attributable to subsequent spouses, domestic associates, and other persons who are part of the parent's household;

(b) means-tested veteran's benefits;

(c) means-tested public assistance benefits including but not limited to cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant;

(d) supplemental security income (SSI);

(e) supplemental nutrition assistance program (SNAP) benefits, formerly known as food stamps;

(f) child support payments received from other sources; and

(g) adoption subsidies paid by state or federal agencies, unless expenses of the subsidized child are included in the calculation.

(4) Income for child support does not include lump sum social security payments or social security benefits received by a child or on behalf of a child as the result of a parent's disability or the child's disability, whether or not the child is a child of the calculation. See ARM 37.62.144 for more information on Social Security benefits.

(5) If overtime is mandatory and the worker has no control over whether or not overtime is worked, the overtime earnings are included in income for child support. In the case of voluntary overtime earnings or earnings from a job that is in addition to a full-time job, and the earnings are expected to continue for the foreseeable future, the earnings are presumed to be available for child support and are included in the calculation subject to rebuttal of the presumption.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

RULE II PARENTING DAYS (1) The parenting plan, referenced in 40-4-234, MCA, provides for the child's residential schedule with the parents.

(2) When the child resides primarily with one parent and does not spend more than 110 days per year with the other parent, there is no adjustment to the transfer payment due. When at least one child spends more than 110 days per year with both parents, however, or when at least one child resides primarily with each parent, the transfer payment is adjusted according to ARM 37.62.134.

(3) A "day" is defined as the majority of a 24-hour calendar period in which the child is with or under the control of a parent. This assumes there is a correlation between time spent and resources expended for the care of the child. For purposes of this chapter, and unless otherwise agreed, the calendar period begins at midnight of the first day and ends at midnight of the second day. When the child is in the temporary care of a third party, such as in school or a day care facility, the parent who is the primary contact for the third party is the parent who has control of the child for the period of third-party care. If both parents are primary contacts for a third party, or if the parents are otherwise unable to agree on the total number of days for each parent, the number of disputed days may be totaled and divided equally between the parents.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

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

37.62.102 REBUTTABLE PRESUMPTION (1) remains the same.

(2) At the request of one of the parties and upon consideration of the factors set out in the guidelines and in 40-4-204, 40-4-208, and 40-6-116, MCA, the final outcome of the guidelines calculation, or "bottom line", may be rebutted and a variance from the guidelines final amount may be granted. Any consideration of a variance from the guidelines must take into account the best interests of the child.

(3) The support order may vary from the guidelines bottom line in a particular case only if the decree, separation order, or support order contains a specific written finding showing justification that application of the guidelines would be unjust or inappropriate, based upon evidence sufficient to rebut the presumption.

(4) Findings that rebut and vary the guidelines bottom line must include a statement of the amount of support that would have been ordered under the guidelines without the variance.

(5) Child support may vary from the guidelines bottom line based on a stipulation or agreement of the parties only if the stipulation or agreement meets the following criteria:

(a) it is in writing, executed by the parties free of coercion ~~or is entered by a court or administrative proceeding;~~

~~(b) the parties have signed the stipulation or agreement free of coercion;~~

~~(c) (b)~~ it contains specific justification as to why application of the guidelines is unjust or inappropriate; ~~and~~

~~(d) (c)~~ it contains a statement of the amount of support that would have been appropriate under the guidelines without the variance; and

(d) it has been approved by the court or in an administrative proceeding.

(6) A support order granting a variance from the bottom line, based upon the existence of a condition or the performance of an act, must provide that, upon termination of the circumstances which justify the variance, the support immediately reverts to the amount which would have been ordered under the guidelines without the variance.

(7) In contrast to the bottom-line presumption, the child support guidelines include a variety of presumptions affecting particular entries or lines in the calculation intended to customize support for a particular family. "Line-item" presumption refers to various provisions of the child support guidelines assuming specific fact patterns which occur in a majority of cases. If, in the case at issue, a parent can show that the facts in evidence are not consistent with the facts assumed, the facts in evidence are applied to the entry and result in a different but appropriate child support award. The entry based on the evidence rebuts the line-item presumption regarding the guideline provision. For example, ARM 37.62.110(1)(b)(ii) may allow a deduction from a parent's income for "an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists". The rule presumes the remaining half of the child's support is the responsibility of the other parent of the child, but if, in the case at issue, there is no other parent to share

responsibility, the party ordinarily entitled to the one-half deduction is allowed the full deduction.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.103 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Actual income" is defined in ~~ARM 37.62.106~~ [New Rule I].

(2) and (3) remain the same.

(4) "Federal poverty index guidelines" means the ~~minimum amount of income needed for subsistence guidelines published by the U.S. Department of Health and Human Services under the authority of 42 USC 9902(2), which will be updated periodically in the Federal Register. Such updates will be adopted by amendment to these rules as appropriate. The amount is developed by the U.S. office of management and budget, revised annually in accordance with 42 USC 9902, and published annually in the federal register.~~

(5) through (10) remain the same.

~~(11) "Pre-existing support order" means an order entered by a tribunal of competent jurisdiction prior to the calculation or recalculation of support.~~

(12) through (14) remain the same but are renumbered (11) through (13).

~~(15) "Subsequent child" is defined in ARM 37.62.146.~~

~~(16)~~ (14) "Transfer payment" is defined in ~~ARM 37.62.136~~ ARM 37.62.134.

(15) "Underemployed" means employed less than full time, when full-time work is available in the community or the local trade area, and/or earning a wage that is less than the parent has earned in the past, or is qualified to earn, when higher paying jobs are available in the community or the local trade area, for which the parent is qualified.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.106 DETERMINATION OF IMPUTED INCOME FOR CHILD

SUPPORT (1) ~~Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.~~

(2) ~~Actual income includes:~~

(a) ~~economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support.~~

~~(b) gross receipts minus reasonable ordinary and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal revenue service rules apply to determine expected life of assets. Business expenses do not include deductions relating to personal expenses, or expenses not required for the production of income.~~

~~(c) the value of non-cash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.~~

~~(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support.~~

~~(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.~~

~~(3) Income for child support does not include benefits received from means tested veteran's benefits and means tested public assistance programs including but not limited to the former aid to families with dependent children (AFDC), cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, general assistance and child support payments received from other sources.~~

~~(4) For lump sum social security payments, social security benefits received by a child of the calculation as the result of a parent's disability, refer to ARM 37.62.144.~~

~~(5) In determination of a parent's income for child support, income attributable to subsequent spouses, domestic associates and other persons who are part of the parent's household is not considered. If a person with a subsequent family has income from overtime or a second job, that income is presumed to be for the use of the subsequent family, and is not included in income for child support for the purposes of determining support for a prior family.~~

~~(6) "Imputed income" means income not actually earned by a parent, but which will be attributed to the parent based on:~~

~~(a) the parent's earning potential if employed full-time;~~

~~(b) the parent's recent work history;~~

~~(c) occupational and professional qualifications;~~

~~(d) prevailing job opportunities in the community and earning levels in the community.~~

~~(7) Income should be imputed whenever a parent:~~

~~(a) is unemployed;~~

~~(b) is underemployed;~~

~~(c) fails to produce sufficient proof of income;~~
~~(d) has an unknown employment status; or~~
~~(e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income to a student parent is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.)~~

(1) "Imputed income" means income not actually earned by a parent, but which is attributed to the parent based on the provisions of this rule. It is presumed that all parents are capable of working at least 40 hours per week at minimum wage, absent evidence to the contrary.

(2) It is appropriate to impute income to a parent, subject to the provisions of (6) of this rule, when the parent:

- (a) is unemployed;
- (b) is underemployed;
- (c) fails to produce sufficient proof of income;
- (d) has an unknown employment status; or
- (e) is a student.

(3) In all cases where imputed income is appropriate, the amount is based on the following:

- (a) the parent's recent work history;
- (b) the parent's occupational and professional qualifications; and
- (c) existing job opportunities and associated earning levels in the community or the local trade area.

(4) Imputed income may be in addition to actual income and may not necessarily reflect the same rate of pay as the actual income.

(5) Income is imputed according to a parent's status as a full- or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless actual income is greater. If the student is:

(a) full-time, the parent's earning capacity is based on full-time employment for 13 weeks and approximately half of full-time employment for the remaining 39 weeks of a 12-month period; or

(b) part-time, the parent's earning capacity is based on full-time employment for a 12-month period.

~~(8) When income is imputed to a parent, federal earned income credit (EIC) should not be added to income and child care expense should not be deducted from income when the effects are offsetting.~~

~~(9) (6) Income should not be~~ is not imputed if any of the following conditions exist:

(a) the reasonable and unreimbursed costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;

(b) through (e) remain the same.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

(1) remains the same.

(2) Income of the parents must be documented. This may include pay stubs, employer statements, income tax returns, and profit and loss statements. If expenses are disputed, proof may be required.

(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:

(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability; If a parent is self-employed, a minimum of three years of profit and loss statements and/or income tax returns for both the individual parent and the business entity are required to consider the average of the parent's income for entry to the child support calculation; or

(b) remains the same.

(4) Nothing in this rule shall be construed to require the use of any particular method of determining annual income if it does not accurately reflect a parent's income available for child support.

(4) remains the same but is renumbered (5).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.110 ALLOWABLE DEDUCTIONS FROM PARENTS' INCOME

(1) Allowable deductions from income include: those required by law, those required as a condition of employment, and those necessary for the production of income. Allowable deductions may include:

(a) the amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order;:

~~(b) an amount for the needs of all "other" children as defined in ARM 37.62.103(9), determined as follows:~~

~~(i) When establishing a child support obligation, deduct:~~

~~(A) the total of any pre-existing support orders for the other children; and~~

~~(b) for an "other child" as defined in ARM 37.62.103(9):~~

~~(i) the amount of child support due under existing court or administrative support orders; and~~

~~(B) (ii) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists; and who:~~

~~(A) reside with the parent of the calculation; or~~

~~(B) do not reside with a parent of the calculation if a showing of ongoing support is made; These include children who reside with the parent as well as children who do not.~~

~~(ii) When modifying a current child support order, deduct the amount determined under ARM 37.62.146.~~

(c) remains the same.

(d) the actual income tax liability based on tax returns. If no other information is available, use the federal and state income tax tables which show the amount of withholding for a single person with one exemption;

(e) remains the same.

(f) court ordered payments except as excluded under ARM 37.62.111;

(f) and (g) remain the same but are renumbered (g) and (h).

~~(h) one-half reasonable expenses for items such as child care or in-home nursing care for the parent's legal dependents other than those for whom support is being determined, which are actually incurred and which are necessary to allow the parent to work, less federal tax credits. Do not deduct imputed child care expenses when imputing income;~~

(i) one-half the amount of a parent's unreimbursed payments for an "other child" for extraordinary medical expenses and child care expenses necessary to allow the parent to work, less federal tax credits;

~~(j) (i) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity; and~~

~~(j) court ordered payments except as excluded under ARM 37.62.111.~~

(k) cost of tuition, books, and mandatory student fees for a parent who is a full-time student as anticipated under ARM 37.62.106 ~~(7)(e) (5)~~; and

(l) the current, annual interest on student loans, paid by a parent of the calculation for post-secondary education that has resulted in an economic benefit for the children of the calculation.

(2) remains the same.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.111 NONALLOWABLE DEDUCTIONS FROM INCOME

(1) Deductions which are not allowable under these rules include:

(a) remains the same.

~~(b) a net loss in the operation of a business or farm used to offset other income imputed employment-related expenses, such as imputed child care;~~

~~(c) investment losses outside the normal course of business;~~

(d) through (g) remain the same but are renumbered (c) through (f).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.114 PERSONAL ALLOWANCE (1) Personal allowance is an amount which reflects 1.3 multiplied by the federal poverty ~~index~~ guideline for a one-person household. This amount is deducted when determining child support. Personal allowance is a contribution toward, but is not intended to meet the subsistence needs of parents.

~~(2) Adjustments for the needs of other legal dependents of a parent are limited to those provided for in ARM 37.62.110. If a parent has legal dependents not~~

capable of self-support and whose needs have not already been considered at ARM 37.62.110, the personal allowance may reflect the parent's responsibility by increasing the number in the household when consulting the federal poverty guideline.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.123 SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE

(1) The primary child support allowance is supplemented by:

(a) remains the same.

(b) ~~costs required for~~ of health insurance coverage for the children of the calculation. ~~Include only those amounts which reflect the actual costs of covering adding the children to an existing health insurance policy or the cost of a child-only policy; and~~

(c) unreimbursed health care expenses for each child of the calculation that exceed \$250 per year and are recurring and predictable; and

~~(e) (d) other needs of the child as determined by the circumstances of the case, including other health related costs.~~

(2) and (3) remain the same.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.126 MINIMUM SUPPORT OBLIGATION (1) A specific minimum contribution toward child support should be ordered in all cases when the parent's income, after deductions, is less than or equal to ~~insufficient to meet~~ the parent's personal allowance or the parent's calculated child support obligation is less than 12% of that parent's income after deductions.

(a) For parents whose income, as defined in [New Rule I] and ARM 37.62.106, after deductions, as defined in ARM 37.62.110, is less than or equal to ~~insufficient to meet~~ the parent's personal allowance, the minimum contribution is a portion of the income after deductions and is determined by applying the table in (3) as follows:

(i) through (iv) remain the same.

(b) For parents whose income after deductions exceeds the personal allowance, the parent's minimum contribution is ~~the greater of:~~ 12% of income after deductions.

~~(i) the difference between income after deductions and the parent's personal allowance; or~~

~~(ii) 12% of income after deductions.~~

(2) remains the same.

(3) The table for determining the minimum support obligation of a parent whose income after deductions is ~~insufficient to meet~~ less than or equal to the parent's personal allowance is as follows:

Column A

Column B

<u>"Income Ratio"</u>	<u>"Minimum Contribution Multiplier"</u>
Over .00 to .25	.00
.25 to .31	.01
.31 to .37	.02
.37 to .43	.03
.43 to .50	.04
.50 to .56	.05
.56 to .62	.06
.62 to .68	.07
.68 to .75	.08
.75 to .81	.09
.81 to .87	.10
.87 to .93	.11
.93 to 1.00	.12

<u>Column A "Income Ratio"</u>	<u>Column B "Minimum Contribution Multiplier"</u>
<u>If the IR is in the range:</u>	<u>The minimum contribution is:</u>
<u>.00 to .25</u>	<u>.00</u>
<u>If the IR is:</u>	<u>The multiplier is:</u>
<u>over: but not over:</u>	
<u>.25</u>	<u>.01</u>
<u>.31</u>	<u>.02</u>
<u>.38</u>	<u>.03</u>
<u>.45</u>	<u>.04</u>
<u>.52</u>	<u>.05</u>
<u>.59</u>	<u>.06</u>
<u>.66</u>	<u>.07</u>
<u>.73</u>	<u>.08</u>
<u>.80</u>	<u>.09</u>
<u>.87</u>	<u>.10</u>
<u>.94</u>	<u>.11</u>

AUTH: 40-5-203, MCA
 IMP: 40-5-209, MCA

37.62.134 TOTAL MONTHLY SUPPORT AMOUNT AND TRANSFER PAYMENT (1) The A total monthly support amount is determined for each parent, separately, and consists of:

- (a) the parent's share of the primary child support allowance, with supplemental needs, if any, plus the parent's standard of living adjustment; or
- (b) the parent's minimum support obligation determined under ARM 37.62.126.

(2) In setting the amount of order per child, the total monthly support should be divided equally among the children, except when it is allocated according to supplemental needs as provided in ARM 37.62.138. After determining each parent's obligation according to (1)(a) or (1)(b), above, each parent's obligation is allocated according to the number of days each child spends with each parent.

(a) If all the children of the calculation reside primarily with one parent and do not spend more than 110 days per year with the other parent, the annual transfer payment, defined as the net amount of child support one parent owes the other, is the same as the total, annual support amount owed by the nonresidential parent.

(i) To set the amount of each child's monthly transfer payment, divide the annual transfer payment by the number of children in the calculation. Then, divide each child's annual payment by 12 and round the result according to ARM 37.62.134(2)(a)(ii), following.

(ii) The monthly transfer payment per child is rounded to whole dollars as follows: round down to the next whole dollar amounts ending in \$0.49 or less and round up for amounts ending in \$0.50 or more. The total of the rounded per child amount is the total monthly transfer payment owed by one parent to the other and/or to a third party, and due to rounding, may vary from the monthly transfer payment shown in the calculation.

(b) If any child of the calculation spends in excess of 110 days per year with both parents or if one or more children reside primarily with one parent while one or more children reside primarily with the other parent, the allocation of each parent's total support amount is determined as follows:

(i) recalculate the needs of each child separately;

(ii) recombine each parent's total support amount for each child based upon that child's proportionate need;

(iii) allocate the parent's total support amount for each child by retaining the amount for time the child spends with the parent and owing to the other parent the amount for time the child spends with the other parent;

(iv) offset the amounts each parent owes the other by subtracting the lower obligation from the higher for each of the children. The remaining balance for each child is the annual transfer payment for that child and is entered in the column of the parent owing the balance; and

(v) to set the monthly transfer payment, divide the annual transfer payment for each child by 12 and round according to (2)(a)(ii).

(A) where the calculation includes only one child, the monthly transfer payment is the total amount due from one parent to the other; or

(B) where the calculation includes two or more children, the monthly transfer payment for each child is the amount entered for the child at (2)(b)(v). The monthly transfer payment for each child is entered in the column of the parent owing the payment. Each parent's column is totaled and the difference between mother's total and father's total is the final monthly transfer payment owed by the parent with the higher total.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.140 ANTICIPATED CHANGES (1) To the extent possible, child support orders must address children's changing needs as they grow and mature in a way that minimizes the need for future modifications. ~~When child support is determined,~~ if any material change in current circumstances is anticipated within 18 months, separate child support calculations ~~should~~ must be completed.

(2) remains the same.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.148 SUPPORT GUIDELINES TABLES/FORMS (1) The Child Support Enforcement Division (CSED) has developed a child support ~~determination calculation~~ worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620 or any regional office. The worksheet is also available on the department's web site at www.dphhs.mt.gov/forms/.

(2) Included for use with the worksheet are a financial affidavit, necessary tables, and information for completion of the guidelines calculation. To assure that these tables are current, the Child Support Enforcement Division will republish the ~~worksheet with~~ tables annually as soon as practical after release of information upon which tables are based. The ~~worksheet with~~ tables will be identified by the year of publication or republication.

(3) The child support guidelines worksheets, or a replica of those forms with a similar format and containing the same information, must be used in all child support ~~determinations~~ calculations under the guidelines and a copy must be attached to the support order.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.2121 ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter 6 9 of this chapter are applicable to administrative hearings under this subchapter.

AUTH: 40-5-202, MCA

IMP: 40-5-273, MCA

5. The department proposes to repeal the following rules:

37.62.136 TRANSFER PAYMENT, is found on page 37-13522 of the Administrative Rules of Montana.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.138 PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS, is found on page 37-13522 of the Administrative Rules of Montana.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.146 MODIFICATION OF CHILD SUPPORT ORDERS, is found on page 37-13533 of the Administrative Rules of Montana.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (DPHHS, the department), Child Support Enforcement Division (CSED) is proposing the adoption of New Rules I and II, the amendment of ARM 37.62.102, 37.62.103, 37.62.106, 37.62.108, 37.62.110, 37.62.111, 37.62.114, 37.62.123, 37.62.126, 37.62.134, 37.62.140, 37.62.148, 37.62.2121, and the repeal of ARM 37.62.136, 37.62.138, and 37.62.146 pertaining to Montana child support guidelines. The proposed changes are necessary to make the Montana child support guidelines easier to read, easier to use, and more equitable for parents. The department's experience shows that certain rules can be rewritten or reorganized to improve reader comprehension and to promote ease of use.

New Rule I

CSED proposes to create New Rule I from the first five subsections of ARM 37.62.106, leaving the remaining four subsections of ARM 37.62.106 renumbered to address the sole issue of imputed income. Currently, ARM 37.62.106 addresses income determination for child support calculations, which is one of the most time-consuming tasks in calculating child support. Experience has revealed that the length of the current rule and the breadth of matters relating to different types of income addressed in it make it difficult to locate specific provisions.

Although required formatting makes it appear that New Rule I is entirely new language, in fact, most text is identical to the first five subsections of current ARM 37.62.106, with the following exceptions:

New Rule I(1)(a) is a statement of parental responsibility, presuming parents to be capable of working a full 40-hour work week, subject to the specific profession and employment policies. While not representing a new idea with respect to the child support guidelines, CSED includes this statement to inform parents directly that less than full-time employment is insufficient to satisfy a parent's obligation to support his or her children.

New Rule I(1)(b) is added to provide for the possibility that the value of a parent's assets may have to be considered to support the child if the parent has little or no income to pay for child support. The need for this provision has been shown to CSED by parents whose assets are indicative of wealth yet who have no countable income for support. CSED, through the child support guidelines, supports the public policy that children should be supported by their parents and not by taxpayers, whether by the parent's income, or, if necessary, through assets the parent has acquired.

New Rule I(2)(a) is proposed to replace (2)(a) in ARM 37.62.106, which treats capital gains in excess of capital losses as income for child support if there is a history of such net capital gains. CSED is concerned the current language could have the unintended result of uneven treatment. A parent, for example, may be allowed to exclude from income a sizable capital gain because he has no history of gains or losses in the years before and after. A second parent, with the same sizable capital gain, is required to include it in income because he has a small gain in the year before or after the large gain which constitutes a history. For these reasons, CSED proposes to replace the current capital gains provision with one treating capital gains net of capital losses as income for child support in every case. To the extent net capital gains result from recurring transactions, CSED would average them over a period of at least three years; a treatment consistent with that for a parent's other income that varies in amount from year to year. If net capital gains are attributable to a single event or year, CSED proposes allowing them to be spread over one or more years so that the calculations reflect how the gains are actually received as well as how the parent can best meet his/her child support obligation.

New Rule I(2) proposes dividing current ARM 37.62.106(2)(b), which consists of a single paragraph regarding business expenses for self-employed parents, into two subparagraphs addressing depreciation expenses [New Rule I(2)(b)(i)], and personal versus business expenses [New Rule I(2)(b)(ii)]. CSED also proposes to include two additional subparagraphs in New Rule 1(2)(b) addressing the treatment of business losses in the child support calculation [New Rule I(2)(b)(iii)], and the treatment of business investments in the child support calculation [New Rule I(2)(b)(iv)], and clarifying how child support calculations are affected when parents have both gains and losses. Current ARM 37.62.111(1)(b) and (c) which provide that losses are not a deduction from income, caused confusion as to how such losses were treated in child support calculations. These additions will answer questions that arise when parents have both gains and losses as a result of their business interests.

New Rule I(3) is proposed to set forth in one clearly organized list the types of income that are excluded from a child support calculation, including income attributable to subsequent spouses, domestic associates, and other persons who are not part of a parent's household. It also identifies the former Food Stamp Program by its current name of Supplemental Nutrition Assistance Program (SNAP).

New Rule I(4) identifies clearly the two most common types of social security payments or benefits which children receive or which parents receive on behalf of children which regularly arise in child support calculations. These can be payments or benefits received as a result of a parent's disability and payments or benefits received as a result of the child's own disability. Neither is included as income in calculating child support. Pursuant to ARM 37.62.144, when benefits are received for a child based on a parent's disability, the parent on whose earning record the benefits are based receives credit toward his support obligation for the payments made to the child.

New Rule I(5) addresses current earnings from overtime or a second job when establishing or modifying a child support order. CSED proposes changes to clarify when it is appropriate to use income from overtime and second jobs in the calculation of support. With the proposed repeal of ARM 37.62.146, all of a parent's children, prior and/or subsequent, will be included in the determination of income available for child support in actions to establish or to modify a support order. Due to the inclusion of all children in every calculation of support, CSED believes the current ARM 37.62.106(5) is no longer appropriate. If the calculation includes all the parent's children, CSED believes the calculation must include all the parent's income, subject to rebuttal of the presumption.

The provision at New Rule I(5) distinguishes mandatory overtime earnings from earnings due to voluntary overtime or a job in addition to a full-time job while at the same time it provides that all overtime and additional job earnings are presumed to be available for child support. Mandatory overtime is a condition of employment which usually requires its inclusion in the child support calculations. Earnings from voluntary overtime or an additional job are also presumed income for child support but due to their voluntary nature the presumption is more likely to be rebutted because the work may not always be available to the parent, because it is undertaken for a specific purpose or time period, or because it will not necessarily continue for the foreseeable future.

New Rule II

CSED proposes to place the provision for calculating parents' time with their children as delineated in the parenting plan in New Rule II(1) because the role of parenting days is integral to the calculation of child support and the user will be better served by the proposed reorganization of provisions under a rule named, "Parenting Days". Consequently, the rule previously addressing these matters, ARM 37.62.138, is proposed for repeal as part of this rulemaking.

CSED proposes setting forth in New Rule II(2) a description of the effect of the number of days the children spend with each parent on allocating the calculated child support between the parents. The user is also directed to ARM 37.62.134 for details of the adjustment based on days.

In New Rule II(3), CSED proposes a more exact definition of the word "day" for calculating the number of days the children spend with each parent. CSED has decided that a better definition for "day" is needed because the term substantially affects the allocation of each parent's child support obligation and the previous definition was frequently misunderstood. The proposed definition also responds to the Montana Supreme Court case of In re Marriage of Kummer & Heinert, 2002 MT 168, 310 MT 470, 51 P3rd 513, in which the Court requested a more helpful definition of a "day" for determining parenting time. The Court found the lack of a better definition of "day" made it difficult to allocate parenting time for periods when children were in the care of third parties, such as schools or day care centers.

The proposed definition of "day" therefore includes not only time when a parent has actual physical control of the child, but also time children spend with third-party caretakers, day care providers, teachers, and administrators. When a child is taken ill or is injured at school, a parent is expected to pick up the child, obtain medical care, or take him home, and stay with him. That parent, on call for the third party, should be credited with the care of the child for that period of time.

An important proposed addition to the parenting days provision is the phrase "and unless otherwise agreed" immediately preceding the proposed calendar period. This provision will allow the parents to agree to a calendar period that begins and ends at a time other than midnight. CSED is hopeful this proposal will provide an incentive for parents to negotiate this matter, customizing the calculation in a way that promotes fairness and ownership of the resulting child support obligation.

The current definition of a day does not allow any credit for a parent with less than the majority of a 24-hour day spent caring for a child. CSED has considered the possibility of counting the number of overnights spent with the noncustodial parent but is aware that method also has its drawbacks. CSED believes the proposal to allow parents to agree on the hour chosen for the beginning and end of the "day" will likely provide a more realistic count of days to noncustodial parents in cases where the previous definition of a day did not. In most cases, the more time the child spends with a parent, the more money the parent will spend on the child so that, in general, the parent with the majority of time is the parent with the majority of the expense.

ARM 37.62.102

This rule sets forth the manner in which child support calculations are subject to the "rebuttable presumption", or legal assumption that if child support is calculated according to the child support guidelines, the resulting obligation is correct unless it is rebutted by a parent's evidence to the contrary. CSED proposes changing this rule to distinguish between two presumptions present in the guidelines, the "bottom-line presumption" and the "line-item presumption". ARM 37.62.102(2) through (6) include new language identifying the "bottom-line presumption" as the subject of those provisions while ARM 37.62.102(7) is entirely new and explains the "line-item presumption".

The "bottom-line presumption" at ARM 37.62.102(2) through (6) applies when child support is calculated according to the guidelines and there is no showing that any specific fact in the child support calculation was incorrect. The calculation is presumed to be correct unless the parent can rebut it by showing the "bottom line" child support obligation is itself unjust or inappropriate based on the evidence.

The "line-item presumption" is the lesser known of the two presumptions. It refers to individual entries in the child support calculation which presume a specific fact pattern. If child support is calculated according to that fact pattern, the resulting calculation is presumed to be correct. A parent, however, can rebut that presumption with evidence showing some specific fact was incorrect as applied in the calculation, that this resulted in an incorrect child support obligation, and that using the true fact results in a different and correct child support obligation.

The changes to ARM 37.62.102(2) are intended to make clear that where the rule previously referred simply to the "guidelines", it now refers to the "final outcome of the guidelines calculation", or "bottom line". This distinction, which is continued in the amendments of ARM 37.62.102(3) through (6) paves the way for the contrasting "line-item presumption" explained in new paragraph (7).

ARM 37.62.103

CSED proposes to amend ARM 37.62.103(1) to include the new reference which will be assigned to the income rule currently labeled New Rule I in this document. CSED proposes changing references in ARM 37.62.103(4) from "federal poverty index" to "federal poverty guidelines" to reflect current terminology used by the federal government. ARM 37.62.103(4) also notes that the U.S. Department of Health and Human Services periodically updates the poverty guideline figures and that the updated figures will be adopted as appropriate by amendment to these rules.

CSED proposes deleting the definition in current ARM 37.62.103(11) of "preexisting support order" because that term is no longer used to describe a support order entered prior to the current calculation. CSED proposes deleting the definition in current ARM 37.62.103(15) of "subsequent child" together with the reference therein to ARM 37.62.146 because the department is proposing to repeal ARM 37.62.146 as part of this rulemaking. CSED proposes to include a new definition for "underemployed" in ARM 37.62.103(15) because the term "underemployed" is used in connection with imputed income when referring to a parent who is employed but at a lower rate of pay or for fewer hours per week than is available.

ARM 37.62.106

CSED proposes creating a new rule from the first five subsections of the current ARM 37.62.106, described as New Rule I, and renumbering the remaining four

subsections of current ARM 37.62.106(6) through (9), reorganized as ARM 37.62.106(1) through (6), to address the sole issue of imputed income.

CSED proposes to include in ARM 37.62.106(1) with the definition of imputed income a presumption that parents are capable of working at least 40 hours per week at a minimum wage, absent evidence to the contrary. Similar to the presumption that parents are capable of earning income from full-time employment, these statements of principle are intended to make parents aware of what is expected of them by the child support guidelines. While not a new idea, the guidelines previously did not specify those expectations, leaving some parents unsure.

The department proposes to include in ARM 37.62.106(5) material drawn from current ARM 37.62.106(7)(e) concerning imputation of income to parents who are students, and extending such treatment to part-time students as well as full-time students. The effect would be to extend the deduction provided in ARM 37.62.110(1)(k) for school expenses to part-time students as well as full-time students.

Income will be imputed if parent's education will result within a reasonable time in an economic benefit for the child for whom the support obligation is being determined, unless the actual income is greater. Because education or training can still be completed within a "reasonable time", the child can still see an economic benefit from the parent's part-time attendance. Because many students who attend school part-time are working full-time, CSED proposes imputing full-time income to parents who attend school part-time unless the parent's actual income is greater.

CSED proposes deleting current ARM 37.62.106(8) treating when child care expenses and the Earned Income Credit should not be entered in the child support calculation because the rule has caused confusion in its application. As stated in ARM 37.62.111(1)(b) imputed employment-related expenses, such as imputed child care, are not allowed in the calculation. Adding child care as if it were an actual expense will do nothing but increase the obligation of the paying parent for an expense that doesn't exist.

CSED proposes to amend ARM 37.62.106(6) to change words "should not be" to "is not" to set forth the mandatory effect CSED intends by this definition. CSED also proposes changing the description in ARM 37.62.106(6)(a) of the conditions in which income is not to be imputed by including two new words "and unreimbursed" with respect to the cost of child care. Child care subsidies are available to many lower income parents whose co-pay may be as little as \$10 or \$20 per month for care that may cost \$500 or \$600. This statement reinforces the rule that only the unreimbursed cost of the care is allowed consideration in the child support calculation.

ARM 37.62.108

CSED proposes amending ARM 37.62.108(2) to set forth that if either parent's expenses are disputed, proof may be required. Some say it is common sense that an assertion of spending by a parent must be proven before the information can be used to calculate child support. However, requiring proof of all information included in a child support calculation would likely be excessive while no provision for requiring proof is unrealistic.

CSED believes this straightforward warning will inform parties they may require and be required to prove the expenses, whether business or personal, they wish to have deducted from income available for child support. This provision gives the parties an opportunity to review the documentation provided and most importantly, to prepare a more accurate calculation.

In Albrecht v. Albrecht, 2002 MT 227, 311 MT 412, 56 P.3d 339 (2002), the Montana Supreme Court held that the lower court "abused its discretion by deviating from the Guidelines' preference for a three-year average of net income for a self-employed parent." The current provision for at least three years' of business tax returns or financial statements for self-employed parents is referenced only in the instructions for the worksheet rather than in the rules themselves. CSED believes the provision should be added to the rules and clearly stated in the child support guidelines. The proposed addition to ARM 37.62.108(3)(a), requiring at least three years' tax returns or financial statements for use in determining income for child support will put guideline users on notice that the high court's opinion has been incorporated into this rule.

CSED proposes amending ARM 37.62.108(4) to provide that nothing in this rule requires a particular method of determining annual income if the method does not accurately reflect income available for child support. This provision stems from the concern that there may be instances in which a three-year average of self-employment income does not accurately reflect income available for child support. The requirement to provide three years' tax returns should not be construed as a requirement to use the three-year average of income in every case.

ARM 37.62.110

CSED proposes amending ARM 37.62.110(1) by including a new provision explaining the philosophy behind the allowance for deductions from income, stating that deductions include those required by law, as a condition of employment, and those necessary for the production of income. By means of this explanation, a determination can be made about the deductibility of an expense that is not specifically addressed in the rules.

CSED proposes amending ARM 37.62.110(1)(b). Current ARM 37.62.110(1)(b)(i) addresses an action to establish a support order and provides for a deduction of the annual amount of the existing support orders for the parent's other children and a deduction of an allowance as found in the rules for other children of a parent for whom no support order exists. Current ARM 37.62.110(1)(b)(ii) addresses an action

to modify a support order by referring the user to ARM 37.62.146, a rule proposed for repeal. With the proposed repeal of ARM 37.62.146, the needs of other children will be treated the same in calculations for modification of a child support order as in calculations for establishment of a child support order.

CSED proposes that amended ARM 37.62.110(1)(b)(i) address the deduction of existing child support orders for other children of the parents in the calculation. Proposed amended ARM 37.62.110(1)(b)(ii) addresses the deduction of an allowance for other children with no support order. Furthermore, CSED proposes an addition to the provision for children with no support order.

In the past, a deduction was allowed for the "other child allowance" for a child who has no order for support and does not live with a parent in the calculation. The proposed amendment to ARM 37.62.110(1)(b)(ii) avoids crediting a parent for financial support of a child not actually paid. If the parent can prove payments are being made, the other child allowance will be permitted as a deduction from income.

CSED proposes amending ARM 37.62.110(1)(d) by inserting the words "federal and state income" to describe the tax tables to which it refers. The purpose is to make it clear which tax tables one should use in the calculation of child support. ARM 37.62.110(1)(f) is moved from its location near the end of the allowable deductions so that all types of court-ordered expenses or payments are found in sequence.

CSED proposes to amend ARM 37.62.110(1)(i) by adding a deduction for half the amount of annual extraordinary medical expense parents pay for their other children. Children's medical expenses are a cost to parents regardless of the birth order or the identity of the child's other parent and CSED thinks they should be a deductible expense for child support purposes. The reason that only half of the expenses are deductible is the same as for day care: only one parent of the other child is included in the calculation and the child's other parent is presumed responsible for the other half of the child's costs.

CSED proposes to delete "full-time" from the description of student in ARM 37.62.110(1)(k) because CSED believes that "part-time" student parents are as able as full-time student parents to gain the benefits of higher education and there is no reason they should not be allowed deductions for its cost.

CSED proposes adding new language to ARM 37.62.110(1)(l) to allow the deduction from income of annual interest on student loan repayments where the education has resulted in a benefit to the child who is the subject of the calculation. Unlike in years past, new resolve on the part of federal officials has caused the collection of student loans to become a near certainty for students today. Past due balances are withheld from federal income tax refunds just as past due child support is withheld. Arguing that interest payments are an employment-related educational expense that is not available to pay child support, parents believe it is only fair to allow its deduction from income in the support calculation. CSED has come to agree with them where it can be shown that the child has benefited.

ARM 37.62.111

CSED proposes amending ARM 37.62.111(1) by deleting from the category of deductions which are not allowed subsections (1)(b) and (c) of the current rule relating to net losses from business and farm operations, and investment losses outside of the normal course of business. The treatment of business and investment losses at the time income entries are determined is set forth in subparagraphs of New Rule I(2)(b). This information is intended to assist parties and attorneys with adapting tax return entries to the child support calculation.

CSED also proposes setting forth in new ARM 37.62.111(1)(b) a provision not allowing deduction of imputed employment-related expenses such as imputed child care. Imputation of employment-related expenses causes adjustments in the child support calculation, resulting in an increase in the child support obligation based on phantom costs that don't really exist.

ARM 37.62.114

CSED proposes amending ARM 37.62.114(1) by deleting the word "index" from the phrase "federal poverty index" and by replacing it with the current federal usage of "guideline", so the rule correctly reads, "federal poverty guideline."

CSED proposes amending ARM 37.62.114(2) by replacing instructions for determining the personal allowance when a parent is responsible for the support of someone not already considered in the calculation. The personal allowance is intended to be a contribution toward a parent's most basic needs and may be adjusted to include a disabled spouse, for example, by increasing to two the number in the parent's household when consulting the federal poverty guidelines. This is another example of a line-item rebuttable presumption, intended to customize the child support calculation to the particular family involved.

ARM 37.62.123

CSED proposes amending the text of ARM 37.62.123(1)(b) to limit the cost of health insurance coverage for the child which may be used to supplement the primary child support allowance for the amount necessary to add the child to an existing health care policy or the cost of a child-only policy. In the past there has been confusion regarding the cost of the parent's health insurance premium where there is no existing policy and the parent must first insure him or herself before a child can be added. The intent has always been to include only the premium that adds the child; otherwise one parent could be charged for a portion of the other parent's health insurance.

CSED proposes amending the text of ARM 37.62.123(1) to include a new (c) and thereby redesignate the current (c) as (d). CSED proposes in new (c) to allow the primary child support allowance to be supplemented by recurring and predictable

unreimbursed health care expenses for each child of the calculation which exceed \$250 per year. The new category provides for those health care expenses that exceed the routine and minor charges most parents incur on behalf of their children over the course of a year. The first \$250 for each child represents those routine and minor expenses for which both parents are responsible in their individual shares.

Only children's expenses that meet the "recurring and predictable" requirements and exceed \$250 per year are eligible to be included in the calculation. A diabetic child, for example, may have unreimbursed medical expenses of \$150/month that are entirely predictable along with other expenses that are sometimes incurred and sometimes not. Only \$150 per month of predictable expenses may be included in the child support calculation as a supplement because the other expenses may or may not occur in a given year. CSED's biggest concern with including any medical expense in the child support calculation is the possibility the expense will not be incurred and one parent would pay child support to the other for an expense that does not exist. If there is any doubt the expense will be incurred it should not be included in the calculation. Whether included in the calculation or not, the children's unreimbursed medical bills are divided between the parents according to the percentage of income each parent displays in the support calculation.

CSED proposes to redesignate current (1)(c) as (1)(d) because of the inclusion of new (1)(c), as described above, and further proposes deleting from ARM 37.62.123(1)(d), the words "including other health related costs". ARM 37.62.123(1)(c) currently allows the primary child support allowance to be supplemented by "other needs of the child as determined by the circumstances of the case, including other health related costs". CSED proposes deleting the words "including other health related costs" because health related costs are now covered in ARM 37.62.123(1)(c) and the reference to "other needs of the child as determined by the circumstances of the case" will remain as the sole provision of ARM 37.62.123(1)(d).

ARM 37.62.126

CSED proposes changing ARM 37.62.126(1)(a) and (3), by replacing the references to cases in which a parent's income may be "insufficient to meet the parent's personal allowance" with a more specific and exact phrasing referring to a parent's income being "less than or equal to the parent's personal allowance" to ensure the rule is understood to extend to cases in which a parent's income is equal to the parent's personal allowance.

CSED proposes amending ARM 37.62.126(1)(b)(i) and (ii) to set forth the current measure of a parent's minimum contribution, which is "12% of income after deductions." The current rule mistakenly provides that the parent's minimum contribution might be "the difference between income after deductions and the parent's personal allowance" if that amount is greater than 12% of income after deductions, and the incorrect language is removed.

CSED proposes amending ARM 37.62.126(3) by replacing the percentages set forth in the table for implementing the minimum child support contribution for low-income parents with more accurate percentages at the high end of the scale.

ARM 37.62.134

CSED proposes amending ARM 37.62.134, by combining into one rule in a straightforward manner all information relevant to how each parent's annual child support obligation is determined and allocated between the parents. The explanation of parent's child support obligations extends from the only child to multiple children, from the simple parenting plan where all the children reside primarily with one parent to complex split and shared custody arrangements. ARM 37.62.134(2)(a)(ii) sets forth the manner in which transfer payment amounts are rounded when whole dollar support amounts are divided by multiple children. The proposed rule provides for all support orders being stated in per child amounts even when the amounts are not identical for each child. By doing so, child support orders will not have to be modified when each child emancipates. Instead, the monthly transfer payment may be adjusted to exclude the obligation for the emancipating child.

ARM 37.62.140

CSED proposes amending ARM 37.62.140(1) to require to the extent possible that child support orders address any anticipated changes to the needs of children as they grow and mature so as to minimize the need for modifying the child support orders. CSED proposes the amendment to impress upon the reader the necessity for awareness of anticipated changes to the parent's and children's circumstances so that additional child support calculations can be completed, if necessary, at the same time as periodic modification, for example. Frequently, enough information is known in advance of a change, such as the end of child care for the youngest child, or emancipation of the oldest child, that an accurate calculation can and should be prepared 18 months in advance. This attention to the milestones in a child's life may result in fewer formal reviews of a support order over the course of the child's minority.

ARM 37.62.148

CSED proposes amending ARM 37.62.148(1) to identify the department's internet address as a source for obtaining the child support calculation worksheet in order to increase ease of use for guideline users. The rule is also amended to change the wording from child support "determination" to "calculation" to reflect current word usage. CSED also proposes removing language promising to provide updated child support worksheets annually because worksheets are updated only when rules change, not annually. Only the guideline tables are to be updated annually.

ARM 37.62.2121

CSED proposes amending ARM 37.62.2121 to correct a typographical error by changing language currently referring to "subchapter 6 of this chapter" to "subchapter 9 of this chapter," which is the correct reference. Subchapter 6 is reserved and the correct hearing procedure subchapter is 9.

ARM 37.62.136, 37.62.138, and 37.62.146

CSED proposes repeal of ARM 37.62.136 and 37.62.138 because they would be absorbed into other rules. In the case of ARM 37.62.146, the modification rule currently functions to limit the increase or decrease in child support due for children whose parents have additional children with other partners. In the majority of calculations, all the children are considered, but in a small portion of cases this rule results in some children not being considered. With the repeal of this rule the child support guidelines will consider every child who resides with the parents, as well as every child to whom support is owed by the parents, regardless of when the child was born. This approach makes the second calculation unnecessary as all children are considered in the initial calculation.

Fiscal Impact

No change in state or federal funds or funding is expected to result from the proposed changes to the Montana child support guidelines. Because a calculation of child support according to the guidelines is required to determine the amount of child support owed by one parent to the other, it is not possible to estimate the cumulative amount of increases or decreases due to the proposed rules. For the same reason, it is not possible to estimate the number of persons affected.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 8, 2011.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 31, 2011.

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 37.104.101 and 37.104.212) PROPOSED AMENDMENT
pertaining to emergency medical)
services (EMS))

TO: All Concerned Persons

1. On November 30, 2011 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 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 21, 2011, 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:

37.104.101 DEFINITIONS The following definitions apply in subchapters 1 through 4:

(1) through (19)(c) remain the same.

(20) "EMS incident" means an instance in which an ambulance service or nontransporting unit is requested to provide emergency medical services, including a mutual aid request, and for which:

(a) a patient was assessed;

(b) medical care was rendered;

(c) a patient was transported;

(d) a patient was pronounced dead at the scene;

(e) a patient was transferred to another licensed service;

(f) a patient was transferred from one medical facility to another; or

(g) the person or persons for whom EMS was dispatched refused treatment, transport, or both.

(20) through (24) remain the same but are renumbered (21) through (25).

(26) "Patient care report" means an accurate and complete record of the response by an ambulance service or nontransporting unit to each EMS incident.

(25) through (34) remain the same but are renumbered (27) through (36).

AUTH: 50-6-323, MCA
IMP: 50-6-323, MCA

37.104.212 RECORDS AND REPORTS (1) Each emergency medical service must maintain a trip report patient care record for every run in which patient care was offered or provided, which contains at least the following information: EMS incident.

- ~~(a) identification of the emergency medical services provider;~~
- ~~(b) (a) date of the call; In incidents where more than one patient is encountered, one patient care record shall be completed for each patient.~~
- ~~(c) (b) patient's name and address; In the event more than one emergency medical service arrives at the scene of an EMS incident, each service having actual contact with a patient is responsible for completing a patient care record on the patient.~~
- ~~(d) type of run;~~
- ~~(e) identification of all emergency medical services providers, riders, trainees, or service personnel officially responding to the call;~~
- ~~(f) the time:~~
 - ~~(i) the dispatcher was notified;~~
 - ~~(ii) the emergency medical service was notified;~~
 - ~~(iii) the emergency medical service was enroute;~~
 - ~~(iv) of arrival on the scene;~~
 - ~~(v) the service departed the scene or turned over the patient to an ambulance service; and~~
 - ~~(vi) of arrival at receiving hospital, if applicable;~~
- ~~(g) history of the patient's illness or injury, including the findings of the physical examination;~~
- ~~(h) treatment provided or offered by the emergency medical services personnel, including, when appropriate, a record of all medication administered, the dose, and the time administered;~~
- ~~(i) record of the patient's vital signs, including the time taken, if applicable;~~
- ~~(j) utilization of online medical control, if applicable; and~~
- ~~(k) destination of the patient, if applicable.~~

(2) No later than January 1, 2012 ambulance services and nontransporting units must provide data as identified by the department in this rule.

(3) Electronic data submitted to the department must be in the format prescribed by the National Emergency Medical Services Information System (NEMSIS).

(a) For emergency medical services directly using the reporting system provided by the department, the data is considered submitted to the department as soon as it has been entered or updated in the department-provided system.

(b) For emergency medical services using third-party software, the data is considered submitted to the department as soon as it has been uploaded or updated into the department-provided system.

(4) The following NEMSIS demographic data elements for ambulance service or nontransporting unit licensing must be reported and updated no less than annually:

- D01 01 EMS Agency Number
- D01 02 EMS Agency Name
- D01 03 EMS Agency State
- D01 04 EMS Agency County
- D01 07 Level of Service
- D01 08 Organizational Type
- D01 09 Organization Status
- D01 10 Statistical Year
- D01 12 Total Service Size Area
- D01 13 Total Service Area Population
- D01 14 911 Call Volume per Year
- D01 15 EMS Dispatch Volume per Year
- D01 16 EMS Transport Volume per Year
- D01 17 EMS Patient Contact Volume per Year
- D01 19 EMS Agency Time Zone
- D01 21 National Provider Identifier
- D02 01 Agency Contact Last Name
- D02 02 Agency Contact Middle Name/Initial
- D02 03 Agency Contact First Name
- D02 04 Agency Contact Address
- D02 05 Agency Contact City
- D02 06 Agency Contact State
- D02 07 Agency Contact Zip Code
- D02 08 Agency Contact Telephone Number
- D02 09 Agency Contact Fax Number
- D02 10 Agency Contact Email Address
- D03 01 Agency Medical Director Last Name
- D03 02 Agency Medical Director Middle Name/Initial
- D03 03 Agency Medical Director First Name
- D03 04 Agency Medical Director Address
- D03 05 Agency Medical Director City
- D03 06 Agency Medical Director State
- D03 07 Agency Medical Director Zip Code
- D03 08 Agency Medical Director Telephone Number
- D03 09 Agency Medical Director Fax Number
- D03 11 Agency Medical Director Email Address
- D04 02 EMS Unit Call Sign
- D05 01 Station Name
- D05 02 Station Number
- D05 04 Station GPS
- D05 05 Station Address
- D05 06 Station City
- D05 07 Station State
- D05 08 Station Zip

D05 09 Station Telephone Number
D06 01 Unit/Vehicle Number
D06 03 Vehicle Type
D06 04 State Certification/Licensure Levels
D06 07 Vehicle Model Year
D06 08 Year Miles/Hours Accrued
D06 09 Annual Vehicle Hours
D06 10 Annual Vehicle Miles
D07 01 Personnel's Agency ID Number
D07 02 State/Licensure ID Number
D07 05 Personnel's Level of Certification/Licensure for Agency
D08 01 EMS Personnel's Last Name
D08 02 EMS Personnel's Middle Name/Initial
D08 03 EMS Personnel's First Name
D08 04 EMS Personnel's Mailing Address
D08 05 EMS Personnel's City of Residence
D08 06 EMS Personnel's State
D08 07 EMS Personnel's Zip Code
D08 09 EMS Personnel's Home Telephone
D08 10 EMS Personnel's Email Address
D08 15 State EMS Certification Licensure Level
D08 17 State EMS Current Certification Date

(5) The following NEMSIS EMS data elements must be reported by ambulance services for each incident:

E01 01 Patient Care Report Number
E02 01 EMS Agency Number
E02 04 Type of Service Requested
E02 05 Primary Role of the Unit
E02 06 Type of Dispatch Delay
E02 07 Type of Response Delay
E02 08 Type of Scene Delay
E02 09 Type of Transport Delay
E02 10 Type of Turn-Around Delay
E02 12 EMS Unit Call Sign (Radio Number)
E02 20 Response Mode to Scene
E03 01 Complaint Reported by Dispatch
E03 02 EMD Performed
E05 02 PSAP Call Date/Time
E05 04 Unit Notified by Dispatch Date/Time
E05 05 Unit En Route Date/Time
E05 06 Unit Arrived on Scene Date/Time
E05 07 Arrived at Patient Date/Time
E05 09 Unit Left Scene Date/Time
E05 10 Patient Arrived at Destination Date/Time
E05 11 Unit Back in Service Date/Time
E05 13 Unit Back at Home Location Date/Time
E06 08 Patient's Home Zip Code

E06 11 Gender
E06 12 Race
E06 13 Ethnicity
E06 14 Age
E06 15 Age Units
E07 01 Primary Method of Payment
E07 34 CMS Service Level
E07 35 Condition Code Number
E08 05 Number of Patients at Scene
E08 06 Mass Casualty Incident
E08 07 Incident Location Type
E08 15 Incident ZIP Code
E09 01 Prior Aid
E09 02 Prior Aid Performed by
E09 03 Outcome of the Prior Aid
E09 04 Possible Injury
E09 11 Chief Complaint Anatomic Location
E09 12 Chief Complaint Organ System
E09 13 Primary Symptom
E09 14 Other Associated Symptoms
E09 15 Provider's Primary Impression
E09 16 Provider's Secondary Impression
E10 01 Cause of Injury
E11 01 Cardiac Arrest
E11 02 Cardiac Arrest Etiology
E11 03 Resuscitation Attempted
E12 01 Barriers to Patient Care
E12 19 Alcohol/Drug Use Indicators
E18 03 Medication Given
E18 08 Medication Complication
E19 03 Procedure
E19 05 Number of Procedure Attempts
E19 06 Procedure Successful
E19 07 Procedure Complication
E20 07 Destination Zip Code
E20 10 Incident/Patient Disposition
E20 14 Transport Mode from Scene
E20 16 Reason for Choosing Destination
E20 17 Type of Destination
E22 01 Emergency Department Disposition
E22 02 Hospital Disposition

(6) Emergency medical services must provide patient care report data to the department at least quarterly based on a calendar year or on a schedule submitted to and approved by the department.

(a) These quarterly data must be submitted to the department within 60 days of the end of the quarter as follows:

(i) data for EMS responses occurring in January through March must be submitted by June 1;

(ii) for responses in April through June by September 1;

(iii) for responses in July through September by December 1; and

(iv) for responses in October through December by March 1.

(b) The data may be submitted more frequently than quarterly.

(c) An emergency medical service with no EMS incidents during the quarter must report such to the department.

(7) Ambulance services are not required to submit other NEMSIS data elements, but may do so. Nontransporting units are not required to submit NEMSIS data, but may do so.

(8) Other software may be used to submit required data, but agencies must consult with the department before purchasing such software.

(9) The department adopts and incorporates by reference the National Emergency Medical Services Information System (NEMSIS) Uniform Pre-Hospital Emergency Medical Services Dataset, Version 2.2.1, (5/04/2010) published by the National Highway Traffic Safety Administration (NHTSA). A copy may be obtained at <http://www.nemsis.org/v2/downloads/datasetDictionaries.html> or from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(2)~~ (10) Trip Patient care reports may be reviewed by the department.

~~(3)~~ (11) Copies of trip patient care reports must be maintained by the service for a minimum of seven years.

~~(4) Each emergency medical service must provide the department with a quarterly report, on a form provided by the department, that specifies the number and types of runs occurring during the quarter, the type of emergency, and the average response times.~~

~~(5)~~ (12) Immediately or as soon as possible upon arrival at a receiving facility, but no later than 48 24 hours after the end of the patient transport, an ambulance service must provide a copy of the trip patient care report to the hospital that receives the patient.

(a) If a completed patient care report cannot be left at the facility at the end of the patient transfer to the licensed hospital, an abbreviated patient encounter form containing information essential to continued patient care shall be provided until a patient care record can be left.

(b) If an immediate response to another patient is required of an ambulance delivering a patient to a licensed hospital, a complete oral report on the patient being delivered will be given to the receiving facility until a patient encounter form or patient care record can be provided.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.104.101 and 37.104.212 pertaining to emergency medical services (EMS). These proposed rule amendments require

ambulance services to report minimum, electronic data to a web-based department database. In order for the department to evaluate emergency medical care and to determine whether the emergency health care system is functioning as intended, collecting information about the characteristics, activities, and results of emergency medical services operations is essential.

ARM 37.104.101

The department is proposing amendments to this rule in order to introduce new industry terms. The department is proposing a new definition to ARM 37.104.101, "EMS incident" in order to define what types of EMS calls need to be documented on a patient care report. The department is also proposing new definition, "patient care report." This definition is reasonably necessary to clarify that a patient record will be completed by each licensed EMS service on each EMS incident. It is also necessary as there currently is some confusion whether or not nontransporting units are required to complete a patient record.

ARM 37.104.212

EMS services inconsistently interpret which calls require a completed patient care report. For example, some services complete patient care records for patient refusal calls and other services do not. The proposed amendment to ARM 37.104.212(1) is reasonably necessary to assure that all services consistently collect patient care records on the same types of calls.

It is reasonably necessary to delete ARM 37.104.212(1)(a) through (1)(k) as they are too generic to be useful for data collection purposes, they are not compliant with the NEMSIS data standard, and they are better defined in these proposed rules which require collection of NEMSIS demographic and patient EMS sets. The new language for ARM 37.104.212(1)(a) is reasonably necessary to allow the department to assure that EMS services use written patient care records that meet current minimum data collection standards and medical record rules. The proposed new language in ARM 37.104.212(1)(b) and (c) clarify the procedure for documentation where there are multiple patient incidents or incidents in which multiple services respond.

The proposed amendment to ARM 37.104.212(2) is reasonably necessary to require that all EMS services will collect data as defined in these proposed rules and to provide for an effective date.

NEMSIS is the national standard for EMS data collection. ARM 37.104.212(3) is reasonably necessary to assure that all services collect data using the NEMSIS standard. Data collected using multiple definitions and standards would be useless for statewide data analysis and performance improvement. ARM 37.104.212(3)(a) is reasonably necessary in order to clarify that EMS services may collect data in the department-based software to be compliant with data collection requirements. ARM 37.104.212(3)(b) is reasonably necessary to clarify that EMS services using other

third-party software must upload their data into the department-based software to be compliant with data collection requirements.

ARM 37.104.212(4) specifies which NEMSIS demographic data set fields must be collected. These fields are primarily related to the EMS service licensing module of the department-based software and are necessary for administration and regulation of these service licenses.

Additionally, ARM 37.104.212(4) is being proposed to ensure that licensing records are more up-to-date. In the previous, paper-based licensing process, most service license information was only updated once every two years upon relicensure. As such, much of the information the department maintained about licensed EMS services was very outdated and inaccurate. With the new electronic system, information can be easily updated by the EMS on a regular basis and in any case, no less than annually.

Proposed amendment ARM 37.104.212(5) is a list of the minimum, national data elements described in the NEMSIS data dictionary. This rule requires ambulance services to report these minimum data elements on all incidents. No patient identifiers and only minimal service identifiers are included in the minimum data set. Services will only be able to access their own data for reports. Summary reports from other services and the EMS system will be produced by the department. As of 2011, 29 states are submitting data to the National EMS Database. It is the intent of the department to be one of 18 additional states seeking to submit state data in the next year. As in the state data system, the service data in the national database is nonidentifiable, except to the service. Like the department system, the national database allows the service to view detailed reports about their own service and only summary reports of other services reporting into the system.

ARM 37.104.212(6), (a), (b), and (c) are necessary in order to establish a minimum schedule for data to be submitted into the department's data system. This rule also requires services that have no runs during the quarter to report such to the department so that compliance with these rules can be monitored.

The department's data system accommodates entry of many more data elements than the minimum elements described above. ARM 37.104.212(7) clarifies that services may optionally enter additional data and, as such, have access to more complete demographic and statistical reports in the system.

ARM 37.104.212(8) is reasonably necessary to assure that EMS services that choose to purchase or develop their own data systems will use software that is NEMSIS compliant and capable of uploading data into the department's data software. Without this requirement, services may invest considerable time and funds obtaining a system that is not compatible and would not allow them to meet the data collection requirements of these rules.

ARM 37.104.212(10) is reasonably necessary to adopt the NEMESIS national data standard. This standard specifies data definitions, electronic format, and other standards which ensures that all services collect data the same way.

ARM 37.104.212(2) and (3) have been renumbered to ARM 37.104.212(11) and (12), and are being updated to the more current terminology of the industry.

The current rule language in ARM 37.104.212(4) is being deleted. This language has been replaced and clarified by several other sections of these proposed rules.

ARM 37.104.212(5) is being renumbered to ARM 37.104.212(13). The department is proposing amendment to ARM 37.104.212(13) as it is necessary to resolve cases in which EMS leaves a patient at a hospital but does not also relay essential information about the patient that is necessary for continuity of care. The requirement for submission of a patient care report to the hospital has been changed from 48 hours to 24 hours. There are essential uses of EMS data in healthcare facilities and there have been numerous comments from field providers and hospitals that 24 hours is more than adequate for submission of this very important information.

ARM 37.104.212(13)(a) is necessary as information that EMS has collected about a patient is essential to the ongoing care of the patient after they leave. In cases in which EMS cannot leave a patient care record at the hospital at the conclusion of the call, this rule requires services to leave an "encounter form." This form provides essential information about the patient to the hospital and helps assure continuity of care in the absence of a complete patient care record.

ARM 37.104.212(13)(b) requires a service that may need to leave immediately due to backup of multiple calls still needs to provide at least a verbal report of this essential patient information before they leave the hospital.

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., December 8, 2011.

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/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State October 31, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to renewal fees for mortgage brokers, mortgage lenders, and mortgage loan originators, and the amendment of ARM 2.59.1708 concerning table funding) NOTICE OF ADOPTION AND AMENDMENT))))))

TO: All Concerned Persons

1. On September 22, 2011, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-463 regarding the proposed adoption and amendment of the above-stated rules at page 1853 of the 2011 Montana Administrative Register, issue number 18.

2. No comments were received.

3. The department has adopted New Rule I (ARM 2.59.1738) exactly as proposed.

4. The department has amended ARM 2.59.1708 exactly as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State October 31, 2011.

BEFORE THE TRANSPORTATION COMMISSION
STATE OF MONTANA

In the matter of the transfer of ARM) NOTICE OF TRANSFER
18.7.301 through 18.7.336 pertaining to)
motorist information signs)

TO: All concerned persons

1. The Department of Transportation transfers the above-stated rules pertaining to outdoor advertising control, motorist information signs, to the Right-of-Way Chapter of the Department of Transportation rules, Title 18, Chapter 6.

2. This transfer is required because the Department of Transportation has transferred the Outdoor Advertising Control function and responsibilities of the motorist information sign program to its Right-of-Way Bureau, from its Maintenance Bureau.

3. The transferred rules are assigned the following numbers under the Department of Transportation:

<u>OLD</u>	<u>NEW</u>	
18.7.301	18.6.401	POLICY STATEMENT
18.7.302	18.6.402	DEFINITIONS
18.7.303	18.6.403	BUSINESS ELIGIBILITY FOR SPECIFIC INFORMATION SIGNS
18.7.304	18.6.404	LOCATION OF QUALIFIED BUSINESSES FOR SPECIFIC INFORMATION SIGNS
18.7.305	18.6.405	SPACING AND LOCATION OF SPECIFIC INFORMATION SIGNS
18.7.306	18.6.406	SPECIFIC INFORMATION SIGN DESIGN AND ORDER
18.7.307	18.6.407	SUPPLEMENTAL DIRECTIONAL SIGNS
18.7.308	18.6.408	TRAILBLAZER SIGNS
18.7.309	18.6.409	BUSINESS SIGNS
18.7.320	18.6.420	TOURIST-ORIENTED DIRECTIONAL SIGNS-GENERAL
18.7.321	18.6.421	TOURIST-ORIENTED DIRECTIONAL TRAILBLAZER SIGNS
18.7.322	18.6.422	DESIGN OF TOURIST-ORIENTED DIRECTIONAL SIGNS AND PANELS
18.7.323	18.6.423	TOURIST-ORIENTED DIRECTIONAL SIGN INSTALLATION
18.7.330	18.6.430	APPLICATION PROCEDURE AND NOTICE
18.7.331	18.6.431	LEASE AGREEMENTS
18.7.332	18.6.432	MAINTENANCE

18.7.333	18.6.433	REMOVAL OF SIGNS AND COVERING SEASONAL SIGNS
18.7.334	18.6.434	GENERAL SERVICE SIGNS
18.7.335	18.6.435	FEEES FOR POSTING ON SPECIFIC INFORMATION SIGNS, PANELS AND TOURIST-ORIENTED DIRECTIONAL SIGNS
18.7.336	18.6.436	OVERSIGHT OF THE FRANCHISEE BY THE DEPARTMENT

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Timothy W. Reardon
Timothy W. Reardon
Director
Department of Transportation

Certified to the Secretary of State October 31, 2011

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) CORRECTED NOTICE OF
20.7.511 pertaining to expansion of) AMENDMENT
existing center

TO: All Concerned Persons

1. On July 28, 2011, the Department of Corrections published MAR Notice No. 20-7-49 pertaining to a public hearing on the proposed amendment of the above-stated rule at page 1339 of the 2011 Montana Administrative Register, Issue Number 14. On September 22, 2011, the department published the notice of amendment at page 2030 of the 2011 Montana Administrative Register, Issue Number 18.

2. This notice is being submitted to correct a typographical error in the proposal notice that was not shown as interlined and underlined in the adoption notice. The section in its corrected form, reads as follows, deleted matter interlined, new matter underlined:

20.7.511 EXPANSION OF EXISTING CENTER (1) through (2)(c) remain as amended.

(3) Before the department executes a contract amendment for an expansion of more ~~that~~ than 25 percent but less than 50 percent, the department must give notice to the public and to current treatment facility or program providers of its intent to expand the existing prerelease contract capacity.

(a) through (6) remain as amended.

3. The replacement page for this corrected notice was submitted to the Secretary of State on September 30, 2011.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State October 31, 2011.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
23.6.105, 23.6.108, and 23.6.109)	
pertaining to removal of a member of the)	
Tow Truck Complaint Resolution)	
Committee, removing references to the)	
Public Service Commission and satellite)	
operations, clarifying requirements)	
regarding insurance, requirements for)	
safety certification of tow trucks and)	
extending the time period for safety)	
certification of tow trucks)	

TO: All Concerned Persons

1. On September 8, 2011, the Department of Justice published MAR Notice No. 23-6-221, pertaining to the proposed amendment of the above-stated rules at page 1783 of the 2011 Montana Administrative Register, Issue Number 17.

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

3. No comments or testimony regarding the substance of the proposed rule changes were received.

By: /s/ Steve Bullock
 STEVE BULLOCK
 Attorney General
 Department of Justice

/s/ J. Stuart Segrest
 J. STUART SEGREST
 Rule Reviewer

Certified to the Secretary of State October 31, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.114.501 architect)
examination, 24.114.1401 and)
24.114.1402 landscape architect)
applications, education and)
experience)

TO: All Concerned Persons

1. On August 11, 2011, the Board of Architects and Landscape Architects (board) published MAR notice no. 24-114-33 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1445 of the 2011 Montana Administrative Register, issue no. 15.

2. On September 1, 2011, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the September 9, 2011 comment deadline.

3. The board has amended ARM 24.114.501, 24.114.1401, and 24.114.1402 exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, 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 31, 2011

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.141.405 fee schedule and) ADOPTION
the adoption of NEW RULE I)
nonroutine applications)

TO: All Concerned Persons

1. On July 28, 2011, the State Electrical Board (board) published MAR notice no. 24-141-35 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1347 of the 2011 Montana Administrative Register, issue no. 14.

2. Due to an error, the proposal notice was reissued and on August 25, 2011, the board republished MAR notice no. 24-141-35 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1588 of the 2011 Montana Administrative Register, issue no. 16

3. On September 23, 2011, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Two comments were received by the October 3, 2011, deadline.

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

COMMENT 1: One commenter asserted that the proposed fee increases in ARM 24.141.405 will generate more than \$90,000 annually in additional board revenue, and opined that at a time when electrical work is down, the board's administrative workload should be too. The commenter stated that raising fees to cover less administrative work when contractors are lowering their rates seems wrong and asked the board to not increase the fees. The commenter requested documentation to explain the increase if the board does require more administrative support.

RESPONSE 1: The board currently has less than \$10,000 in reserve and without a fee increase, the board will be forced to borrow money to cover its appropriation. The board's economic projections estimate that this fee increase should protect licensees from fee increases in the near future. The board is statutorily required to set and maintain fees commensurate with costs, and the costs of doing business have risen substantially, even in this time of economic downturn. The board notes that the fee increases proposed back in 2010 were actually reduced after the board considered public comment, even though the board's economic projections at the time clearly showed that further increases would be necessary.

COMMENT 2: One comment asserted that a 35 percent increase in fees is out of line and suggested a little "belt-tightening" from the board.

RESPONSE 2: The board appreciates all comments made during the rulemaking process and notes that the fee increases are necessary to keep fees commensurate with costs.

5. The board has amended ARM 24.141.405 exactly as proposed.
6. The board has adopted NEW RULE I (24.141.509) exactly as proposed.

STATE ELECTRICAL BOARD
JACK FISHER, 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 31, 2011

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.207.505 and 24.207.506)
qualifying education requirements for)
licensed real estate appraisers and)
residential certification)

TO: All Concerned Persons

1. On July 28, 2011, the Board of Real Estate Appraisers (board) published MAR notice no. 24-207-32 regarding the proposed amendment of the above-stated rules, at page 1362 of the 2011 Montana Administrative Register, issue no. 14.
2. No comments were received by the August 25, 2011 comment deadline.
3. The board has amended ARM 24.207.505 and 24.207.506 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS
JENNIFER MCGINNIS, 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 31, 2011

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.101.413 renewal dates and)
requirements, 24.207.401 fees, and)
the adoption of NEW RULES I)
definitions and II through IV appraisal)
management)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On August 25, 2011, the Department of Labor and Industry (department) published MAR notice no. 24-207-33 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1610 of the 2011 Montana Administrative Register, issue no. 16.

2. On September 15, 2011, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the September 23, 2011, deadline.

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

ARM 24.207.401 and NEW RULE II(7)

COMMENT 1: Several commenters contended there is no statutory authority to base renewal fees on the number of appraisal engagements. Some commenters objected and stated that application costs would not be affected by business volume and fees should be commensurate with costs.

RESPONSE 1: The board has authority to adopt rules to implement and administer the provisions of Montana Code Annotated Title 37, chapter 54, to receive and review applications for licensure, and issue licenses to set and enforce standards, and adopt and enforce rules governing licensing, and to set fees commensurate with costs. The board anticipates that those real estate appraisal management companies (AMCs), that are involved in more transactions in Montana will generate higher costs than those which do little work in the state.

States already regulating AMCs have noted an increase in compliance costs associated with regulating these entities. The board expects that the majority of such costs will be associated with AMCs doing the most work in Montana. As the commenters observed, the board is required to set fees commensurate with costs and, therefore, the board determined that it had the authority to set renewal fees based upon the volume of work performed in the state.

ARM 24.207.401

COMMENT 2: One commenter suggested that if the board replaced the variable renewal fee with a uniform fee, there would be no need for a fee to report the AMC's number of engagements.

RESPONSE 2: The board concluded that having two categories of renewal fees will allow the board to ensure that fees for regulating AMCs will reflect the costs incurred in regulating them. Board staff will need to spend more time monitoring regulatory compliance of AMCs that do more work and, therefore, those AMCs that do the most work in the state should pay a higher renewal fee.

It is reasonable to charge a fee to report a firm's number of engagements. Firms with no Montana activity prior to renewal would report no activity and would not pay the additional reporting fees. For firms with engagements in Montana, the board will incur greater compliance monitoring costs, and those increased costs are reflected in the engagement reporting fee.

COMMENT 3: Several commenters stated that there is no statutory authority to require AMCs to file appraiser panel lists, and therefore, no authorization to charge a fee for filing or changing appraiser panel lists.

RESPONSE 3: The board determined it is necessary to request appraiser panel lists to verify that AMCs have complied with the requirements of 37-54-501(2)(f)-(h), MCA. The appraiser panel lists will assist the board in carrying out its audit function pursuant to 37-54-512, MCA. In addition, the board has the authority to request appraiser panel lists under 37-1-131, 37-1-134, 37-54-105, and 37-54-501(2)(l), MCA.

COMMENT 4: Numerous commenters objected that fees were higher than the average of fees charged by other states.

RESPONSE 4: The board is making every effort to ensure that fees charged to AMCs reflect the costs incurred to register and regulate them. The board will abate or reduce fees as required by law if collections exceed costs.

COMMENT 5: One commenter found the fees for minor changes, such as changes to fax numbers and electronic mail addresses, to be excessive.

RESPONSE 5: The fees proposed are consistent with what the board charges other licensees to update similar information.

COMMENT 6: One commenter noted that there is currently an annual fee for each appraiser on the AMC's appraiser panel, and asserted that the registry fee would be redundant and increase costs to consumers.

RESPONSE 6: The board only expects to charge the national registry fee required for each appraisal panel member of an AMC. If the final federal regulations promulgated by the Appraisal Subcommittee (ASC) do not require AMCs to pay a national registry fee for each appraiser on the AMC's panels, the board will not

collect the fee. To the extent that excess or redundant fees are collected, they will be abated or refunded.

COMMENT 7: One commenter stated that the board should not renew all AMCs on a single renewal date. The commenter asserted one renewal will be difficult for board staff to process all at once and the AMCs will not receive a full year of registration when they apply or renew toward the end of the renewal period.

RESPONSE 7: Historically, the board has found it much simpler to have all renewal and board processes occur at the same time.

COMMENT 8: One commenter asked that the board provide additional justification for the fees charged.

RESPONSE 8: The board believes the proposed fees are adequately justified as described in the reasonable necessity statements of the proposal notice and in the responses to specific comments described herein.

COMMENT 9: Several commenters suggested it is premature to begin collecting the annual registry fee before the ASC completed its work.

RESPONSE 9: The board will only collect the national registry fee as necessary to comply with federal requirements, which have not yet been finalized.

COMMENT 10: One commenter requested that the board cap audit charges so that AMCs are not confronted with unexpected expenses.

RESPONSE 10: The board must charge fees commensurate with costs. The board anticipates that most routine audit expenses will be covered by the AMC licensing fees. In the event that audit costs are not covered by licensing fees, the costs should be paid by the AMC, rather than by all board licensees.

COMMENT 11: One commenter asked that the board include the cost of performing audits in the license application and renewal fees.

RESPONSE 11: The board anticipates that routine audit costs will be covered by licensing fees, but extraordinary costs will be passed on to the AMC under review.

NEW RULE I

COMMENT 12: One commenter asked the board to clarify whether the information that must be provided about engagements is a number or more detailed information.

RESPONSE 12: Only the number of engagements must be reported in relation to the renewal process. The board may request more detailed information as part of an audit or disciplinary process.

COMMENT 13: One commenter noted that information about engagements is proprietary, and requiring this information of AMCs will result in more records requests, which will be burdensome for the board.

RESPONSE 13: Under 2-6-102(3), MCA, trade secrets included within public records are protected from disclosure. Pursuant to 30-14-402(4), MCA, trade secrets include information that derives actual or potential economic value from not being generally known to other persons who could obtain economic value from its disclosure or use. The board determined that the number of engagements performed by an AMC would constitute a trade secret, unless the firm has not made reasonable efforts to maintain the secrecy of this information.

COMMENT 14: Several commenters stated that filing updated appraiser panel lists will be time consuming and expensive for both the board and AMCs.

RESPONSE 14: The board determined that the requirement to update appraiser panel lists will encourage AMCs to maintain a stable list of qualified appraisal panel members year-round, instead of on an as-needed basis. Submission of the list will also encourage appraiser independence, will aid in the audit process, and will ensure that appraisers are removed only for cause. The requirement to file amendments should not discourage changes when appropriate and necessary.

NEW RULE II

COMMENT 15: One commenter contended the board lacks the authority to request license verification from AMCs.

RESPONSE 15: The board concluded that it is necessary to request information about licensure in other states to ensure adequate protection of the public. According to 37-1-316(7) and 37-1-137, MCA, the board is permitted to deny a license based upon disciplinary actions in other jurisdictions. Further, under 37-54-501(2)(I), MCA, the board has the authority to request information that is reasonably necessary to implement AMC registration. The board notes that all other licensees must provide information regarding licensure status in other states. The board is authorized to request verifications from AMCs.

NEW RULE II(1)(h)

COMMENT 16: Several commenters requested the board eliminate or modify the license verification requirement, asserting that most states are not yet prepared to provide them.

RESPONSE 16: The board has proposed these requirements now to prepare for the eventuality that all states will regulate AMCs. Until such time, the board will be flexible regarding the information required to verify licensure in states where it is required.

COMMENT 17: One commenter stated that New Rule II is overly burdensome and may cause delays in licensing, as AMCs will be required to obtain verifications from

all states in which the company is licensed. Most AMCs will be licensed in many, if not all, of the 50 states.

RESPONSE 17: Under 37-1-304(2), MCA, the board may issue a license prior to verification by other states when an applicant has requested verification and certified that the applicant is not subject to pending discipline in the other state. The board is confident there will be minimal delays in processing when other states are not able to verify licensure status in a timely manner.

NEW RULE II(1)(i)

COMMENT 18: Multiple commenters stated the requirement to report unprofessional conduct and legal actions against AMC owners, officers, directors, and controlling and contact persons is overly broad and vague. The commenters asked that this section be more narrowly tailored to match the statutory language from HB 188.

RESPONSE 18: The board agrees with the commenter and is amending the rule to limit this reporting requirement accordingly.

COMMENT 19: One commenter argued that the board should request only that information that is material to how an AMC conducts its business.

RESPONSE 19: The actions of ten percent owners, controlling persons, and contact persons can be an indicator of the performance of a company that acts through these individuals. The board concluded that acts which may constitute unprofessional conduct should be reported as part of the application and renewal process to allow the board to carry out its duty to protect the health, safety, and welfare of the public.

COMMENT 20: One commenter alleged the board does not have statutory authority to request detailed information regarding an AMC's business practices.

RESPONSE 20: The board has authority to investigate an AMC's practices pursuant to 37-1-137, 37-1-316(7), and 37-54-501(2)(I), MCA.

NEW RULE II(3), (4), and (5)

COMMENT 21: Several commenters argued that New Rule II does not allow AMCs adequate time to complete a restructuring of management, find a replacement contact person, and provide information to the board. The commenters also stated that the new rule imposes various deadlines for compliance, which creates confusion, and requested a single deadline.

RESPONSE 21: The board agrees with the commenters and is amending the rule to extend the time period to 30 days for all of the activities described therein.

COMMENT 22: One commenter suggested that re-registration should not be required, unless there is a change of majority ownership.

RESPONSE 22: The board does not intend to require that AMCs go through the registration process again when there is a change of ownership. Instead, an AMC that undergoes significant changes, such as in the business structure of the AMC or its ownership, is required to provide updated information to the board.

The board determined that the best method of reporting this information would be to have the AMC complete an application and pay any of the applicable fees under ARM 24.207.401(2)(b)-(e) and (j). The information in the updated application could be used to ensure that the restructured AMC remains compliant with the applicable statutes and administrative rules.

COMMENT 23: One commenter requested clarification as to which changes in business structure would require reporting to the board.

RESPONSE 23: The board responded that this rule was intended to require reporting of all changes in an AMC's designated contact person. The board will consider amending this subsection in the future if additional clarification is required.

NEW RULE II(6)

COMMENT 24: Several commenters noted that an AMC may not be aware of all pending or current investigations against it and its controlling persons. They suggested the language in this section should be amended to apply only to known and completed disciplinary actions or investigations.

RESPONSE 24: The board responded that if a person was not aware of an investigation or complaint, it could not be expected to report its existence. Thus, only known complaints, investigations, and disciplinary actions must be reported.

COMMENT 25: Multiple commenters maintained that only completed disciplinary actions should be reported, because the ASC web site does not include pending actions. As the statute authorizes consultation of the ASC web site regarding this information, the proposed rules are overly broad and burdensome.

RESPONSE 25: The pending language pertains only to complaints or disciplinary actions in process against the AMC itself, its controlling persons, and contract persons. Pending actions against members of an AMC's appraiser panel would not be reported by the AMC. The individual licensed appraisers on the panel would report actions pending against them at the time they renew their license.

COMMENT 26: Several commenters contended the board should not require reporting of complaints against other licensed individuals affiliated with the company. The board should limit reporting to completed disciplinary actions against an AMC itself and its controlling persons. This requirement will impose large compliance costs for the AMC if it is required to report on actions involving any AMC employee or independent contractor, rather than being limited to those specified in the statute.

RESPONSE 26: Section (6) will apply mainly to AMCs and their contact and controlling persons. The actions of other individuals who are affiliated with an AMC and licensed as appraisers may affect consumers in Montana and, therefore, disciplinary actions against those appraisers should be reported to the board. AMCs are not required to report pending actions against appraiser panel members and, therefore, the impact of this rule should be limited.

NEW RULE II(7)

COMMENT 27: One commenter objected that it was not clear how an AMC should calculate its number of engagements.

RESPONSE 27: The board explained that the number of engagements could be calculated by determining the number of times an appraiser completes an assigned appraisal. The completion of an appraisal assignment is the critical factor in this determination. Thus, if an appraisal is assigned to one appraiser, then reassigned to another appraiser who completes the assignment, there would be only one assignment. An engagement that is assigned during one licensing year and completed in another licensing year would count only once, during the year when the assignment was completed.

COMMENT 28: Some commenters noted that much of the information about an AMC's engagements is private and proprietary. Therefore, the board should only collect information about the AMC's number of engagements.

RESPONSE 28: The board is not interested in collecting information about each engagement as part of the renewal process. AMCs may be asked to provide more detailed information about engagements as part of the board's complaint or audit processes.

COMMENT 29: One commenter sought clarification that an AMC could fulfill its requirement to report engagements at the time of renewal.

RESPONSE 29: The board agreed that engagements could be reported on the AMC's renewal application.

NEW RULE II(8)

COMMENT 30: Numerous commenters suggested that New Rule II(8) and New Rule III(1) and (2) are not authorized by HB 188 and should be removed.

RESPONSE 30: The board determined that it was necessary to request appraiser panel lists to verify that AMCs have complied with the requirements of 37-54-501(2)(f)-(h), MCA. The appraiser panel lists will assist the board in carrying out its audit function pursuant to 37-54-512, MCA. In addition, the board has the authority to request appraiser panel lists under 37-1-131, 37-1-134, 37-54-105, and 37-54-501(2)(l), MCA.

COMMENT 31: One commenter suggested that the board change the ten-day notification period to thirty days, because it would allow more time for complications in the engagement process to be resolved before the addition of the appraiser is reported to the board.

RESPONSE 31: The board notes that a primary purpose of AMC registration is to encourage firms to maintain an ongoing and stable appraiser panel list of qualified licensees, and concluded that the ten-day notification requirement will encourage AMCs to maintain that stability.

COMMENT 32: One commenter stated that the board should limit the times that an AMC should update appraiser panel lists to just the period when an AMC is applying for licensure or renewing its registration.

RESPONSE 32: The board notes that an AMC may provide information about its appraisal panel at the time of application or renewal without incurring additional fees. Panel amendments will result in additional fees only when they take place outside of the application or renewal process. Additionally, off-cycle panel amendments due to appraisers' documented violations of the Uniform Standards of Professional Appraisal Practice (USPAP) would not result in additional charges to the AMC.

COMMENT 33: One commenter opined that since Montana is unique in requiring appraiser panel lists, complying with the requirements of this section will impose a major compliance and financial burden on AMCs.

RESPONSE 33: AMCs could be required to report changes to their appraiser panel lists as many as eleven times annually or only upon their annual renewal. Except for cases where appraisers are removed for USPAP violations, AMCs control how often their appraiser panel lists are modified and are in a position to minimize their own regulatory burden.

NEW RULE II(8) and III

COMMENT 34: One commenter speculated that the fee for updating an appraiser panel list might be a disincentive for an AMC to ensure that its list has only the best and most qualified appraisers.

RESPONSE 34: The board concluded that this fee will encourage AMCs to maintain stable lists of qualified appraisers. Appraisers can adjust the panel lists annually and appraisers not meeting minimum standards for appraisal practice can be removed from the list, both at no cost. The board will incur costs when appraiser panel lists are modified, so this fee will allow the board to recoup those costs and encourage AMCs to amend their panel only when it is necessary and appropriate.

COMMENT 35: Several commenters indicated that it would be too burdensome and expensive for AMCs to update their appraiser panel lists as often as required by the board.

RESPONSE 35: The board believes that the amendment fee will cover the cost of documenting changes in the panel. AMCs have the ability to control how often they are charged to amend their panel lists by limiting amendments to cases where changes are necessary.

COMMENT 36: One commenter objected that the exception for removing appraisers from the panel for USPAP violations was too narrow. The commenter suggested the exception should allow panel members to be removed for other reasons, such as other violations of state or federal law, upon the request of the appraiser, the expiration of the appraiser's license, etc.

RESPONSE 36: The board determined that most violations of state and federal law will also be USPAP violations, and in those circumstances, the AMC will be able to amend its panel without paying a fee. The board agrees that AMCs should be permitted to amend their appraiser panel lists without being charged when an appraiser requests removal from the panel or when an appraiser's license expires. The board may consider this change in a future rulemaking project.

NEW RULE III

COMMENT 37: One commenter requested that the board more narrowly tailor the requirement to provide information about an AMC's appraiser panel to reflect the requirements of HB 188.

RESPONSE 37: The board determined that it was necessary to request appraiser panel lists to verify that AMCs have complied with the requirements of 37-54-501(2)(f)-(h), MCA. The board contends that this requirement will impose a minimal compliance burden on AMCs. At any given time, an AMC knows who is on its panel. AMCs are merely being asked to provide this information during the application and renewal process, and whenever the panel is changed. AMCs are in complete control over how often their panel changes and, therefore, how often they will have to report to the board.

COMMENT 38: Several commenters stated that filing updated appraiser panel lists would be time consuming and expensive for both the board and AMCs.

RESPONSE 38: The board determined that the requirement to update appraiser panel lists would encourage AMCs to maintain a stable list of qualified appraisal panel members year-round instead of on an as-needed basis. It will also encourage appraiser independence. Furthermore, submission of the list will aid in the audit process and ensure that appraisers are removed only for cause. The requirement to file amendments should not discourage changes when appropriate and necessary.

COMMENT 39: Some commenters noted that appraiser panel lists are trade secrets of the AMC, which must be protected from disclosure. If the board collects this information, it could lead to additional costs to respond to information requests and to take appropriate precautions to protect this information.

RESPONSE 39: The board notes that under 2-6-102(3), MCA, trade secrets included within public records are protected from disclosure. Pursuant to 30-14-402(4), MCA, trade secrets include information that derives actual or potential economic value from not being generally known to other persons who could obtain economic value from its disclosure or use. The board concluded that an AMC's appraiser panel list would constitute a trade secret, unless the firm has not made reasonable efforts to maintain the secrecy of this information.

COMMENT 40: One commenter suggested that, rather than collecting each AMC's appraiser panel list, the board should require that AMCs certify the maintenance of a list of its panel members in accordance with HB 188 and that any removals of appraisers are done in accordance with the applicable statutes and regulations.

RESPONSE 40: The process proposed by the board will be the most efficient in terms of the audits mandated by 37-54-512, MCA. If an AMC can accurately make the certifications recommended by the commenter, providing an appraiser panel list to the board should be as easy as making the certification.

COMMENT 41: One commenter observed that individual appraisers may want to keep their lists of customers secret.

RESPONSE 41: The board will maintain the confidentiality of appraiser panel lists to protect the trade secrets and privacy interests of both the appraisers and AMCs.

NEW RULE IV

COMMENT 42: Some commenters objected that the record-keeping requirements were beyond what was authorized by HB 188.

RESPONSE 42: The board is authorized to inspect the record-keeping documentation described in 37-54-513, MCA, and any other documentation the board requests to validate compliance with Title 37, chapter 54, MCA. The records that AMCs will be required to keep will allow the board to verify the AMC's compliance with all of the mandates imposed by HB 188, including whether their required certifications were accurate, whether they have complied with the appraiser independence provisions, and whether the AMC has committed any form of unprofessional conduct described in 37-54-519, MCA. When viewed in the context of the overall regulatory scheme for AMCs, the record-keeping requirements proposed in this rule are clearly authorized and necessary to carry out the board's regulatory duties.

NEW RULE IV(1)(a)

COMMENT 43: Some commenters questioned whether it was technologically feasible for AMCs to maintain complete, locked PDF files of all appraisals.

RESPONSE 43: The board researched this issue prior to proposing New Rule IV and found that it is possible with current technology to maintain the required

information in locked PDF files. If it proves impossible due to changes in technology or for other reasons, the board will amend the rule.

NEW RULE IV(1)(g)

COMMENT 44: One commenter stated the requirement to keep all agreements with panel members was beyond what is allowed under HB 188.

RESPONSE 44: The board responded that agreements with appraisal panel members must be kept in order to verify that AMCs are not violating the appraiser independence provisions of 37-54-514, MCA, or other statutes pertaining to the relationship between appraisers and AMCs.

COMMENT 45: One commenter alleged that privacy concerns would prevent AMCs from disclosing some portions of agreements between appraiser panel members and AMCs.

RESPONSE 45: The board notes that agreements between AMCs and appraisers will only come into the possession of the board as a result of audit or compliance processes. This information will be protected by the board as private or trade secret information.

NEW RULE IV(1)(f) and (h)

COMMENT 46: One commenter observed that if the board requested the kind of information that AMCs are required to keep under this rule, the board should not disclose this information as it includes protected trade secrets and confidential client information.

RESPONSE 46: The board agreed that to the extent that the information described in New Rule IV(1)(f) and (h) is included private and/or trade secret material, the board would not be required to disclose it under public record and right to know laws.

NEW RULE IV(1)(h)

COMMENT 47: One commenter requested clarification regarding what owner information will need to be provided.

RESPONSE 47: The board concluded that AMCs should maintain records demonstrating that ten percent owners meet the requirements of 37-54-503, MCA, and documenting the owners' ownership interests in the company. Information related to prior criminal, disciplinary, and other legal actions against ten percent owners will be considered as part of the background examination mandated in 37-54-503(2), MCA. This information, as well as documentation regarding new actions against these individuals, should be kept as part of the AMC's records under the proposed rule.

NEW RULE IV(1)(i)

COMMENT 48: One commenter claimed the board should not require verifications of licensure for anyone other than appraiser panel members because HB 188 only allows the board to request this information from panel members.

RESPONSE 48: Under 37-54-503, MCA, the board must verify that ten percent owners have not had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered, unless the license or certificate was subsequently granted or reinstated. Contact persons must be licensed pursuant to 37-54-504, MCA. According to 37-54-505, MCA, an AMC may not employ a person whose license was refused, denied, or canceled if that person has any responsibility for ordering appraisal reports, providing quality control examinations, or communicating with appraisers about appraisal deficiencies. Any individuals who are performing the annual appraisal reviews of appraisers on the AMC's appraiser panel required by 37-54-511, MCA, would need to be licensed in order to qualify to perform the review.

The board determined that licensing information must be kept for those who must be licensed in order to satisfy the provisions of HB 188 and those who must not be disqualified from their position as a result of prior denial or revocation of an appraisal license. For all of these individuals, either verification of licensure or the absence of action against a license is necessary.

NEW RULE IV(1)(j) and (k)

COMMENT 49: One commenter stated that the board needed to specify what proper documentation must be kept for quality control examinations and annual appraisal reviews.

RESPONSE 49: The board explained that AMCs must keep every written document pertaining to a quality control examination or an appraisal review. Much of this information is specifically detailed in the USPAP.

COMMENT 50: One commenter stated that, in general, the proposed rules were overly burdensome for both AMCs and the board.

RESPONSE 50: This comment has been addressed in previous responses.

4. The department has amended ARM 24.101.413 exactly as proposed.
5. The board has amended ARM 24.207.401 exactly as proposed.
6. The board has adopted NEW RULE I (24.207.406), NEW RULE III (24.207.1504), and NEW RULE IV (24.207.1507) exactly as proposed.
7. The board has adopted NEW RULE II (24.207.1501) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT COMPANIES (1) through (1)(h) remain as proposed.

(i) provide specific information requested by the board regarding the business practices, any civil, criminal, or administrative actions, ethical practice of the appraisal management company's individual owners of more than ten percent of the company, ~~corporation officers, directors,~~ and controlling and contact persons as part of the background examination pursuant to [HB 188 section 5].

(2) remains as proposed.

(3) When the ownership or business structure of a currently registered appraisal management company changes, the appraisal management company is required to complete a new appraisal management company registration application and pay the appropriate fees within ~~ten~~ 30 days of the change. Failure to notify and submit the appropriate application and fees to the board within ~~the ten~~ 30 days shall be cause for suspension or revocation of the appraisal management company's registration.

(4) When the individual designated as a controlling person by the registered appraisal management company is no longer employed, appointed, or contractually authorized by the appraisal management company to serve as the controlling person, the appraisal management company must submit an application to redesignate the controlling person. The application to redesignate the controlling person must be made on a form prescribed by the department, accompanied by the appropriate fees, and submitted to the board office within ~~20~~ 30 days. Failure to notify and submit the appropriate application and fees to the board within ~~20~~ 30 days shall be cause for suspension or revocation of the appraisal management company's registration.

(5) When the individual designated as the contact person by the registered appraisal management company is no longer the contact person and is not the designated owner or the controlling person of the appraisal management company, the appraisal management company must submit an application for change of contact person prescribed by the department and the appropriate fees to the board office within ~~ten~~ 30 days. Failure to notify and submit the appropriate application and fees to the board within ~~ten~~ 30 days shall be cause for suspension or revocation of the appraisal management company's registration.

(6) through (9) remain as proposed.

/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 31, 2011

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.25.801, 36.25.802,)
36.25.805, 36.25.808, 36.25.809, and)
36.25.811 pertaining to the land)
banking program)

To: All Concerned Persons

1. On August 25, 2011, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-151 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1618 of the 2011 Montana Administrative Register, Issue No. 16.

2. No written comments or oral testimony pertaining to the rulemaking were received.

3. The department has amended ARM 36.25.801, 36.25.802, 36.25.805, 36.25.808, and 36.25.809 as proposed.

4. The department has further reviewed the proposed amendments to ARM 36.25.811 and determined that the proposed language in (3) was redundant since inter-entity loans are already authorized under 17-2-107, MCA. Also, the department has put in language to account for the eventual expiration of the land banking program. The department believes that none of these amendments substantially change the rule as proposed.

5. The department has amended ARM 36.25.811 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.25.811 THE LAND BANKING TRUST FUNDS

(1) through (2) remain as proposed.

(3) Proceeds from the sale of land from trusts may be pooled to acquire tracts of land to add to state trust land, if approved by the board after consultation with the affected beneficiaries. ~~Using funds from multiple trusts allows the department to acquire land for more than one trust or to ultimately purchase land for a single trust if sufficient funds are not available from that trust at closing.~~

~~(a) Where land has been acquired in common for several trust beneficiaries, and the department wishes to transfer the beneficial ownership of the land to a single trust, or another trust, the department may do so by purchasing the property interests held for the other trust or trusts by remitting to their trust accounts:~~

~~(i) the initial purchase funds attributable to their undivided ownership in the land; and~~

~~(ii) the interest that would have accrued to the divesting trust or trusts as invested with the Board of Investment (BOI) short-term investment pool (STIP). The interest shall be paid from the date that the parcel was acquired for the benefit of a trust or trusts up to the date of the transfer of the beneficial ownership by the department to another trust or trusts and the transfer of funds from the acquiring trust account(s) to the divesting trust account(s); provided that,~~

~~(iii) such trust transfer purchases shall be restricted to a one-year period of time after the initial acquisition of the land for two or more trust beneficiaries.~~

(4) When land banking expires, any proceeds remaining in the state trust land bank fund must be expended by the tenth year after the effective date of each sale.

(5) Any remaining proceeds must be deposited in the appropriate permanent trust fund.

(4) remains as proposed but is renumbered (6).

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director

/s/ Tommy Butler
Tommy Butler
Rule Reviewer

Certified to the Secretary of State October 31, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.1101, 37.86.1102,)
37.86.1105, and 37.86.1106)
pertaining to Medicaid pharmacy)
reimbursement)

TO: All Concerned Persons

1. On September 8, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-557 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1805 of the 2011 Montana Administrative Register, Issue Number 17.

2. The department has amended ARM 37.86.1101, 37.86.1102, and 37.86.1106 as proposed.

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (2)(a) remain as proposed.

(b) The dispensing fees assigned shall range between:

(i) a minimum of \$2.00 and a maximum of \$4.94 for brand name and nonpreferred generic drugs; and

(ii) a minimum of \$2.00 and a maximum of \$6.40 for preferred brand name and generic drugs and generic drugs not identified on the preferred list.

(2)(c) through (7) remain as proposed.

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

COMMENT #1: The commenter proposed a change to the proposed language defining "Active Pharmaceutical Ingredients" in ARM 37.86.1101(11). The commenter asked that the department consider the inclusion of the word "compounding" in this section.

RESPONSE #1: The department appreciates the comment; however, the department will be leaving the language, stated in ARM 37.86.1101(11), as defined in 21 CFR 207.3(a)(4)(2011). To avoid confusion, the department believes that the definition in the administrative rule should not vary from the definition in the CFR.

COMMENT #2: A commenter stated they were opposed to the proposed Estimated Acquisition Cost (EAC) formula called for in ARM 37.86.1101. The commenter also thought the dispensing fees should more accurately reflect Montana pharmacy surveys as Montana Medicaid is moving more and more to cost plus or reductions due to loss of revenue associated with lower reimbursements based on these pricing models. The commenter also stated the proposed formula fails to recognize the basic cost to dispense relating to such expenses as labor, energy, training, and the increased cost of maintaining an adequate drug inventory. The commenter asked if the preferred brands, listed on the preferred drug list (PDL), were the same as those in the definition of "preferred brand name drugs" found in ARM 37.86.1105. The commenter was concerned that there are a significant number of brand name drugs that are not on the PDL and Montana pharmacies will not receive an adequate dispensing fee. The commenter also asked what vendor the department will be using to calculate the wholesale acquisition cost (WAC) and what is the department's definition of "national pricing data."

RESPONSE #2: The department appreciates the comments. In regards to the EAC formula, it will remain as proposed. The department understands the commenter's concerns regarding an accurate cost to dispense and is working toward that goal through annual cost to dispense surveys, but reminds the commenter that provider reimbursement, including dispensing fees, is tied to appropriations. ARM 37.86.1105 does not contain a definition for preferred brand name drugs. The rule does refer to preferred brands that are the identified preferred brands on the department's preferred drug list and can be found at www.mtmedicaid.org. In regards to the comment about not enough brand name drugs on the PDL and thus not eligible for the higher dispensing fee, the goal of the higher differential dispensing fee is to incentivize pharmacy providers to dispense medications which offer the best value to the state. The department will obtain WAC pricing data from both First DataBank and Medispan through the department's fiscal agent, Affiliated Computer Services (ACS). The commenter's question regarding the national pricing data is not related to this rule change, but is in the present rule. For clarity, national pricing data is related to the state maximum allowable cost (SMAC) data that is obtained by our SMAC contractor through research on drug pricing throughout the nation and then reported back to the department when setting the SMAC pricing.

COMMENT #3: For purposes of clarity the department needs to address the dispensing fees for nonpreferred generic drugs identified on the preferred drug list (PDL). The intent of the higher differential dispensing fee is to incentivize drugs that offer the best value to the state.

RESPONSE #3: The department will amend ARM 37.86.1105(2)(b).

5. The department intends to apply these amendments retroactively to October 1, 2011.

/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 31, 2011

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.70.406, 37.70.408,)
37.70.601, and 37.70.901 pertaining)
to low income energy assistance)
program (LIEAP))

TO: All Concerned Persons

1. On September 22, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-560 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1978 of the 2011 Montana Administrative Register, Issue Number 18.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The department intends to apply the amendments to ARM 37.70.601 retroactively to October 1, 2011.

/s/ Barbara B. Hoffmann
Rule Reviewer

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

Certified to the Secretary of State October 31, 2011.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 38.3.402, 38.3.703, 38.3.705,) REPEAL
38.3.706, 38.3.707, 38.3.708; and the)
repeal of ARM 38.3.712 relating to)
the regulation of motor carriers)

TO: All Concerned Persons

1. On August 25, 2011 the Department of Public Service Regulation published MAR Notice No. 38-3-211 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 1632 of the 2011 Montana Administrative Register, Issue Number 16.

2. On September 21, 2011, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

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: The commission received comments from City Cab (Wilson LLC) and Yellow Cab, both of Billings, Montana. City Cab comments note that an increase in insurance coverage will necessitate an increase in passenger fares to the public. City Cab estimates that the proposed insurance coverage increase will result in an approximate 1 to 5 percent increase in carriers' overhead. City Cab is concerned about the impact to the riding public and about the possibility of a lessening of ridership due to increased fares. City Cab is not specifically against the proposed increase in insurance coverage, but suggests that it be transitioned to be effective over time.

RESPONSE 1: The commission considered City Cab's concerns about its ability to pass on increased operating expenses. Title 69, Chapter 12 affords regulated carriers the opportunity to prove a need for increased rates.

COMMENT 2: City Cab asked "Why are taxis being held to same [sic] insurance requirements as vehicles that travel primarily Interstate and at a higher rate of average speed where serious injury or death is more likely?"

RESPONSE 2: Taxis are not restricted to operating on city streets at low speeds and may travel extensively on interstate highways or state highways within the geographical areas permitted by a motor carrier's certificate of public convenience and necessity. Moreover, the commission is charged with ensuring that regulated motor carriers maintain sufficient insurance to assure that they can pay a judgment

against the carrier arising out of the death or injury to any passenger or death or injury to any other person caused by the carrier. § 69-12-402, MCA. The commission firmly believes that the current liability insurance coverage minimums are inadequate.

COMMENT 3: City Cab commented bus capacity is up to 57 passengers divided by \$5 million is \$87,719.30 per passenger.

RESPONSE 3: Bus capacities up to 57 passengers would typically be operated in charter service or interstate commerce and would not be regulated by the commission. Therefore, the commission does not consider a 57-passenger bus a valid object of comparison when determining insurance rates for Montana carriers regulated by the commission.

COMMENT 4: City Cab commented, "Our taxi service averages 1.25 passengers per trip. Using the \$100,000 per passenger logic our insurance limits should be \$125,000. Using the DOT standard it would be \$109,649. Not what is being proposed? [attachment from U.S. Department of Transportation, FMCSA, Overview of Federal Requirements August 2010]. Where it also states financial responsibility requirements do NOT apply to a motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers."

RESPONSE 4: Transportation Services noted the Department focused on \$100,000 per person seating capacity and further offered that the U.S. DOT requires \$87,719.30 per passenger if a 57-passenger vehicle is insured for \$5,000,000. However, Transportation Services ignores the fact that the U.S. DOT requires an insurance level of \$1.5 million for vehicles with a capacity of 9 to 15 which is very much in line with the Commission's proposed insurance level of \$100,000 per person seating capacity. Further, the U.S. DOT Transportation Services noted that the U.S. DOT levels do not apply to vehicles with a seating capacity of less than 7. Although the U.S. DOT does not require insurance for vehicles with a capacity less than 7 or for taxicabs, § 69-12-402, MCA does require the Commission to set appropriate insurance levels to protect the travelling public.

COMMENT 5: City Cab asked if there are there any records of fatal or serious injury in the state of Montana that the Taxicab service has not fulfilled its fiduciary responsibility? The accident-rates [*sic*] according to the National Safety Council are declining see attached 2 (National Safety Council Injury Facts Annual Report September 15, 2011).

RESPONSE 5: Transportation Services inquired whether there are records of fatal or serious injuries in the state of Montana where the taxicab service has not fulfilled their fiduciary responsibility but was unsuccessful in finding data that specific. The Commission firmly contends that the current liability insurance coverage minimums are inadequate; e.g., \$100,000 for 7 passengers or less. Under current ambulance, physician, and hospital cost circumstances; it does not take a major injury to incur \$100,000 in costs.

COMMENT 6: City Cab asked, "Why are we being held to standards that are 20 times more stringent than a normal driver see Montana Code Annotated 2009 61-6-103 states \$25,000.00 per person or \$50,000.00 for two or more."

RESPONSE 6: Section 6-6-103, MCA is the liability requirement for personal automobile requirements. Regulated motor carriers serve the travelling public and the public places a trust in the commission to ensure that for-hire motor carriers are adequately insured to protect the public. See 69-12-402, MCA, described above.

COMMENT 7: City Cab asked, "How is this following Montana Code Annotated 69-12-202 Encouragement of common carrier motor transportation?"

RESPONSE 7: As with many of the commission's duties, a balance is required. For example, the commission must provide utility shareholders with a reasonable opportunity to realize an appropriate return on their investment, but must also assure ratepayers that rates must be just and reasonable. Here, § 69-12-202, MCA requires the commission to encourage a system of common carrier motor transportation within the state for the convenience of the shipping public, yet § 69-12-402, MCA to set appropriate insurance levels to protect the travelling public. A balancing effort is required and the commission finds that the proposed increase in minimum liability insurance coverage is necessary.

COMMENT 8: The commission is in receipt of correspondence from Taylor-Leavitt Insurance Agency, the current agent of record for the owners of City Cab's insurance business needs. Taylor-Leavitt states that an increase from \$100,000 to \$300,000 Combined Single Limit coverage would result in a premium increase of approximately \$11,500 per year (from \$43,614/year to \$55,125/year). Such an increase would cause "significant heartache with [City Cab's] clientele."

RESPONSE 8: The commission must assume that the yearly premium costs cited include more than City Cab's taxi fleet (City Cab also has a number of vans with which it provides service, some unregulated). The commission bases this on a recent taxicab rate case and queries to other insurance providers. One regulated cab company in Montana experiences about \$800/month (has 2 cabs) in liability coverage expenses. Another experiences liability insurance coverage costs (\$1million coverage) for about \$3400/cab. The commission realizes that there will be an increase in operating costs with an increase in minimum liability insurance coverage requirements. Nevertheless, the commission finds that the current minimums are inadequate to protect the travelling public.

COMMENT 9: Yellow Cab is primarily concerned with availability of liability insurance coverage for passenger operations in the state of Montana. Yellow Cab expressed a concern that coverage may not be available in Montana. In a post-hearing letter, Yellow Cab indicated that while it agreed that minimum liability coverage of \$100,000 was not enough, Yellow Cab had difficulty finding insurers that will provide insurance in Montana. Moreover, Yellow Cab's current insurance carrier

has indicated that they would not provide liability insurance coverage in the magnitude of \$5,000,000.

RESPONSE 9: The commission has contacted several insurance carriers/brokers currently providing liability insurance coverage for passenger motor carriers in Montana. The number of companies providing liability coverage to Montana taxi operations is relatively short, but there are companies that do provide such coverage. Moreover, the commission does recognize that the cost of the coverage is not an insignificant operating expense for the carrier. While the commission recognizes that insurance coverage is such a significant expense, it nevertheless must provide sufficiently high minimum coverage requirements to protect the travelling public.

The commission determines that it is reasonably necessary to increase the amount of casualty (liability) insurance in order to adequately protect motor carrier passengers in the event of an accident. Further, it is reasonably necessary to remove antiquated forms from the commission's administrative rules. The proposed amendments increasing the minimum amounts for liability insurance coverage are warranted except for those subsections that will remain unchanged as noted in Paragraph 6 below.

4. The department has amended the following rules as proposed: ARM 38.3.402, 38.3.703, 38.3.705, 38.3.707, and 38.3.708.

5. The department has repealed the following rule as proposed: ARM 38.3.712.

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

38.3.706 ENDORSEMENTS (1) through (2)(b)(iv) remain as proposed.
(v) ~~\$5,000,000 for 16 passengers or more;~~
(vi) \$100,000 for transportation of nonhazardous freight in a vehicle designed, equipped, and primarily intended for transportation of seven passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;
(vii) \$500,000 for transportation of nonhazardous freight for all other vehicles.
(3) remains as proposed.

7. The amendments and repeal of the department are effective January 1, 2012.

/s/ JIM PAINE
Jim Paine
Alternate Rule Reviewer

/s/ TRAVIS KAVULLA
Travis Kavulla
Chairman
Public Service Regulation

Certified to the Secretary of State October 31, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I (42.4.402) relating to issuing tax)
certificates to LLCs following)
administrative dissolution)

TO: All Concerned Persons

1. On September 22, 2011, the department published MAR Notice No. 42-2-868 regarding the proposed adoption of the above-stated rule at page 1988 of the 2011 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 17, 2011, to consider the proposed adoption. No one appeared at the hearing to testify.

3. No comments were received. However, the department further amends New Rule I (42.2.402) as shown below, new matter underlined. The amendment is necessary, after further review, to include a reference to another existing department rule that provides additional detail that may be helpful to certain taxpayers.

NEW RULE 1 (42.4.402) TAX CERTIFICATES - REQUIREMENTS

(1) through (6) remain as proposed.

(7) The department will not issue any tax certificate unless the application contains the name, mailing address, and federal employer identification number (FEIN) of the entity. If the entity is a single member LLC that has no employees and does not have an FEIN, the single member LLC shall use its owner's social security number (SSN) or FEIN. If the entity is a C corporation requesting a tax clearance certificate described in (3), the entity must provide additional information as provided in ARM 42.23.313.

(8) and (9) remain as proposed.

AUTH: 15-1-201, MCA

IMP: 15-31-524, 15-31-552, 35-1-994, 35-1-1037, 35-6-201, 35-8-912, 35-8-1010, 35-8-912, MCA

4. Therefore, the department adopts New Rule I (42.4.402) with the amendments shown above.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" 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. 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 31, 2011

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to processes and)
procedures for early preparation of)
absentee ballots)

TO: All Concerned Persons

1. On August 25, 2011, the Secretary of State published MAR Notice No. 44-2-172 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1658 of the 2011 Montana Administrative Register, Issue Number 16.

2. The Secretary of State has adopted the above-stated rule as proposed: New Rule I (44.3.2204).

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Certified to the Secretary of State October 31, 2011.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.1716, 44.3.2014 through)
44.3.2016, 44.3.2109, 44.3.2203, and)
44.3.2304 concerning elections)

TO: All Concerned Persons

1. On August 25, 2011, the Secretary of State published MAR Notice No. 44-2-173 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1662 of the 2011 Montana Administrative Register, Issue Number 16.
2. The Secretary of State has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Certified to the Secretary of State October 31, 2011.

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, 2011. This table includes those rules adopted during the period July 1, 2011, through September 30, 2011, 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, 2011, 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 2011 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

I	Montana Mortgage Loan Origination Disclosure Form, p. 1231, 2021
I	Renewal Fees for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators, p. 1853
I-IV	Financial Responsibility of Mortgage Loan Originators and Control Persons - Ultimate Equity Owners of Mortgage Entities, p. 2108
I-IX	Bank Debt Cancellation Contracts - Debt Suspension Agreements, p. 1430
I-IX	Credit Union Debt Cancellation Contract - Debt Suspension Agreements, p. 1842
I-XX	Reasonable Accommodations and Equal Access, p. 966, 1668
2.4.403	and other rules - Single Audit Act, p. 1325, 2019
2.21.901	and other rules - Disability and Maternity Leave Policy, p. 2101
2.21.4001	and other rules - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention, p. 982, 1672
2.21.6401	and other rules - Performance Management and Evaluation, p. 2105
2.21.6608	and other rules - Employee Records Management, p. 998, 1677, 2020
2.59.1505	and other rule - Department Approval of Loan Agreement Form - Examination of Deferred Deposit Lenders, p. 692, 1365
(Public Employees' Retirement Board)	
2.43.1302	and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees Retirement Board, p. 1211, 1678

- 2.43.1306 Actuarial Rates, Assumptions, and Methods for Valuation Purposes - Actuarial Equivalence for the Board-Administered Defined Benefit Retirement Systems, p. 2196
- 2.43.2105 Basic Period of Service, p. 132, 643
- 2.43.2608 and other rules - Return of PERS Retirees to PERS-Covered Employment, p. 1839
- 2.43.5002 and other rules - Operation of Volunteer Firefighters' Compensation Act Administered by the Montana Public Employees' Retirement Board, p. 1572, 2261

AGRICULTURE, Department of, Title 4

- 4.13.1001A State Grain Lab Pricing, p. 696, 1366

STATE AUDITOR, Title 6

- I-VI Insurer Investments in Derivative Instruments, p. 762, 1303
- 6.6.2801 and other rules - Surplus Lines Insurance Transactions, p. 1857
- 6.6.3401 and other rules - Standards for Companies Considered to Be in Hazardous Financial Condition, p. 616, 1128
- 6.6.3504 Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements, p. 705, 1129
- 6.6.4601 and other rules - Montana Life and Health Insurance Guaranty Association Act - Notice Concerning Coverage Limitations and Exclusions, p. 700, 1367
- 6.6.6501 and other rules - Actuarial Opinions, p. 2199
- 6.6.6802 and other rules - Formation and Regulation of Captive Insurance Companies, p. 2118
- 6.10.502 Broker-Dealers and Investment Advisors, p. 746

COMMERCE, Department of, Title 8

- I Administration of the 2013 Biennium Quality Schools Grant Program- Planning Grants, p. 708, 1304
- I Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 2678, 645
- 8.94.3726 Incorporation by Reference for the CDBG Program, p. 135, 566
- 8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CBDG) Program, p. 710, 1130
- 8.94.3814 Treasure State Endowment Program, p. 1866
- 8.99.504 and other rules - Microbusiness Loans, p. 713, 1131
- 8.119.101 Tourism Advisory Council, p. 1439

(Board of Housing)

- I-VII Montana Veterans' Home Loan Programs, p. 1236, 2024
- 8.111.202 and other rules - Procedural Rules - Qualified Lender Requirements, p. 622, 1307

8.111.602 Low Income Housing Tax Credit Program, p. 2792, 567

EDUCATION, Department of, Title 10

10.16.3803 and other rules - Special Education, p. 1772, 2262

(Board of Public Education)

I-XI English Language Proficiency (ELP) Standards and Performance Descriptors, p. 1331, 2026

10.54.3610 and other rules - Content Standards for English Language Arts and Literacy - General Standards - Communication Arts Content Standards and Performance Descriptors, p. 1868

10.54.4010 and other rules - Content Standards for Mathematics - Mathematics Content Standards and Performance Descriptors, p. 1931

FISH, WILDLIFE AND PARKS, Department of, Title 12

I Aquatic Invasive Species Inspection Stations, p. 626, 1132

(Fish, Wildlife and Parks Commission)

12.11.610 and other rules - Recreational Use Rules on the Bitterroot River, Blackfoot River, and Clark Fork River, p. 767

12.11.805 and other rules - Recreational Use Rules in Montana, p. 83, 901

ENVIRONMENTAL QUALITY, Department of, Title 17

I-VII Electronic Filing of Documents, p. 628, 1135

17.36.103 and other rules - Application Contents - Review Procedures - Compliance With Local Requirements - Certificate of Approval - Certification of Local Department or Board of Health - Sewage Systems, p. 1577, 2278

17.50.203 Completion of Shielding, p. 1442, 2142

17.50.213 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 91, 379

17.56.101 and other rules - Definitions - Cleanup Plan - Release Categorization, p. 1775, 2279

17.56.308 and other rules - Underground Storage Tanks - Operating Tags - Delivery Prohibition, p. 1048, 2139

17.74.301 and other rules - Incorporation by Reference - OSHA Preclusion - Asbestos Project Management, p. 493, 718, 2264

(Board of Environmental Review)

17.8.604 and other rules - Air Quality - Open Burning, p. 2880, 569

17.8.763 Air Quality - Revocation of Permit, p. 2878, 568

17.8.801 and other rules - Air Quality - Definitions - Ambient Air Increments - Major Stationary Sources - Source Impact Analysis - Source Information - Sources Impacting Federal Class I Areas - Definitions -

- When Air Quality Permit Required - Baseline for Determining Credit for Emissions - Air Quality Offsets, p. 799, 2134
- 17.30.201 and other rule - Water Quality - Permit Application - Degradation Authorization - Annual Permit Fees - General Permits, p. 2870, 909
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89, 1244
- 17.30.1201 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Effluent Limitations and Standards - Standards of Performance - Treatment Requirements, p. 771, 2131
- 17.36.922 and other rule - Local Variances - Variance Appeals to the Department, p. 528, 1548
- 17.38.101 and other rules - Plans for Public Water Supply or Wastewater System - Fees - Definitions - Water Supply - Chemical Treatment of Water, p. 521, 1545

(Petroleum Tank Release Compensation Board)

- 17.58.201 and other rules - Procedural and Substantive Rules - Petroleum Tank Release Compensation, p. 1, 377
- 17.58.326 and other rules - Operation and Management of Petroleum Storage Tanks - Review and Determination of Claims for Reimbursement - Third-Party Damages, p. 720, 1370

CORRECTIONS, Department of, Title 20

- I Expansion of Adult Community Corrections Contracted Treatment Facilities or Programs, p. 1336, 2027
- 20.7.506 and other rules - Siting - Establishment - Expansion of Prerelease Centers, p. 1339, 2030
- 20.9.302 and other rules, Youth Who Have Been Paroled From Youth Correctional Facilities, p. 808, 1345, 1821
- 20.9.602 and other rules - Prison Rape Elimination Act - Licensure of Youth Detention Facilities, p. 183, 570

JUSTICE, Department of, Title 23

- I-IX Establishing the 24/7 Sobriety Program, p. 1246, 2033
- 23.6.105 and other rules - Removal of a Member of the Tow Truck Complaint Resolution Committee - Removing References to the Public Service Commission and Satellite Operations - Clarifying Requirements Regarding Insurance - Requirements for Safety Certification of Tow Trucks - Extending the Time Period for Safety Certification of Tow Trucks, p. 1783
- 23.6.106 Tow Truck Complaint Resolution Committee, p. 1788
- 23.15.306 Mental Health Therapists, p. 1585, 2143

(Gambling Control Division)

- 23.16.117 and other rules - Change in Business Entity Type - Transfer of Interest to a New Owner - Change of Liquor License Type - Change of Location for a Licensed Manufacturer, Distributor, or Route Operator - Card Game Tournaments - Licensure of Sports Tab Sponsors - Video Gambling Machine Bill Acceptors - Software Specifications for Video Keno Machines, p. 2205
- 23.16.1802 and other rules - Advertising Restrictions for Video Gambling Machines - Expiration Date for Video Gambling Machine Ticket Vouchers - Software Specifications for Video Line Games - Special Bingo Sessions - Definitions - General Specifications of Video Gambling Machines - General Software Specifications of Video Gambling Machines - Software Specifications for Video Multigame Machines - Bonus Games - Automated Accounting and Reporting System - Video Gambling Machine - Hardware and Software Specifications - Prohibited Machines - Approval of Video Gambling Machines and/or Modifications to Approved Video Gambling Machines - Inspection and Seizure of Machines - Manufacturer of Illegal Gambling Devices – Department Contact Information - Combination of Video Poker, Keno, Bingo, and Video Line Games - Testing of Automated Accounting and Reporting Systems - Definitions - Prize Awards for Live Keno and Bingo Games, p. 1252, 1681

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- 24.7.301 and other rules - Board of Labor Appeals - Unemployment Insurance, p. 195, 573
- 24.11.2221 Unemployment Insurance Rates for Governmental Entities, p. 1002, 1371
- 24.17.103 and other rules - Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 2681, 102, 747
- 24.17.127 Prevailing Wage Rates for Public Works Projects-Nonconstruction Services, p. 725, 1136
- 24.21.401 and other rules - Apprenticeship Training Programs, p. 2466, 2962
- 24.26.643 Petitions for Decertification Before the Board of Personnel Appeals, p. 1006, 1372
- 24.29.1401A and other rules - Implementation of Utilization and Treatment Guidelines - Medical Services Rules for Workers' Compensation Matters, p. 728, 1137

(Board of Athletic Trainers)

24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule -
Licensure of Athletic Trainers, p. 94, 576

(Board of Architects and Landscape Architects)

24.114.501 and other rules - Architect Examination - Landscape Architect
Applications - Education and Experience, p. 1445

(Board of Barbers and Cosmetologists)

24.101.413 and other rule - Renewal Dates - Requirements - Fees, p. 812, 1683

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Interns and Preceptors - Applications for
Certification - Renewals - Continuing Education, p. 2212

24.126.510 and other rules - Endorsement - Inactive Status and Conversion -
Minimum Requirements for Impairment Evaluators - Prepaid
Treatment Plans, p. 2284, 380

(Board of Dentistry)

24.138.509 and other rules - Dental Hygiene Limited Access Permit - Medical
Assistance Program Relapse - Dentist Administration of Anesthesia -
Anesthesia Definitions - Committee - Permits, p. 1791

(State Electrical Board)

24.141.405 and other rule - Fee Schedule - Nonroutine Applications, p. 1347,
1588

(Board of Medical Examiners)

24.156.1401 and other rules - Acupuncturist Licensure - Unprofessional Conduct -
Physician Assistant Supervision - Chart Review - Acupuncturist
Discipline Reporting - Continuing Education - Physician Assistant
Performing Radiologic Procedures - Acupuncture School Approval, p.
1591

(Board of Nursing)

24.159.301 and other rules - Definitions - Fees - Faculty for Practical Nursing
Programs - Medication Aides - Prohibited Intravenous Therapies -
Licensure by Examination - Medication Aides - Nurse Reexamination,
p. 1350, 2144

(Board of Outfitters)

24.171.401 and other rules - Fees - Outfitter Records - Safety Provisions - Inactive
License - Guide License - Determination of Client Hunter Use -
Renewals - Web Site Posting - Successorship, p. 1265, 2149

(Board of Pharmacy)

24.174.303 and other rules - Definitions - Examination for Licensure - Administration of Vaccines - Prescription Requirements - Internship Requirements - Preceptor Requirements - Registered Pharmacist Continuing Education - Disciplinary Action, p. 277, 1148

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.181.301 and other rules - Definitions - Licensing Fee Schedule - Application for Registration - Site Visits - Program Administration - Program Participant Protection - Definitions-Residential Programs - Renewals - Registration Fee Schedule - Implementation, p. 636, 1684

(Board of Private Security Patrol Officers and Investigators)

24.182.401 and other rules - Fee Schedule - Training Courses Standards - Curriculum, p. 1603

(Board of Professional Engineers and Professional Land Surveyors)

I-IV Professional Land Surveyor Scope of Practice Activities, p. 2288, 385
24.183.404 and other rules - Fee Schedule - Certificate of Authorization - Application - Grant and Issue Licenses - Uniform Standards, p. 1449
24.183.502 and other rule - Application Processes for Professional Engineers and Professional Land Surveyors, p. 286, 920

(Board of Real Estate Appraisers)

24.101.413 and other rules - Renewal Dates - Requirements - Fees - Definitions - Appraisal Management, p. 1610
24.207.401 and other rules - Fees - Application Requirements - Qualifying Education Requirements - Qualifying Experience - Inactive License or Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Continuing Education, p. 2905, 577
24.207.505 and other rule - Qualifying Education Requirements for Licensed Real Estate Appraisers - Residential Certification, p. 1362

(Board of Realty Regulation)

24.210.667 and other rule - Continuing Real Estate Education - Continuing Property Management Education, p. 815, 2280

(Board of Sanitarians)

24.216.402 and other rules - Fee Schedule - Applications - Minimum Licensure Standards - Examination - Continuing Education - Sanitarian-in-Training - Inactive Status Licensure, p. 364, 749

(Board of Social Work Examiners and Professional Counselors)

I-XII Qualification of Social Workers and Professional Counselors to Perform Psychological Testing, Evaluation, and Assessment, p. 533, 2153

- 24.101.413 and other rules - Renewal Dates - Requirements - Licensure - Regulation of Marriage and Family Therapists, p. 550, 2158
- 24.219.301 and other rules - Definitions - Application Procedures - Supervisor Qualifications - Parenting Plan Evaluations, p. 540, 2038

(Board of Veterinary Medicine)

- 24.225.401 and other rules - Fees - Examination Application Requirements - Examination for Licensure - Board-Approved Training Program Criteria - Euthanasia Technician Test Criteria - Certified Euthanasia Agency Inspection Criteria, p. 371, 1151

LIVESTOCK, Department of, Title 32

- 32.2.404 and other rules -Department Livestock Permit Fees - Miscellaneous Fees - Definitions - Bison Unlawfully Estrayed - Public-Owned Migratory Bison From Herds Affected With a Dangerous Disease - Use of Brucella Abortus Vaccine - Domestic Bison Permit Before Removal From County or State - Livestock Market Releases, p. 1464
- 32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Official Trichomoniasis Testing - Certification Requirement - Reporting Trichomoniasis - Movement of Animals From Test Positive Herds - Epizootic Areas - Epidemiological Investigations - Exposed Herd Notification - Common Grazing - Grazing Associations - Penalties, p. 1470
- 32.3.433 and other rule - Animal Identification Within the DSA, p. 1053, 1551
- 32.3.1505 Blood Testing With Salmonella Antigens, p. 1056, 1556
- 32.8.101 and other rule - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 289, 1461

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Horse Creek Controlled Groundwater Area, p. 2218
- 36.12.101 and other rules - Water Right Permitting, p. 1277, 2043

(Board of Land Commissioners)

- 36.25.110 Rental Rate for State Grazing Leases, p. 1479
- 36.25.801 and other rules - Land Banking Program, p. 1618

(Board of Oil and Gas Conservation)

- I-V Oil and Gas Well Stimulation, p. 819, 1686

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-XIII Montana Medicaid Provider Incentive Program for Electronic Healthcare Records, p. 824, 1374
- 37.5.304 and other rules - Medicaid Credible Allegation of Fraud, p. 2222

- 37.12.301 and other rules - Licensure of Laboratories Conducting Analyses of Public Water Supplies, p. 1059, 2286
- 37.34.206 and other rules - Developmental Disabilities Eligibility Rules for Medicaid Only, p. 312, 1158, 1311
- 37.34.913 and other rules - Reimbursement for the Provision to Persons With Developmental Disabilities of Services - Items Covered as Benefits of the Various Programs of Services Administered by the Developmental Disabilities Program, p. 1008, 1718
- 37.40.307 and other rules - Nursing Facility Reimbursement, p. 835, 1375
- 37.40.705 and other rules - Home Health Care - Personal Assistance Service, p. 858, 1386
- 37.40.1406 and other rules - Home and Community-Based Services (HCBS) for the Elderly and People With Physical Disabilities, p. 1077, 1722, 2045
- 37.40.1421 Medicaid Provider Fee Schedules - Home and Community-Based Services (HCBS) for the Elderly and People With Physical Disabilities, p. 896, 1713
- 37.70.406 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1978
- 37.78.102 Temporary Assistance for Needy Families (TANF), p. 561, 1313
- 37.78.102 and other rules - EPSDT Services Reimbursement, p. 2246
- 37.79.102 Healthy Montana Kids Definition of Federal Poverty Level, p. 871, 1388
- 37.80.101 and other rule - Permissive Licensing Facilities Exclusion From Subsidy Child Care Program, p. 1815, 2295
- 37.81.304 Maximum Big Sky Rx Premium Change, p. 2238
- 37.82.101 and other rule - Medicaid Eligibility, p. 1293, 1823
- 37.85.212 and other rule - Resource Based Relative Value Scale (RBRVS) - Reimbursement for Physician Administered Drugs, p. 865, 1287, 1700
- 37.86.702 and other rules - Audiology - Hearing Aids, p. 1628, 1976, 2293
- 37.86.805 and other rules - Medicaid Acute Services Reimbursement - Early and Periodic Screening - Diagnostic and Treatment (EPSDT), p. 851, 1384
- 37.86.805 and other rules - Durable Medical Equipment - Hearing Aids, p. 2230
- 37.86.1101 and other rules - Medicaid Pharmacy Reimbursement, p. 1805
- 37.86.2207 EPSDT Services Reimbursement, p. 2227
- 37.86.2224 and other rules - Children's Mental Health Bureau Rate Reduction, p. 874, 1290, 1708
- 37.86.2801 and other rules - Medicaid Inpatient Hospital Services, p. 884, 1391
- 37.86.2803 and other rules - Medicaid Inpatient Hospital Services, p. 2241
- 37.86.2907 Medicaid Inpatient Hospital Services, p. 1625, 2292
- 37.86.3515 Case Management Services for Adults With Severe Disabling Mental Illness - Reimbursement, p. 2807, 449
- 37.86.3515 and other rules - Mental Health Services for Adults, p. 891, 1394
- 37.86.3607 Rates of Reimbursement for the Provision by Provider Entities of Medicaid Funded Targeted Case Management Services to Persons With Developmental Disabilities, p. 881, 1389
- 37.86.4201 and other rules - Dialysis Clinics, p. 1811, 2294

- 37.87.903 and other rules - Psychiatric Residential Treatment Facility Reimbursement, p. 293, 1154
- 37.87.1303 and other rules - Home and Community-Based Services for Youth With Serious Emotional Disturbance (Waiver), p. 841, 1382
- 37.88.901 and other rule - Mental Health Services for Adults Program of Assertive Community Treatment (PACT), p. 2234
- 37.97.101 and other rules - Youth Care Facility (YCF) Licensure, p. 2108, 138, 387
- 37.104.101 and other rule - Emergency Medical Services (EMS), p. 2915, 1153
- 37.106.1130 and other rules - Licensing Requirements for Outpatient Facilities for Primary Care, p. 2690, 578
- 37.107.101 and other rules - Montana Marijuana Act, p. 1524, 2047
- 37.115.104 and other rules - Pools - Spas - Other Water Features, p. 1482

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.402 and other rules - Regulation of Motor Carriers, p. 1632
- 38.5.1010 Electric Standards for Utilities - Pipeline Safety, p. 2255
- 38.5.1902 Qualifying Facilities, p. 2258

REVENUE, Department of, Title 42

- I Issuing Tax Certificates to LLCs Following Administrative Dissolution, p. 1988
- I-IV Telecommunication Services for Corporation License Taxes, p. 1968, 2540, 582
- 42.8.102 and other rule - One-Stop Business Licensing, p. 1023, 1557
- 42.9.102 and other rules - Pass-Through Entities, p. 1992
- 42.11.104 and other rules - Liquor Vendors, p. 2563, 451
- 42.11.105 and other rule - Mark-Up on Liquor Sold by the State, p. 1642, 2296
- 42.13.101 and other rules - Alcohol Server Training Requirements, p. 2005
- 42.14.101 and other rule - Lodging Facility Use Tax, p. 44, 461
- 42.14.1002 and other rule - Rental Vehicle Tax, p. 41, 460
- 42.18.106 and other rules - Property Taxes, p. 1020, 1395
- 42.20.432 and other rules - Validating Sales Information - Extension of Statutory Deadline for Assessment Reviews, p. 1646
- 42.21.158 and other rule - Aggregation of Property Tax for Certain Property, p. 1650
- 42.23.107 and other rules - Corporation License Tax - General and Corporate Multistate Activities, p. 1107, 2053
- 42.23.801 and other rule - Net Operating Losses - Consistency in Reporting With Respect to Property, p. 2125

SECRETARY OF STATE, Office of, Title 44

- I Access to Documents - Fees for Copies of Public Records, p. 1026, 1558
- I Processes - Procedures for Early Preparation of Absentee Ballots, p. 1658
- 1.2.419 Scheduled Dates for the 2012 Montana Administrative Register, p. 2128
- 44.3.1716 and other rules - Elections, p. 1662

(Commissioner of Political Practices)

- 44.10.331 Limitations on Receipts From Political Committees to Legislative Candidates, p. 1539
- 44.10.338 Limitations on Individual and Political Party Contributions, p. 1542
- 44.10.401 Statements - Filing Reports, p. 2016