

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rules I through III pertaining to)	ADOPTION AND REPEAL
exemptions under 32-9-104, MCA,)	
determining the amount of the surety)	
bond required for new applicants, and)	
the date by which the Montana test)	
must be completed in order to be)	
licensed as a mortgage loan)	
originator in Montana and the repeal)	
of ARM 2.59.1718, 2.59.1719,)	
2.59.1720, and 2.59.1729 pertaining)	
to temporary licenses and transition)	NO PUBLIC HEARING
fees)	CONTEMPLATED

TO: All Concerned Persons

1. On December 13, 2010, the Department of Administration proposes to adopt and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on December 6, 2010, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

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

NEW RULE I AVAILABILITY OF EXEMPTIONS TO ENTITIES AND INDIVIDUALS (1) The exemptions in 32-9-104, MCA, addressing entities are available and apply only to business organizations, including sole proprietorships. An individual is not an entity for purposes of 32-9-104, MCA.

AUTH: 32-9-130, MCA
IMP: 32-9-103, 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: Congress authorized the Department of Housing and Urban Development (HUD) to review state laws and rules to determine if the state has a system in place for licensing and registering mortgage loan originators that meets the requirements of the Secure and Fair Enforcement of Mortgage Licensing Act of 2008, 12 USC 5101, et seq. (SAFE Act).

On January 15, 2010, HUD notified the Department of Administration by letter that it had reviewed the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act (Montana SAFE Act). In reference to 32-9-104(1)(a), (f), (g), (h), and (j), MCA, HUD stated, "Only *individuals* are subject to the SAFE Act's licensing requirements. To the extent that MT applies these exemptions only to *companies* and not individuals, the exemptions provided in [MT's] law would not differ from the SAFE Act and HUD's proposed rule. However, these exemptions appear to be inconsistent with the requirements of the SAFE Act to the extent that they could also be read to exempt individuals from the SAFE Act's licensing requirements. The SAFE Act and HUD's Proposed Rule do not provide for such exemptions." (Emphasis in original.)

Subsections 32-9-104(1)(a), (f), (g), (h), and (j), MCA, reference entities. Entity is defined under 32-9-103(11), MCA, to mean a business organization, including a sole proprietorship. The purpose of this new rule is to clarify for all applicants that the department interprets "entity" as used in 32-9-104, MCA, to mean "entity" as defined in 32-9-103(11), MCA, and thus does not include an individual.

NEW RULE II DETERMINING THE AMOUNT OF SURETY BOND FOR A NEW MORTGAGE BROKER OR MORTGAGE LENDER (1) An entity applying for a license as a mortgage broker or mortgage lender for the first time in Montana shall submit with its application the total combined annual loan production volume for the year preceding the year of application as required by 32-9-123(2)(b), MCA.

(2) An entity having no prior business history, or a business history of less than one year at the time of application, shall purchase a surety bond in the amount of \$50,000.

AUTH: 32-9-130, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-123, MCA, requires all new applicants for an entity license to carry a surety bond or meet the net worth requirements.

If an entity has been in business in the past and is seeking a new license in Montana, that entity must submit the annual loan production volume of all persons originating residential mortgage loans for them in any business location wherever it is located. The total annual loan production volume is used to set the proper surety bond amount that the entity must carry.

In the case of a start-up entity, or an entity that has been in business less than one full year, the entity must carry a surety bond of \$50,000 for the first year. After one year, the entity's actual annual loan production volume will be used to determine the appropriate surety bond amount.

Once an entity is licensed, it will be required by 32-9-151, MCA, to submit call reports to the Nationwide Mortgage Licensing System (NMLS). These call reports will contain the data necessary for regulators to calculate the entity's annual loan production volume. But, for entities that are initially seeking licensure, that data has not yet been submitted to NMLS. So the department needs a method to get the data to determine the proper amount of the surety bond that should be carried.

For an entity that has not been in business long enough to have annual loan production volume data, the department has chosen to set the bond amount in rule.

The amount of \$50,000 was selected because that was the amount of the bond required for lenders seeking temporary licensure in Montana until they could be transitioned on to the NMLS. The department wanted to be consistent with ARM 2.59.1720, which requires a \$50,000 surety bond for new start-up entities.

NEW RULE III DEADLINE FOR CONDITIONALLY LICENSED MORTGAGE LOAN ORIGINATORS TO COMPLETE THE MONTANA EXAM (1) Individuals holding a conditional license as a mortgage loan originator in Montana shall successfully complete the Montana examination by December 31, 2010.

AUTH: 32-9-130, MCA

IMP: 32-9-114, MCA

STATEMENT OF REASONABLE NECESSITY: The SAFE Act, effective July 30, 2008, gave all states one year to enact legislation complying with the mandates of the SAFE Act. In response to this legislation, the Montana Legislature enacted the Montana SAFE Act, effective July 1, 2009.

The Montana SAFE Act requires all individuals acting as mortgage loan originators to be registered with and licensed through the NMLS. One of the requirements for licensure as a mortgage loan originator is to take and pass, with a score of 75% or better, the Montana state licensing examination. (See, 32-9-110, MCA).

When the SAFE Act was passed, Montana had a state test, but it was not psychometrically valid. In order to develop a psychometrically valid test for each state, the State Regulatory Registry, LLC, (SRR) board hired a nationally known test development company to work with each state to develop a compliant state test. Because all states needed to develop state tests within a one-year period of time, and because it takes six weeks to develop a state test, it was not possible to develop all the states' tests within the one-year period.

The SRR scheduled each state for development of its test based on the needs of each state, the needs of other states, and the number of personnel available for state test development.

Montana began its state test development in March 2010 and concluded in May 2010. However, the Montana SAFE Act required the department to transition all applicants onto the NMLS by April 1, 2010 (for all applicants applying for licensure after July 1, 2009) or June 30, 2010 (for all applicants with current licenses as of July 1, 2009).

The Montana state test could be taken starting June 14, 2010. Because one transition deadline set by statute preceded the date on which the state test became available, and the other transition deadline was two weeks before the test became available to take, the department could not require that applicants for transition take the state test before the transition deadline.

Instead, the department issued conditionally approved licenses, the condition being that the applicant take, and pass, the state test. The date by which applicants must pass the test is set by this rule as December 31, 2010. This date was selected

because all current licensees must renew their licenses by December 31, 2010, in order to be licensed for 2011.

This makes passing the state test a criterion for a normal license renewal and results in a more efficient process for all concerned. Montana mortgage loan originators have already met a number of new requirements this year. The department wanted to minimize the effect of the delayed availability of the state test on licensees.

4. The department proposes to repeal the following rules:

2.59.1718 LICENSE RENEWALS FOR MORTGAGE LENDERS LICENSED AS OF JULY 1, 2009 – TEMPORARY LICENSES, found on ARM page 2-6141.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-113, 32-9-120, 32-9-123, MCA

2.59.1719 NEW APPLICANTS FOR A MORTGAGE LOAN ORIGINATOR LICENSE – TEMPORARY LICENSES, found on ARM page 2-6141.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-120, 32-9-127, 32-9-128, MCA

2.59.1720 NEW APPLICANTS FOR A MORTGAGE BROKER OR MORTGAGE LENDER LICENSE – TEMPORARY LICENSES, found on ARM page 2-6142.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-113, 32-9-120, 32-9-123, 32-9-127, 32-9-128, MCA

2.59.1729 TRANSITION AND INITIAL LICENSE APPLICATION THROUGH NMLS – LICENSE RENEWALS – FEES, found on ARM page 2-6150.3.

AUTH: 32-9-117, 32-9-130, MCA

IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal ARM 2.59.1718, 2.59.1719, 2.59.1720 and 2.59.1729 because these rules were adopted to account for the transition to using the NMLS. The transition to the NMLS has been completed, therefore, these rules are no longer necessary.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov; and must be received no later than 5:00 p.m., December 10, 2010.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above at the above address no later than 5:00 p.m., December 10, 2010.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 persons based on the number of licensed mortgage brokers, mortgage lenders, and mortgage loan originators.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the 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 department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Jeff Essman, the primary bill sponsor of SB 351 (2009), was contacted on May 19, 2009 by U.S. mail.

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 November 1, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
4.16.701, and repeal of 4.16.702 and)
4.16.801, relating to Agricultural)
Marketing Development Program)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On December 3, 2010, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on November 26, 2010, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rule as proposed to be amended provide as follows:

4.16.701 AGRICULTURAL MARKETING AND BUSINESS DEVELOPMENT PROGRAM; PURPOSE, GOALS, AND CRITERIA (1) through (4) remain the same.

~~(5) The council will identify, at regularly scheduled meetings at which public comment will be invited, the markets, products, processes, and technologies it seeks to study, expand, or otherwise develop.~~

~~(a) the council shall advertise requests for proposals in compliance with applicable Montana law and shall consider the comments received at its meetings when determining which types of proposals should be requested.~~

~~(b) at a minimum, requests for proposals will include the following:~~

~~(i) specific criteria by which proposals will be selected;~~

~~(ii) the establishment of milestones for evaluating the progress and success of the proposals;~~

~~(iii) a schedule for the submission of periodic progress reports.~~

AUTH: 90-9-202, 90-9-203, MCA

IMP: 90-9-201, 90-9-202, 90-9-401, MCA

REASON: This language is no longer necessary because these issues are addressed in ARM 4.16.503 and 4.16.504 or are addressed contractually.

FINANCIAL IMPACT: There will be no financial impact on this rule.

4. The department proposes to repeal the following rules:

4.16.702 APPLICATION PROCEDURES FOR AN AGRICULTURAL
MARKETING AND BUSINESS DEVELOPMENT INVESTMENT – SUBMISSION
AND USE OF INVESTMENT PROPOSAL

AUTH: 90-9-203, MCA

IMP: 90-9-202, 90-9-203, 90-9-303, 90-9-311, 90-9-401, MCA

REASON: This rule must be repealed because it is no longer necessary. Application requirements are addressed in ARM 4.16.503.

FINANCIAL IMPACT: There will be no financial impact on this rule.

4.16.801 RIGHTS TO INTELLECTUAL PROPERTY AND PROPRIETARY
INFORMATION – CONFIDENTIALITY – AGRICULTURE MARKETING AND
BUSINESS DEVELOPMENT ASSISTANCE

AUTH: 2-15-112, MCA

IMP: 80-1-102, 80-11-103, MCA

REASON: This rule must be repealed because it conflicts with Montana's Right-to-Know laws.

FINANCIAL IMPACT: There will be no financial impact on this rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov and must be received no later than December 10, 2010.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person 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 Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the notice

conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, November 1, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.102 pertaining to incorporation by)
reference of current federal regulations)
and other materials into air quality rules)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On December 6, 2010, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 22, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2008~~ 2009, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2000~~ 2006 edition of the USC and Supplement ~~V~~ II (~~2005~~ 2009);

(c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2008~~ 2009, edition of the Administrative Rules of Montana (ARM).

(2) through (2)(b) remain the same.

(3) For purposes of this chapter, the following subparts, or portions thereof, of 40 CFR Part 63 are excluded from incorporation by reference:

(a) remains the same.

(b) 40 CFR 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (40 CFR 63.8530 through 63.8665, and all associated appendices and tables), as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit; and

(c) 40 CFR 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 63.7575, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

~~(d) portions of 40 CFR 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products, as vacated June 19, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit.~~

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal statutes and regulations and state rules that are incorporated by reference in the rules. The board is proposing to amend ARM 17.8.102(1) to adopt revisions to federal regulations and statutes that were published in the July 1, 2009, edition of the Code of Federal Regulations (CFR) and 2006 edition of the United States Code, as supplemented in 2009. The board adopts and incorporates by reference federal regulations and statutes, including emissions standards, to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations in order to maintain primacy and federal delegation of Montana's air quality program and to timely implement emission standards developed on the federal level pursuant to a federal program of emissions control. The board also is proposing to update the version of the Administrative Rules of Montana incorporated by reference in order to maintain consistency with the current rules.

The board is proposing to delete the exclusion from incorporation by reference of 40 CFR Part 60, Subpart DDDD, EPA's National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products, which was vacated by the U.S. Circuit Court of Appeals for the D.C. Circuit in 2007. The subpart is no longer published in the CFR.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., December 13, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine

reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, November 1, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.38.204 pertaining to maximum)	AMENDMENT
organic chemical contaminant levels)	
)	(PUBLIC WATER AND SEWAGE
)	SYSTEM REQUIREMENTS)
)	
)	(NO PUBLIC HEARING
)	CONTEMPLATED)

TO: All Concerned Persons

1. On December 13, 2010, the Board of Environmental Review proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 22, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board adopts and incorporates by reference 40 CFR 141.61(a), 141.61(c), 141.64(a) and (a)(1), 141.64(b)(1)(i), and 141.64(b)(2)(i), which set forth maximum contaminant levels for synthetic organic contaminants, volatile organic contaminants, and disinfection byproducts.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment is necessary to correct an error in adoption of the federal bromate and chlorite maximum contaminant levels. It is the intent of the Montana Legislature that Montana maintains primacy for the Safe Drinking Water Act within the state of Montana. In order for Montana to maintain primacy, it must adopt rules and regulations that are at least as stringent as the federal requirements. The current reference incorrectly refers to 40 CFR, Part 141.64(a)(1), which has the effect of not adopting 40 CFR, Part 141.64(a). The statement of necessity from that adoption process correctly indicated the intent and reason to adopt this standard. Because this language was previously part of a

public hearing and received no comment, no public hearing is proposed for this amendment in order to expedite correction of this error.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than December 10, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than December 10, 2010.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 94 based on the 684 community public water supply systems and 257 non-transient, non-community public water supply systems that may be subject to the disinfection byproducts requirements in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this entity. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; open-cut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN
Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, November 1, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.29.1432, 24.29.1533, and) PROPOSED AMENDMENT
24.29.1538, regarding the workers')
compensation medical fee schedules)

TO: All Concerned Persons

1. On December 3, 2010, at 10:00 a.m., or as soon thereafter as is feasible, the Department of Labor and Industry (department) will hold a public hearing to be held in the Sanders Auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this 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 30, 2010, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulations Bureau, Attn: Keith Messmer, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail kmessmer@mt.gov.

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

24.29.1432 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER DECEMBER 1, 2008 (1) through (1)(f) remain the same.

(g) The Montana Status Indicator (SI) Codes as follows: ~~;~~ and

(i) for services provided from December 1, 2008, through December 31, 2010, "The Montana Status Indicator (SI) Codes applicable from December 1, 2008, to December 31, 2010";

(ii) for services provided on or after January 1, 2011, "The Montana Status Indicator Codes applicable on or after January 1, 2011"; and

(h) and (2) remain the same.

(3) Critical access hospitals ~~and medical assistance facilities~~ are reimbursed at 100 percent of that facility's usual and customary charges, unless there is an applicable agreement with a managed care organization or a preferred provider organization that provides for a different payment amount.

(4) through (6) remain the same.

(7) Facility billing must be submitted on a CMS Uniform Billing (UB-04) form or CMS 1500 form, including the 837-I and 837-P form when submitting electronically. When a billing document includes a line item charge, but no CPT or HCPCS code is provided for that item, the item is not separately payable.

(8) through (10) remain the same.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective December 1, 2008 For services provided from December 1, 2008, through December 31, 2010, the base rate is \$7,735.

(ii) For services provided on or after January 1, 2011, the base rate is \$8,091.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, for services on or after January 1, 2011, if the MS-DRG weight is 0.5, the amount payable is \$3,867.50 4,045.50, which is the base rate of \$7,735 8,091 multiplied by 0.5.

(c) remains the same.

(d) The threshold for outlier payments is three times the Montana MS-DRG payment amount. For services provided on or after January 1, 2011, when determining whether the outlier threshold has been met, the only implantable charges that may be included in the total charges are the actual invoice cost of the implantable, the handling and freight cost for the implantable, and 15 percent of the actual amount paid for the implantable. Any reimbursement for an implantable included as part of an outlier must be documented by a copy of the invoice for the implantable. If the outlier threshold is met, the outlier payment must be the MR-DRG reimbursement amount plus an amount that is determined by multiplying the charges above the threshold by the sum of 15 percent and the individual hospital's Montana operating RCC.

(i) and (ii) remain the same.

(e) The following applies to implantables provided at an acute care hospital:

(i) For services provided from December 1, 2008, through December 31, 2010, ~~W~~where an implantable exceeds \$10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment according to (11)(e)(iii) through (v). Any implantable that costs less than \$10,000 is bundled in the implantable charge included in the MS-DRG payment.

(ii) For services provided on or after January 1, 2011, implantables are not separately reimbursed.

~~(i)(iii)~~ Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

~~(ii)(iv)~~ Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice, plus the handling and freight cost for the implantable, plus 15 percent of the actual amount paid for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

~~(iii)(v)~~ When a hospital seeks additional reimbursement pursuant to this subsection, the implantable charge is excluded from any calculation for an outlier payment.

~~(iv)(vi)~~ Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to

determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.

(f) and (g) remain the same.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The department may establish the base rate for outpatient service at acute care hospitals annually.

(i) Effective For services provided from December 1, 2008, through December 31, 2010, the base rate for hospital outpatient services is \$105.

(ii) For services provided on or after January 1, 2011, the base rate for hospital outpatient services is \$102.40.

(b) The department may establish the base rate for ASCs annually.

(i) Effective For services provided from December 1, 2008, through December 31, 2010, the base rate for ASCs is \$79, which is 75 percent of the hospital base rate.

(ii) For services provided on or after January 1, 2011, the base rate for ASCs is \$76.80, which is 75 percent of the hospital base rate.

(c) through (e) remain the same.

(f) The following applies to implantables provided as part of outpatient services at an acute care hospital or at an ASC:

(i) For services provided from December 1, 2008, through December 31, 2010, where ~~Where~~ an outpatient implantable exceeds \$500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment according to (12)(f)(iii) through (iv). In such an instance, the provider may bill CPT code L 8699, and the status indicator code "N" may not be used by a payer to determine the amount of the payment. Any implantable that costs less than \$500 is bundled in the APC payment.

(ii) For services provided on or after January 1, 2011, implantables are not separately reimbursable.

~~(i)~~(iii) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

~~(ii)~~(iv) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice, plus the handling and freight cost for the implantable, plus 15 percent of the actual amount paid for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(v) Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.

(g) remains the same.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1432 because 39-71-704, MCA, requires the department to annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. Section 39-71-704, MCA, also controls workers' compensation costs by setting an upper limit above which fees may not be set. The proposed rates change reimbursement for facilities in order to address steadily increasing medical costs in workers' compensation, costs that are increasing faster than general inflation. Currently, medical costs comprise 72% of every dollar spent on workers' compensation benefits, compared to 56% in 1998. The department initially established the current fee schedule to make reimbursement based on a cost-based system, so that costs could be controlled. The proposed rates reimburse at approximately 150% of Medicare and are set relative to the limit of 10% above group health based on the data supplied by providers. The proposed rates are higher than those discussed informally by the department because Medicare rates recently went up. Further, although the department is analyzing Medicare rates as relevant to the fee schedule reimbursements, the department is proposing a Montana-specific rate that will not go down if Medicare reimbursement goes down. Rather, this rate will only change if proposed and adopted through the normal Montana Administrative Procedure Act requirements. The department reserves the right to adjust the proposed reimbursement rates based on comments received.

There is also reasonable necessity to change the reimbursement procedure for implantables. Providers have indicated that they would prefer that the reimbursement amount for implantables be incorporated in the base rate reimbursement number, rather than have a separate reimbursement. That allows providers to not have to process excess paperwork dealing with the implantable reimbursement.

There is also reasonable necessity to update the Montana-specific status indicator code list, in order to make the fee schedule simpler and clearer for users. The updated list proposes to add more of Medicare's status indicator codes, since that is what users are accustomed to.

There is reasonable necessity to amend (3) to remove medical assistance facilities to conform to the statutory amendments to 39-71-704, MCA. Because the department has received numerous inquiries regarding reimbursement for critical access hospitals, there is also reasonable necessity to clarify that under 39-71-704(8), MCA, critical access hospitals may be subject to lower than 100% reimbursement if that hospital chooses to enter into a managed care organization agreement or a preferred provider agreement.

Due to feedback from users, there is reasonable necessity to clarify that when a line item charge on a bill does not include a CPT or HCPCS code, it is not reimbursable at 75% of charges. Rather, that item is not separately reimbursable.

24.29.1533 NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) through (1)(b)(i) remain the same.

(ii) For services provided on or after January 1, 2011, the Montana geographical practice cost indices (GPCI) listed in the RBRVS are incorporated by reference.

(c) remains the same.

(i) The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2009", applies to services provided from January 1, 2009, through December 31, 2009;

(ii) The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2008", September 2007 edition, applies to services provided from January 1, 2008, through December 31, 2008;

(d) through (f) remain the same.

(2) The conversion factors, the CPT codes, and the RVU, and the GPCI used depends on the date the medical service, procedure, or supply is provided. The reimbursement amount is generally determined by finding the proper CPT code in the RBRVS then multiplying the GPCI adjusted RVU for that code by the conversion factor. For example, if the conversion factor is \$5.00, and a procedure code has a GPCI adjusted unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is \$15.00.

(3) Instructions for the fee schedule are available on the department's web site, ~~along with already calculated reimbursement amounts by CPT code.~~ All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions affecting the determination of individual fees apply. A copy of the instructions is available on the department web site at <http://erd.dli.state.mt.us/wcregs/medreg.asp> or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.

~~(4) The maximum fee that an insurer is required to pay for a particular procedure is listed on the department web site and was computed using the RVU in the total facility or nonfacility column of the RBRVS times the conversion factor, except as otherwise provided for in these rules.~~

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

~~(6) RVUs have not been established in the RBRVS for CPT codes 99455 and 99456. The RVU established by the department for:~~

~~(a) code 99455 is 2.5 RVU; and~~

~~(b) code 99456 is 2.8 RVU.~~

(7) through (11) remain the same but are renumbered (5) through (9).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend 24.29.1533 to incorporate the geographical practice cost indices that are incorporated in the RBRVS. The department has determined that because geographical practice cost indices are an integral part of the overall RBRVS system, including the indices within the Montana fee schedule system will increase the overall comparability to Medicare and other payers.

There is reasonable necessity to remove the requirement from rule that the already calculated maximum reimbursement amounts that an insurer is required to pay be listed on the department's web site by CPT code. The department cannot list these amounts at the same time as the rules notice is posted because the timing the rules notice and the RVU value changes are different. Therefore, the department proposes to remove the mandatory requirement from the rule, but still post the values in a timely manner as a customer service.

There is reasonable necessity to remove the Montana-specific RVU values for the listed codes because the RBRVS has now established values for those codes.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 -- METHODOLOGY (1) and (2) remain the same.

(a) provided from January 1, 2008, through December 31, 2008, is \$63.45;
and

(b) provided ~~on or after~~ from January 1, 2009, through December 31, 2010 is \$65.28; and

(c) provided on or after January 1, 2011, is \$59.81.

(3) and (3)(a) remain the same.

(b) provided from January 1, 2009, through December 31, 2009, is \$61.98;
and

(c) provided ~~on or after~~ from January 1, 2010, through December 31, 2010 is \$60.97; and

(d) provided on or after January 1, 2011, is \$55.12.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1538 because 39-71-704, MCA, requires the department to annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. The statute allows the rate to be set at a rate not greater than 10% above the average of the conversion factors used by up to the top five insurers or third party administrators providing group health insurance coverage using the resource-based relative value scale in Montana. The 2011 average rate is \$62.41. The proposed rate is therefore 96% of group health rates and 87% of the upper limit of 68.65. The proposed rate is set relative to 10% above the average conversion factor. The department believes this is a reasonable conversion factor that controls costs but at the same time provides a reasonable reimbursement. Because Montana's group health rates are more than 115% of the national average for group health, the department believes that setting the rate at the maximum limit of 110% of group health in Montana will not properly control costs.

The proposed rates change reimbursement for nonfacilities in order to address steadily increasing medical costs in workers' compensation, costs that are increasing faster than general inflation. Currently, medical costs comprise 72% of every dollar

spent on workers' compensation benefits which is significantly above the national average and up from 56% in 1998. The department initially established the fee schedule to have reimbursement based on a cost-based system, so that costs could be controlled. Setting the conversion factor at a lower amount is intended to balance the competing interests of users of the system in that it controls costs, but also allows for a reasonable reimbursement above costs.

The proposed rates are higher than those discussed informally by the department because Medicare rates recently went up. Further, although the department is analyzing Medicare rates as relevant to the fee schedule reimbursements, the department is proposing a Montana-specific rate that will not go down if Medicare reimbursement goes down. Rather, this rate will only change if proposed and adopted through the normal Montana Administrative Procedure Act requirements. The department reserves the right to adjust the proposed reimbursement rates based on comments received.

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: Keith Messmer, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail kmessmer@mt.gov, and must be received no later than 5:00 p.m., December 10, 2010.

5. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the electronic copy of this Notice of Public Hearing 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 a person's difficulties in sending an e-mail 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 this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to

mcadwallader@mt.gov, or may be 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, do not apply.

8. The department's Hearings Bureau has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly,
Commissioner of Labor and Industry

Certified to the Secretary of State November 1, 2010

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I and II, and amendment of) AMENDMENT
ARM 4.12.102, 4.12.106, 4.12.108,)
4.12.110, and 4.12.111, relating to)
Apiculture)

TO: All Concerned Persons

1. On September 23, 2010 the Department of Agriculture published MAR Notice No. 4-14-197 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2018 of the 2010 Montana Administrative Register, Issue Number 18.

2. The department has adopted New Rule I (4.12.112) and New Rule II (4.12.113) as proposed. The department has amended the above-stated rules as proposed.

3. The department received the following comments:

Comment 1: One beekeeping association responded with unanimous support for the proposed rules as written.

Response 1: No response is necessary.

Comment 2: One beekeeper responded with a list of criticisms of the law including the three-mile limit, the pollination permit systems, the budget of the program, and why Montana has an apiary program at all.

Response 2: All of the criticism involved the laws related to the apiary program, not the rules. Regardless of the merit or lack of merit of the comments, nothing in the rule does or could change the laws in question. It was recommended by the department that the beekeeper talk to his legislator about the laws in question.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State November 1, 2010.

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

In the matter of the amendment of)
ARM 24.159.301 definitions,)
24.159.401 fees, 24.159.601 through)
24.159.680 nursing education)
programs, 24.159.1021 LPN practice)
permit, 24.159.1028 LPN licensure,)
24.159.1029 LPN foreign)
requirements, 24.159.1221 RN)
practice permit, 24.159.1228 RN)
licensure, 24.159.1229 RN foreign)
requirements, 24.159.1605)
delegation practices, 24.159.2020)
and 24.159.2021 nondisciplinary)
track, 24.159.2301 conduct of nurses,)
and the adoption of NEW RULES I)
and II program standards, NEW)
RULES III through VI continuing)
education, and NEW RULE VII)
clinical practice settings)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On September 9, 2010, the Board of Nursing (board) published MAR notice no. 24-159-74 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1930 of the 2010 Montana Administrative Register, issue no. 17.

2. On September 30, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the October 8, 2010, 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 24.159.301 (definitions):

COMMENT 1: A commenter opposed calculating contact hours in half-hour increments because the language is inconsistent with many continuing education accrediting body standards as well as language proposed elsewhere in this notice.

RESPONSE 1: The board agrees and is amending ARM 24.159.301(7) accordingly.

COMMENT 2: A commenter suggested the board amend ARM 24.159.301(9) and New Rule III so that a continuing education provider is "an entity that is approved by an accredited or approved organization to provide continuing education programs."

RESPONSE 2: The board concluded that it is not necessary to add "approved" to the rule since accrediting organization is already defined in in this rule as a professional organization, which has been approved by the board. Moreover, the commenter's proposed amendment would allow any "accredited or approved" organization to, in turn, approve another accrediting organization, bypassing direct board approval of accrediting organizations.

COMMENT 3: A commenter asked the board to clarify the meaning of "national accreditation" in (18), stating that it is unclear whether regional accreditation bodies listed in ARM 24.159.615(2) have any role in the approval of nursing education programs. The commenter suggested that it would be helpful to define regional accreditation as it relates to colleges, universities, and nursing education programs.

RESPONSE 3: The board agrees and is amending ARM 24.159.615(2) to clarify the purpose of regional accreditation programs in relation to colleges, universities, and nursing education programs.

ARM 24.159.401 (fees):

COMMENT 4: A commenter agreed with the reduced fee in (2) for subsequent applications to take the NCLEX, but asked the board to clarify that the NCSBN sets the examination fees and suggested that if a previous application lapsed after the first 12-month period of time, then a new application would need to be submitted.

RESPONSE 4: The board agrees that the NCSBN sets NCLEX exam fees, and notes that some applicants mistakenly send NCLEX exam fees to the board office. The board is therefore amending ARM 24.159.401(2) to clarify that the fee is an application fee for approval to retake the NCLEX exam, not the fee charged by the NCSBN for administering the exam. As to the commenter's suggestion about a new application after the first 12-month period, the board notes that current rules state that a new application must be submitted if an applicant fails to meet application requirements within one year, and this rule already requires an application fee. The board declined to further amend this rule.

COMMENT 5: A commenter stated that the board does not certify APRNs and recommended language changes to (4) of this rule. The commenter also asked how many fees are due if multiple APRN specialties are obtained.

RESPONSE 5: The board agrees that it does not certify APRNs, but the suggested language fails to address the perceived problem. The board points out that an APRN's practice within the scope of a specialty certification requires that the APRN first pay an application fee to the board for each specialty certification and then renew each specialty certification with the board. An APRN must consult the

specific rules addressing application and renewal of APRN licenses, but the board concluded that the proposed language in (4) adequately explains the requirements.

ARM 24.159.609 (program evaluation):

COMMENT 6: One commenter suggested that (2)(e) should require evidence of the incorporation of quality improvement initiatives and that the language is outdated.

RESPONSE 6: Presumably, the commenter's suggested language is intended to either raise the bar for nursing education programs or more clearly describe what the appropriate standard should be. The board fails to see how the suggested language accomplishes either of those ends and is amending ARM 24.159.609 exactly as proposed.

COMMENT 7: A commenter suggested amending (2)(g), (3)(c) and (d) to require that nursing education programs explain why particular methods for measuring student attrition and employer satisfaction were chosen.

RESPONSE 7: At the time of the annual report, the board may ask for an explanation of why a particular measurement was used, if that appears to be an issue. Moreover, the board is more interested in how each particular program explains the results, than in micromanaging how programs present their reports.

COMMENT 8: A commenter suggested the board should calculate the five-year data that is required in (3)(a) by using NCLEX data, rather than having the nursing education programs provide the data as part of their reports.

RESPONSE 8: The board notes that the current process keeps the board from controlling the minutia of program reports. In addition, the board monitors the NCLEX data and the programs are accountable to the board, so there is no tangible risk of being provided unreliable data by the programs.

ARM 24.159.640 (change in approval status of program):

COMMENT 9: One commenter suggested the board change "achieved" to "demonstrated" in (7).

RESPONSE 9: If a program fails to demonstrate compliance, the board will be unable to determine that the program has achieved compliance, so demonstration of the program's compliance is already incumbent upon the program. The board is amending ARM 24.159.640(7) exactly as proposed.

ARM 24.159.666 (use of CRRNs in nursing education programs):

COMMENT 10: A few commenters suggested that restricting the number of CRRNs and students that a program's faculty may supervise does not protect the public. One commenter said that it makes more sense to limit the number of students

supervised by a CRRN, rather than the number of CRRNs that a faculty member may supervise. Another commenter did not oppose limiting faculty supervision to no more than 20 students, but agreed with the other commenters that restricting total CRRNs makes no sense.

RESPONSE 10: The board agrees with the commenters' rationale and is amending ARM 24.159.666 accordingly. The board notes that a program's failure to place necessary controls on the number of students or CRRNs under the particular circumstances of that program may place the program's approval at risk, so that a meaningful incentive is already in place to discourage abuse.

COMMENT 11: One commenter asserted that the amendments to this rule place a burden on rural facilities by prohibiting CRRNs from having clinical responsibilities concurrent with the supervision of students.

RESPONSE 11: The board notes that the commenter's suggestion may make CRRNs virtually indistinguishable from preceptors. Moreover, either the supervision of students or the care of patients could potentially be compromised if both functions were allowed to be performed simultaneously, creating a risk to the public.

ARM 24.159.677 (professional nursing curriculum specific to Associate degrees):

COMMENT 12: One commenter asked how structured vs. unstructured settings in (1) will be monitored in the Associate degree role, which prepares nurses for "structured" settings, only, while the Baccalaureate degree role would prepare nurses for both structured and unstructured settings. The commenter pointed out that this distinction is not made with NCLEX-RN licensure and said that (5) denies an Associate degree nurse a leadership role within the interdisciplinary health care delivery system, which could be very limiting considering that NCLEX-RN licensure focuses on management of care and leadership to verify competency in this area, regardless of the type of degree obtained.

RESPONSE 12: The board notes that ARM 24.159.677 addresses curriculum, not practice, and therefore, the practice of a RN nurse prepared through an Associate degree program is not necessarily limited by this rule. The board is amending this rule exactly as proposed.

ARM 24.159.1021 and 1221 (temporary practice permit):

COMMENT 13: One commenter stated that requiring direct supervision of every temporary practice permit holder serves no practical purpose. The commenter opined that, following amendment, a permit holder would be unable to practice in home health care while waiting on a delayed CGFNS report.

RESPONSE 13: The proposed amendments to require supervision pending licensure will adequately protect both the license applicant and the public. Before direct supervision can end, all qualifications of the applicant must be confirmed and

the application must be approved prior to licensure. The board is amending ARM 24.159.1021 and 24.159.1221 exactly as proposed.

ARM 24.159.1029 and 1229 (foreign-educated applicants):

COMMENT 14: A commenter stated that the board lacks the expertise to determine which other education evaluation services, other than CGFNS, could be used to provide the "very necessary barrier to licensure of foreign educated applicants."

RESPONSE 14: The board notes that if the board is capable of determining that CGFNS is an appropriate education evaluation service, it is also able to determine the appropriateness of other evaluation services. The board concluded that the current rules hinder applicants with an unnecessary barrier to licensure and is amending ARM 24.159.1029 and 24.159.1229 exactly as proposed.

COMMENT 15: One commenter approved allowing entities other than CGFNS to evaluate foreign education and suggested that the board establish a vetting process for these companies to ensure that Montana's residents receive safe care that is equivalent to that provided by domestically educated nurses.

RESPONSE 15: The board may consider establishing a vetting process in a future meeting, but is unable to address that suggestion in the current rule notice.

ARM 24.159.1605 and 2301 (name badges):

COMMENT 16: A few commenters approved having just the nurse's first name and first initial of the last name on a name badge, since a nurse's identity is known to the employer, and the requirement will not compromise the public's protection.

RESPONSE 16: The board agrees with the commenters' reasoning and is amending ARM 24.159.1605 and 2301 exactly as proposed.

COMMENT 17: One commenter stated that to accomplish the board's duty of protecting the public health, safety, and welfare, both first and last names of must be on nurses' name badges. The commenter asserted that the public has a right to know the identity of the nurses treating them and the board has not provided any reliable collaboration between name badges and violence against nurses. The commenter also opined that the statement of reasonable necessity is inadequate, the board is unable to change the current name badge requirements unless doing so would enhance the protection of the public, nicknames are used in some facilities, and that many states require public identification of licensees.

RESPONSE 17: The board points out that the proposed name badge amendments reflect only the minimum information required and that individual facilities or employers may require more. Because employers know each nurse, failing to print the full last name on a name badge or using a preferred first name does not hide the identity of nurses from the public. The board has received numerous complaints

from nurses – who are also members of the public – in which the nurses link the use of full names on name badges to harm or threat of harm to the nurses. The board does not believe that the change will compromise the public's protection, and rejects the assertion that the board is only able to amend rules to enhance public protection. The board concluded that the proposed amendments will likely enhance protection for nurses and will harm no other members of the public.

New Rules III through VI (continuing education):

COMMENT 18: One commenter asked if the board would notify licensees of approved continuing education (CE) courses. The commenter further stated that the board should consider all licensees, including those who have limited access to computers for online courses, that CE will be a financial burden on nurses, especially in a state as large as Montana, and that education required by employers would not be counted as CE under the proposed rules.

RESPONSE 18: The board points out that CE is considered an important requirement for the protection of the public and that there are many resources available for obtaining qualified continuing education.

COMMENT 19: One commenter, who is dually licensed as an LPN and a nursing home administrator, noted that a nursing home administrator license requires 25 hours of CE annually, and suggested giving nurses in management positions credit for "management criteria" since many CE hours relate back to care issues.

RESPONSE 19: The board notes that, regardless of CE requirements for other licenses, a nurse is required to obtain 24 hours of CE every two years. New Rules III through VI will allow a licensee to use CE obtained for another license, if it also qualifies as CE within the new rules.

COMMENT 20: A commenter suggested amending New Rule III(1)(b) to accept CE that provides education in nursing roles or practice, stating that there are many nursing roles today that might not be traditionally considered nursing practice, but the roles themselves may require nursing education, experience, and licensure.

RESPONSE 20: The board agrees and is amending New Rule III accordingly.

COMMENT 21: A commenter suggested that proposed New Rule III(2), defining how CE is qualified as contact hours, is too limiting.

RESPONSE 21: The board determined that (2) is inconsistently restrictive in relation to ARM 24.159.301(8), since it omits "continuing education provider" from the list of entities that may approve continuing education, and is amending this rule accordingly.

COMMENT 22: One commenter suggested amending New Rule IV(3) to better direct staff in prorating new licensees' CE by requiring that licensees submit

requests to the board office, instead of the board. The commenter also suggested changing the language from "licensed less than 2 years" to "issued an original Montana nursing license during the course of the two year renewal period."

RESPONSE 22: The board concluded that the concern about prorating CE is sufficiently addressed in proposed New Rule IV without further amendments, and the board maintains appropriate control over CE proration. The proposed language in New Rule IV does not prevent the board from directing staff to handle proration requests, as this may be accomplished by motion during a board meeting. The board determined that the proposed language more clearly expresses the intent of the board than does the commenter's suggested change.

COMMENT 23: A commenter suggested deleting the commas after "two-year period" in New Rule IV(5), and after "setting" in New Rule VII(2)(h).

RESPONSE 23: The board agrees and is amending the new rules accordingly.

COMMENT 24: A commenter suggested amending New Rule V(1)(b) to add "or class for college credit" as such classes may be used to satisfy CE requirements.

RESPONSE 24: The board points out that, as stated by the commenter, the rules already provide for CE credit for college classes. The board is adopting New Rule V exactly as proposed.

COMMENT 25: A commenter suggested amending New Rule VI(3) for clarity by replacing "within 30 days" with "by the date specified in the notice."

RESPONSE 25: The board agrees and is amending New Rule VI accordingly.

COMMENT 26: One commenter said that New Rule VI(4) should be amended to require licensees to maintain records beyond two years, stating that a strict application of the rule may hinder the board's ability to audit even the immediately prior renewal period.

RESPONSE 26: The board agrees and is amending (4) of New Rule VI to clarify that proof of CE must be maintained for the period that is no less than two years following the last day of the renewal period during which the CE was obtained.

COMMENT 27: A commenter suggested the board amend New Rule VI(6) and ARM 24.159.2301 to specify that failure to respond to a board notice of audit may be considered unprofessional conduct and be subject to board sanctions. The commenter opined that disciplinary actions are taken against licenses, not licensees.

RESPONSE 27: The board disagrees that disciplinary actions are not taken against licensees, because the licensee is named as a respondent in the action and may end up being personally liable for fines, being personally prohibited from practicing nursing, being subject to personal supervision, or being personally required to report

to the board on a regular basis, among other sanctions that personally affect the licensee. The board notes that the suggested language that a "failure" may be subject to board sanctions is nonsensical, and is not making the suggested change.

COMMENT 28: One commenter expressed general approval of the effort put into the rule amendments and adoptions, and listed the commenter's concerns.

RESPONSE 28: The board appreciates all comments made during the rulemaking process. The board noted the stated areas of concern and will entertain any ideas presented that address the concerns at a future meeting.

4. The board has amended ARM 24.159.601 through 24.159.614, 24.159.616 through 24.159.665, 24.159.667 through 24.159.680, 24.159.1021, 24.159.1028, 24.159.1029, 24.159.1221, 24.159.1228, 24.159.1229, 24.159.1605, 24.159.2020, 24.159.2021, and 24.159.2301 exactly as proposed.

5. The board has amended ARM 24.159.301, 24.159.401, 24.159.615, and 24.159.666 with the following changes, stricken matter interlined, new matter underlined:

24.159.301 DEFINITIONS (1) through (6) remain as proposed.

(7) "Contact hours" means the time period of instruction determined by the continuing education provider and indicated on the participant's certificate of completion. ~~Contact hours may be calculated in half-hour increments.~~ One academic semester credit equals 15 contact hours; one academic quarter credit equals 12.5 contact hours.

(8) through (38) remain as proposed.

24.159.401 FEES (1) remains as proposed.

(2) The application fee required for requesting board approval to retake fee ~~for repeating the examination (NCLEX) for RN or LPN is \$50.~~

(3) through (19) remain as proposed.

24.159.615 RECOGNIZED ACCREDITATION BODIES (1) remains as proposed.

(2) The board recognizes the following regional accreditation bodies ~~for purposes of approving nursing education programs:~~

(a) through (f) remain as proposed.

24.159.666 USE OF CLINICAL RESOURCE REGISTERED NURSES (CRRNS) IN NURSING EDUCATION PROGRAMS (1) remains as proposed.

(2) The supervising faculty member is responsible for all students in the clinical setting, including those supervised by the CRRNs. ~~The faculty may supervise no more than two CRRNs. One faculty member cannot have responsibility for more than 20 students at one time.~~ The maximum number of nursing students a CRRN may supervise at any one time is ten.

(3) through (4)(d) remain as proposed.

6. The board has adopted NEW RULES I (24.159.632), II (24.159.611), and V (24.159.2104) exactly as proposed.

7. The board has adopted NEW RULES III (24.159.2101), IV (24.159.2102), VI (24.159.2106), and VII (24.159.608) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III STANDARDS FOR CONTINUING EDUCATION

(1) through (1)(a) remain as proposed.

(b) offers greater depth of knowledge and skills in a particular area of nursing role or practice;

(c) through (h) remain as proposed.

(2) To qualify as contact hours, continuing education courses must be approved by an accrediting organization or provided by an academic institution of higher learning, a continuing education provider, or an APRN certifying body.

NEW RULE IV BIENNIAL CONTINUING EDUCATION REQUIREMENTS

(1) through (4) remain as proposed.

(5) Licensees seeking reactivation or reinstatement of an inactive license must complete 24 contact hours of continuing education during the two-year period, immediately preceding application for reinstatement.

(6) remains as proposed.

NEW RULE VI AUDITING OF CONTACT HOURS (1) and (2) remain as proposed.

(3) Licensees shall respond to the notice of audit ~~within 30 days~~ by the date specified in the notice by submitting proof of completion of continuing education for the renewal period specified by the board. Proof may consist of copies of the continuing education certificates issued by the continuing education provider, transcripts with course descriptions or other verified documentation of course completion.

(4) Licensees must retain proof of completion of continuing education ~~during the next~~ for the period of no less than two years following the last day of the renewal period during which the continuing education was obtained.

(5) and (6) remain as proposed.

NEW RULE VII PLACEMENT OF AN OUT-OF-STATE NURSING STUDENT IN A MONTANA CLINICAL PRACTICE SETTING (1) through (2)(g) remain as proposed.

(h) verification from relevant directors of Montana nursing education programs that placement of the out-of-state student in the identified Montana clinical practice setting, will not displace a Montana nursing student;

(i) through (5) remain as proposed.

BOARD OF NURSING
KATHY HAYDEN, LPN

/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 November 1, 2010

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 37.80.101 and 37.80.201)
pertaining to child care assistance)

TO: All Concerned Persons

1. On September 23, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-520 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2171 of the 2010 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 these rules retroactively to November 1, 2010. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State November 1, 2010.

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, 2010. This table includes those rules adopted during the period July 1, 2010, through September 30, 2010, and any proposed rule action that was pending during the past six-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, 2010, 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 2010 Montana Administrative Register.

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

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