

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.57.412, 10.57.425, and) PROPOSED AMENDMENT
10.57.426, pertaining to educator)
licensure)

TO: All Concerned Persons

1. On October 27, 2015, at 10:00 a.m., the Board of Public Education will hold a public hearing in the training room at the Office of Public Instruction, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on October 20, 2015, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.57.412 CLASS 1 AND 2 ENDORSEMENTS (1) through (3) remain the same.

(4) To obtain an elementary (K-8), early childhood (age 3 to grade 3), or middle grades (4-8) endorsement, an applicant must provide verification of completion of an accredited teacher education program in those areas to include student teaching or supervised teaching experience or a waiver of this requirement if the applicant has previously had supervised teaching experience.

(5) remains the same.

(a) completion of an NCATE or CAEP accredited professional educator preparation program at the grade level(s) identified by the program, including supervised teaching experience, or a waiver of this requirement if the applicant has previously had supervised teaching experience; or

(b) remains the same.

(6) To obtain an endorsement in special education P-12, the applicant must provide verification of:

(a) completion of an NCATE or CAEP accredited professional educator preparation program; or

~~(a) a bachelor's degree; and~~

(b) completion of an a state-approved accredited special education P-12 professional educator preparation program from a regionally accredited college or

university; and

(c) which includes student teaching or supervised teaching experience or a waiver of this requirement if the applicant has previously had supervised teaching experience.

(7) through (9) remain the same.

AUTH: 20-4-102, MCA

IMP: 20-4-106, 20-4-108, MCA

10.57.425 CLASS 5 PROVISIONAL LICENSE – ELEMENTARY LEVEL

(1) remains the same.

(a) a bachelor's degree from a regionally accredited college or university; and

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

AUTH: 20-4-102, MCA

IMP: 20-4-106, 20-4-108, MCA

10.57.426 CLASS 5 PROVISIONAL LICENSE – SECONDARY, K-12, and P-12 SPECIAL EDUCATION LEVELS (1) remains the same.

(a) a bachelor's degree from a regionally accredited college or university; and

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

AUTH: 20-4-102, MCA

IMP: 20-4-106, 20-4-108, MCA

4. Statement of Reasonable Necessity: Supervised teaching experience is defined in ARM 10.57.102(12) as "field experience, internship, practicum, or student teaching." The term "student teaching" need not be repeated in this rule. Allowing a university or college waiver of the supervised teaching experience requirement is necessary when an applicant for an endorsement has already completed the supervised teaching experience in their educator preparation program. Without allowing a waiver, the applicant would have to repeat the educator preparation program's supervised teaching component for each endorsement added.

ARM 10.57.425 and 10.57.426 clarify that educators must obtain a bachelor's degree from a regionally accredited college or university, without which there is no criteria for any accreditation of the bachelor's degree program.

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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., October 27, 2015.

6. Peter Donovan has been designated to preside over and conduct this hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 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 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 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.

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

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll
Board Chair
Board of Public Education

Certified to the Secretary of State September 14, 2015.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.207.101 board organization,	)	PROPOSED AMENDMENT AND
24.207.401 fees, 24.207.406	)	REPEAL
definitions, 24.207.501 examination,)	
24.207.502 application requirements,)	
24.207.509 qualifying experience,)	
24.207.518 mentor requirements,)	
24.207.1501 registration and renewal,)	
24.207.1507 record-keeping)	
requirements, 24.207.2305)	
unprofessional conduct, and the)	
repeal of ARM 24.207.520 renewals)	

TO: All Concerned Persons

1. On October 15, 2015, at 9:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, 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 Real Estate Appraisers (board) no later than 5:00 p.m., on October 9, 2015, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsrea@mt.gov (board's e-mail).

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

24.207.101 BOARD ORGANIZATION (1) remains the same.

(2) The presiding officer shall preside at all meetings and shall perform such duties as the board may direct. At any meeting at which the presiding officer is absent, the vice presiding officer will serve as the presiding officer.

(3) The board shall hold an annual meeting prior to October 31 of each year for purposes of electing officers from among its members, each for a term of one year, or until a successor has been duly elected and qualified.

(4) Meetings shall be held, after reasonable notice, at the call of the presiding officer or a majority of the members of the board.

AUTH: 2-4-201, 37-54-105, MCA

IMP: 2-4-201, MCA

REASON: The board determined it is necessary to amend this rule to ensure elections are held regularly and to clarify the board's intent regarding the chain of command when the presiding officer is absent. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

<u>24.207.401 FEES</u> (1) through (1)(b) remain the same.	
(c) temporary practice permits for out-of-state licensed or certified appraisers	150 <u>250</u>
<u>(d) temporary practice permit renewal</u>	<u>50</u>
(d) through (l) remain the same, but are renumbered (e) through (m).	
<u>(n) mentor endorsement application fee</u>	<u>200</u>
(m) remains the same, but is renumbered (o).	
(2) through (2)(e) remain the same.	
(f) annual fee for reporting of all engagements	250
(i) annual reporting of all engagements after 30 days	1000
(ii) annual reporting of all engagements after 60 days	2000
(g) through (m) remain the same, but are renumbered (f) through (l).	
(3) remains the same.	

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: The board determined it is reasonably necessary to amend (1)(c) and raise the temporary practice permit fee. The number of temporary practice permits has increased over the last few years, with a large percentage being out-of-state applicants. The board is increasing the fee to be commensurate with the actual costs of processing and regulating these permits. The board estimates that approximately 137 persons will be affected by this fee increase, with a resultant \$13,700 increase in annual revenue.

The board is adding a temporary practice permit renewal fee in (1)(d) to set a fee to cover the costs associated with processing the permit renewals. Although this is not a new process, the board did not initially establish a fee when the temporary registration legislation passed in 2001. Through a review of statutes and rules, the board determined that a reasonable \$50 fee should be charged to cover the work of board staff. The board estimates that approximately two individuals will be affected by this new fee, and that annual revenue will increase by \$100.

The 2015 Montana Legislature enacted Chapter 303, Laws of 2015 (HB 29), an act providing for the regulation of real estate appraiser mentors. The bill was signed by the Governor on April 27, 2015, and will become effective on October 1, 2015. The board is amending this rule by adding (1)(n) to establish a mentor endorsement application fee and further implement the legislation. The board estimates that the new mentor endorsement fee will affect approximately three persons and increase annual revenue by \$600.

The board decided it is reasonably necessary to amend (2) and remove the appraisal management company (AMC) annual fee for reporting of all engagements because it is adopting a new process. The board will audit the AMCs after the renewal period and any AMC found to be noncompliant during the audit will be assessed additional fees or reported to the board at that time. The board estimates that approximately 79 AMCs will be affected by the eliminated fees, and that revenue will decrease by \$23,250. The board notes that this loss of revenue will be offset somewhat by the additional engagement fee charged in the new audit process through the amendments of ARM 24.207.1501 in this notice.

24.207.406 DEFINITIONS (1) remains the same.

(2) "Complete" means a determination by licensing staff that the application form is legible and filled out entirely, the fee and accompanying documentation or further requested information has been received, and the qualifications component has been met.

(a) The qualifications component will include a completed appraisal review prepared by an individual designated by the board, unless the applicant is qualified for a license by reciprocity or is applying for a temporary practice permit or trainee license.

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

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-1-304, 37-54-202, 37-54-302, 37-54-403, 37-54-501,
MCA

REASON: The board determined it is reasonably necessary to amend this rule to clearly delineate a "complete" application. The board notes that it has been unclear to many applicants exactly when an application is deemed complete, and this has led to misunderstanding as to when an application may be heard at the quarterly scheduled board meeting.

The board is amending the implementation citations to accurately reflect all statutes implemented through this rule.

24.207.501 EXAMINATION (1) and (2) remain the same.

(3) ~~Effective January 1, 2015, an~~ An applicant shall be required to successfully complete and pass the 2015 or later examination requirements of the AQB.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-302, MCA

REASON: The board determined it is necessary to amend this rule because January 1, 2015 has passed and the date is no longer necessary.

24.207.502 APPLICATION REQUIREMENTS ~~(1) An application for a license or temporary practice permit must be made on a form provided by the board~~

~~and completed and signed by the applicant and include the applicant's state license number, if applicable.~~

~~(2) The application must be typed or legibly written in ink, accompanied by the appropriate application and license fees and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 54, MCA, and rules promulgated thereunder.~~

~~(3) The applicant shall submit documentation in support of the application.~~

~~(4) The board shall review applications for compliance with applicable laws and rules and shall notify the applicant in writing of the results. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be acknowledged with a statement regarding incomplete portions.~~

~~(5) The board or its designee shall select appraisal reports from the experience log to validate experience and for review in accordance with USPAP. The appraisal reports requested will be commensurate with the level of licensure sought:~~

~~(a) licensure level - single unit residential appraisals are required;~~

~~(b) certified residential - two to four-unit income-producing residential appraisal reports with all three approaches to value are required; and~~

~~(c) general certification - nonresidential appraisal reports with all three approaches to value are required.~~

~~(1) Applicants for licensure or a temporary practice permit must submit a complete application provided by the department, electronically or by paper, including appropriate fees and all required documentation.~~

~~(2) An applicant for licensure may qualify in one of two methods, either by examination or reciprocity.~~

~~(3) To qualify for licensure by examination, the applicant must complete the following requirements:~~

~~(a) An examination pursuant to ARM 24.207.501;~~

~~(b) Qualifying education for:~~

~~(i) a licensed real estate appraiser pursuant to ARM 24.207.505;~~

~~(ii) a certified residential appraiser pursuant to ARM 24.207.506; or~~

~~(iii) a certified general appraiser pursuant to ARM 24.207.507.~~

~~(c) Qualifying experience pursuant to ARM 24.207.503, 24.207.508, and 24.207.509;~~

~~(d) Applications will be reviewed for compliance with board law and rules and the applicant shall be notified in writing of any discrepancies or incompleteness in the application or required documentation. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary;~~

~~(e) The board will select work product from the experience log. The work product requested will be commensurate with the level of licensure sought:~~

~~(i) licensure level - single unit residential appraisals are required;~~

~~(ii) certified residential - two to four unit income-producing residential appraisals are required; and~~

~~(iii) general certification - nonresidential report with all approaches to value with income approach, cost approach, and sales comparison approach are required.~~

(f) The applicant shall correct any deficiencies and submit required material within 60 days of notice with no additional application fee. Failure to submit the required materials will be treated as a voluntary withdrawal. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again;

(g) All examination applications are considered nonroutine and must be reviewed by the board; and

(h) Incomplete applications, whether missing information or documentation will not be scheduled for a board meeting. Applications including the appraisal review must be completed for board review at least 15 days prior to the scheduled board meeting or the application will be referred to the next scheduled board meeting.

(4) To qualify for licensure by reciprocity, the applicant must:

(a) have a current and unencumbered license in a jurisdiction where the appraisers are approved by the ASC as eligible to perform appraisals for federally related transactions or a jurisdiction that strictly abides by the ASC standards;

(b) have no current or pending disciplinary action against any other licenses the applicant holds; and

(c) be listed as AQB compliant on the ASC national registry.

(5) To qualify for a temporary practice permit, the applicant must:

(a) complete the appropriate application and submit fees; and

(b) have an active status with the ASC national registry.

(6) through (8) remain the same.

~~(9) A completed application file must be received in the board office at least 45 days in advance of the next scheduled board meeting date.~~

~~(10) remains the same, but is renumbered (9).~~

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to distinguish between applicants who apply for licensure by examination and those who apply by reciprocity. The board also determined it is reasonably necessary to remove (9) because the board has adopted the department's standardized application procedure and this rule conflicts with the new process.

24.207.509 QUALIFYING EXPERIENCE (1) through (8)(a)(ii) remain the same.

(b) multiunit residential (two to four units) 20

(i) and (ii) remain the same.

(c) residential vacant land less than ten acres 8

(i) and (ii) remain the same.

(d) individual residential subdivision sites (per site)

(not to exceed 20 hours - two sites per subdivision) 5

(i) and (ii) remain the same.

(e) land (undeveloped nonresidential tracts, residential multifamily sites, commercial sites,

industrial sites, land in transition, etc.)	20
(i) appraisal report	20 <u>25</u>
(ii) restricted appraisal report	20 <u>25</u>
(f) rural, agricultural, or residential ten to 160 acres	20
(i) appraisal report	20 <u>25</u>
(ii) restricted appraisal report	20 <u>25</u>
<u>(g) rural, agricultural, or residential 161 to 2000 acres</u>	
(i) appraisal report	<u>30</u>
(ii) restricted appraisal report	<u>30</u>
<u>(h) agricultural in excess of 2000 acres</u>	
(i) appraisal report	<u>40</u>
(ii) restricted appraisal report	<u>40</u>
(g) and (h) remain the same, but are renumbered (i) and (j).	
(j) <u>(k)</u> residential multifamily (5-12 units) (apartments, condominiums, townhouses, mobile home parks, etc.)	35
(i) and (ii) remain the same.	
(j) <u>(l)</u> residential multifamily (13+ units) (apartments, condominiums, townhouses, mobile home parks, etc.)	40
(i) and (ii) remain the same.	
(k) <u>(m)</u> commercial single tenant (office building, retail store, restaurant, service station, bank, day care center, etc.)	35
(i) appraisal report	35 <u>40</u>
(ii) restricted appraisal report	35 <u>40</u>
(k) <u>(n)</u> commercial multitenant (office building, shopping center, hotel, etc.)	60
(i) and (ii) remain the same.	
(m) <u>(o)</u> industrial (warehouse, manufacturing plant, etc.)	60
(i) appraisal report	60 <u>70</u>
(ii) restricted appraisal report	60 <u>70</u>
(n) <u>(p)</u> institutional (nursing home, hospital, school, church, government building, etc.)	60
(i) appraisal report	60 <u>70</u>
(ii) restricted appraisal report	60 <u>70</u>
(9) and (10) remain the same.	

AUTH: 37-1-131, 37-54-105, 37-54-303, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to adjust the maximum hours of allowable qualifying experience to permit trainees to receive credit for the entire time it takes to complete a report. The board intends for trainees to continue reporting only actual time spent on the appraisal process, but adjusting the maximum will allow trainees to receive full credit for complicated assignments without having to request a variance. The board notes that this change will align Montana's requirements with those of the surrounding states.

The board is also amending this rule throughout to remove the hours from the general experience categories, as they are already and more appropriately located in the subcategories of appraisal reports and restricted appraisal reports.

24.207.518 MENTOR REQUIREMENTS (1) through (1)(b) remain the same.

(i) a mentor shall make application on forms provided by the board, pay the required fee, and submit two appraisal reports prepared by the mentor in accordance with USPAP standards with all three approaches to value; and

(ii) failure to prepare appraisal reports in compliance with USPAP can result in denial of mentor status; ~~and~~

~~(iii) mentor applications must be received in the board office 45 days prior to the next scheduled board meeting.~~

(c) through (5) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, MCA

REASON: The board is amending this rule to remove (1)(b)(iii) because the board has adopted the department's standardized application procedure and the current rule conflicts with this process.

24.207.1501 REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT COMPANIES (1) through (6) remain the same.

(7) Annually, the registered appraisal management company must report to the board ~~the number of engagements it had whether it had more than 200 engagements or 200 or fewer engagements~~ during the previous renewal year ~~no later than November 15~~. This requirement is subject to audit. The subsequent renewal fee will be based on the appraisal management company's reporting of engagements for the previous renewal year. If the AMC's report of 200 or fewer engagements is found to be inaccurate, the board will notify the AMC and the AMC shall pay an additional engagement fee of \$2500 within 30 days of notification.

~~(a) An appraisal management company that reports its engagements after the deadline in (7) will be assessed additional fees pursuant to ARM 24.207.401.~~

~~(b) Failure to comply with the requirements of (7) on or before January 15 is cause for suspension or revocation of the appraisal management company's registration.~~

(8) and (9) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-501, MCA

REASON: The board determined it is reasonably necessary to amend this rule because it is adopting a new AMC audit process and to align with amendments proposed to ARM 24.207.401 in this notice. The board will audit AMCs after the renewal period and any AMC found to have exceeded 200 engagements will be required to pay an additional engagement fee. This fee will ensure that AMCs

having more than 200 engagements will pay the full cost of regulating an active AMC instead of the lower fee for less active AMCs. The board estimates that approximately two AMCs will pay the additional engagement fee, and that annual revenue will increase by \$5,000.

24.207.1507 APPRAISAL MANAGEMENT COMPANY RECORD-KEEPING REQUIREMENTS (1) through (1)(d) remain the same.

(e) a list of all engagements, including the name of requesting entity, the appraiser assigned, and the dates assigned and completed; If use of trainees or interoffice transfers is restricted, then the AMC's client or end-user policy must be attached to the engagement letter or contract for services;

(f) through (2) remain the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-501, 37-54-503, 37-54-504, 37-54-505, 37-54-506, 37-54-508, 37-54-509, 37-54-510, 37-54-511, 37-54-512, 37-54-513, 37-54-515, 37-54-516, MCA

REASON: The board is amending this rule and ARM 24.207.2305 to establish procedures to implement HB 29 on restricting the use of trainees and interoffice transfers and to allow the board to discipline licensees for violating the bill's provisions.

24.207.2305 UNPROFESSIONAL CONDUCT FOR APPRAISAL MANAGEMENT COMPANIES (1) and (1)(a) remain the same.

(b) failing to provide information requested by the board or its designee in relation to an audit, investigation, or complaint; or

(c) violating any of the appraiser independence prohibitions found in 37-54-514, MCA; or

(d) failing to provide to an appraiser a copy of a client's or end-user's policy restricting use of trainees or interoffice transfers.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-137, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-54-105, 37-54-512, 37-54-514, MCA

4. The rule proposed to be repealed is as follows:

24.207.520 RENEWALS found at ARM page 24-23564.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, 37-54-105, 37-54-310, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdua@mt.gov, and must be received no later than 5:00 p.m., October 23, 2015.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on July 1, 2015, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.207.101, 24.207.401, 24.207.406, 24.207.501, 24.207.502, 24.207.509, 24.207.518, 24.207.1501, 24.207.1507, and 24.207.2305 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.207.520 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations are available upon request to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdua@mt.gov.

10. Gene Allison, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CERTIFIED
GENERAL APPRAISER, CHAIRPERSON

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

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

Certified to the Secretary of State September 14, 2015

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 37.86.3503, 37.88.101,) PROPOSED AMENDMENT
37.89.103, 37.89.114, and 37.89.509)
pertaining to compliance to ICD-10-)
CM)

TO: All Concerned Persons

1. On October 14, 2015, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, 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 the Department of Public Health and Human Services no later than 5:00 p.m. on October 7, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.3503 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SEVERE DISABLING MENTAL ILLNESS

(1) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of (1)(a), (b), or (c) ; ~~or d.~~ The person must also meet the requirements of (1)~~(e)~~(d). The person:

(a) has been involuntarily hospitalized for at least 30 consecutive days because of a mental disorder at Montana State Hospital (~~Warm Springs campus~~) at least once; or

(b) has recurrent thoughts of death, recurrent suicidal ideation, a suicide attempt, or a specific plan for committing suicide; or

(c) except for excluding "mild, not otherwise specified (NOS)," or due to "physiological disturbances and physical factors," has a ~~DSM-IV-TR~~ DSM diagnosis of:

(i) ~~schizophrenic disorder (295)~~ schizophrenia, schizophrenia spectrum, and other psychotic disorders;

(ii) ~~other psychotic disorder (293.81, 293.82, 295.40, 295.70, 297.1, 297.3, 298.9)~~ bipolar spectrum disorder;

- (iii) ~~mood disorder (293.83, 296.22, 296.23, 296.24, 296.32, 296.33, 296.34, 296.40, 296.42, 296.43, 296.44, 296.52, 296.53, 296.54, 296.62, 296.63, 296.64, 296.7, 296.80, 296.89)~~ depressive disorder;
- ~~(iv) amnestic disorder (294.0, 294.8);~~
- ~~(v) disorder due to a general medical condition (293.0, 310.1);~~
- ~~(vi) pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation;~~
- ~~(vii) (iv) anxiety disorders; (300.01, 300.21, 300.3); or~~
- ~~(viii) (v) posttraumatic stress disorders; (309.81);~~
- ~~(d) has a DSM-IV-TR diagnosis of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90); and~~
- ~~(vi) borderline personality disorder; or~~
- ~~(vii) autism spectrum disorders; and~~
- ~~(e) (d) has ongoing functioning difficulties because of the mental illness for a period of at least six months or for an a obviously predictable period over six months, as indicated by the presence of at least two three of the following indicators:~~
 - ~~(i) remains the same.~~
 - ~~(ii) the person is unable to work in a full-time competitive situation because of mental illness;~~
 - ~~(ii) an inability to care for personal needs, e.g., meals, bathing, dressing, and daily chores, due to mental illness;~~
 - ~~(iii) an inability to maintain housing due to mental illness;~~
 - ~~(iv) an inability to maintain competitive employment or education process due to mental illness;~~
 - ~~(v) an inability to sustain interpersonal relationships due to mental illness;~~
 - ~~(iii) (vi) the person has been determined to be disabled due to mental illness by the social security administration;~~
 - ~~(iv) (vii) the person maintains a living arrangement only with ongoing supervision, is homeless, or is at imminent risk of homelessness due to mental illness; or~~
 - ~~(v) (viii) the person has had or will predictably have repeated episodes of decompensation.~~

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS.
AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid adult under the Montana Medicaid program will be reimbursed only if the client is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM ~~37.86.3502~~ 37.86.3503.
(2) For mental health services provided to an adult Medicaid client under the Montana Medicaid program, a maximum of 24 sessions may be reimbursed per state fiscal year for individual and family outpatient therapy billed under 2015 Current Procedure Terminology 4th Edition (CPT4) codes 90804, 90806, 90846, and 90847 90832, 90833, 90834, 90836, 90837, 90838, 90846, and 90847 only. Prior authorization must be obtained for additional sessions.

(3) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of (3)(a) or (b). The person must also meet the requirements of (3)(c). The person has:

(a) a DSM-IV diagnosis with a severity specifier of moderate or severe of mood disorder (~~293.31, 293.33, 293.34, 293.83, 295.70, 296.7, 296.22, 296.23, 296.24, 296.32, 296.33, 296.34, 296.42, 296.43, 296.44, 296.80, 296.89~~) bipolar spectrum or depressive disorder; or

(b) a DSM-IV diagnosis borderline personality disorder (~~301.83~~), personality disorder NOS (~~301.9~~) with prominent features of 301.83; and

(c) through (4) remain the same.

(5) The prior authorization requirement ~~shall~~ will not be waived except as provided in this rule.

(6) remains the same.

(7) Review of authorization requests by the department or its designee will be made with consideration of the adult intensive outpatient therapy services ~~€Clinical m Management g Guidelines (2006) (2015)~~. A copy of the ~~a Adult iIntensive eOutpatient tTherapy sServices eClinical mManagement gGuideline s (2006) (2015)~~ can be obtained from the following web site:

<https://montana.fhsc.com/> or department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, ~~555 Fuller~~, P.O. Box 202905, Helena, MT 59620-2905.

(8) and (9) remain the same.

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

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

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) and (2) remain the same.

(3) "Correctional or detention facility" means:

(a) the Montana State Prison, including any correctional facility located on the Warm Springs correctional facilities campus;

(b) through (e) remain the same.

(4) "Covered diagnosis" means a diagnosis for which the Mental Health Services Plan provides covered services to members who have a severe disabling mental illness, as specified in ARM ~~37.86.3504~~ 37.86.3503.

(5) through (15) remain the same.

(16) "Severe disabling mental illness" is defined in ARM ~~37.86.3504~~ 37.86.3503.

(17) remains the same.

(18) The department adopts and incorporates by reference the ~~ICD-9-CM ICD-10-CM~~ diagnosis codes with meanings found in the ~~Ingenix ICD-9-CM ICD-10-CM Code Book (2006) published by Ingenix (2015) published by the American Medical Association~~. A copy of the code book may be obtained at: <http://www.ama-assn.org/ama>. The department also adopts and incorporates by reference the DSM-

~~IV~~ diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition Text Revision (~~2000~~) (2013), published by the American Psychiatric Association of Washington, D.C. A copy of the DSM may be obtained at: <http://www.medicalcodingbooks.com/>. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated in order to provide common references for purposes of the provision of services through the Mental Health Services Plan. ~~Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.~~

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) through (3) remain the same.

(4) The plan covers the medically necessary psychotropic medications listed in the department's mental health services plan drug formulary if medically necessary with respect to a covered diagnosis. The department may revise the formulary from time to time. A copy of the current formulary may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, ~~555 Fuller~~, P.O. Box 202905, Helena, MT 59620-2905.

(5) through (9) remain the same.

AUTH: 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-706, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.509 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CLAIMS AND REIMBURSEMENT (1) through (7)

remain the same.

(8) If reimbursement is denied because services were delivered to an individual within seven days following discharge from crisis stabilization services delivered by another provider, the provider may request a review to determine whether payment is warranted. A written request for review must be received by the Department of Public Health and Human Services, Addictive and Mental Disorders Division, ~~555 Fuller~~, P.O. Box 202905, Helena, MT 59620-2905 within 30 days after the date of a notice denying a claim. The department will conduct an informal administrative review and may grant full or partial reimbursement for services if it determines that:

- (a) complications have arisen because of premature discharge, treatment errors, or omissions in the previous crisis stabilization plan;
- (b) the crisis stabilization services are for a condition that could not have been treated during the previous crisis stabilization plan; or
- (c) the provider could not have discovered the previous stabilization plan using due diligence.

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

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services, Mental Health Services Bureau (the department) proposes to amend ARM 37.86.3503, 37.88.101, 37.89.103, 37.89.114, and 37.89.509. These rules specify the program and member eligibility requirements for adult Medicaid mental health services and they define the basis and procedure the department will use to reimburse these services. The proposed amendments implement the new ICD-10 requirements mandated by the Centers for Medicare and Medicaid (CMS) and to make general housekeeping edits.

The proposed amendments incorporate a new definition of severe disabling mental illness (SDMI) that uses the new ICD-10-CM diagnoses. The new definition necessitates the removal of the old ICD-9 diagnosis codes and replacement of those diagnosis codes with the general conditions of the diagnosis codes. The department proposes to eliminate medical and physical conditions such as amnesic disorder, disorders due to medical conditions, and pervasive developmental disorder because such conditions are not considered to be a severe disabling mental illness. The department proposes to take the mood disorder diagnosis codes and replace them with depressive disorders; broaden the schizophrenia, schizophrenia spectrum, and other psychotic disorders to include some of the psychotic and mood disorders; and the bipolar spectrum disorder including mood disorder. The department proposes to add, specifically, borderline personality disorder and autism spectrum disorders.

The proposed amendments are:

37.86.3503

(1) The proposed amendments clarify that a person with severe disabling mental illness only needs to have one of the conditions identified in (1)(a), (b), or (c). Section (1) was deleted from the definition and (1)(d) was added.

(1)(c) The DSM-IV-TR was updated to DSM. The exclusion to the diagnosis codes was added for mild, not otherwise specified or due to physiological disturbances and physical factors.

(1)(c)(i) The ICD-9-CM codes are no longer valid and are replaced with general conditions of schizophrenia, schizophrenia spectrum, and other psychotic disorders.

(1)(c)(ii) The ICD-9-CM codes are no longer valid and are replaced with the general conditions of the bipolar spectrum.

(1)(c)(iii) The invalid ICD-9-CM codes were deleted for mood disorder and replaced with general conditions of depressive disorder.

(1)(c)(iv) Amnestic disorder is deleted entirely because this is a physical condition and is not considered a severe disabling mental illness condition.

(1)(c)(v) The disorder due to a general medical condition is deleted because it is a medical condition and is not considered a severe disabling mental illness.

(1)(c)(vi) The diagnosis was deleted because it is not considered a severe disabling mental illness condition.

(1)(c)(iv) Formerly (1)(c)(viii), the invalid ICD-9-CM codes are deleted. The general condition of anxiety disorders remains.

(1)(c)(v) Formerly (1)(c)(viii), the invalid ICD-9-CM codes are deleted. The general conditions of posttraumatic stress disorders remain.

(1)(c)(vi) Borderline personality disorder was added as a qualifying diagnosis. This had been incorporated in the personality disorder ICD-9-CM codes. People with this particular diagnosis have been shown to be high utilizers of expensive services such as emergency room and inpatient services. They also have a higher incidence of suicidal ideation. The department believes that people with this qualifying diagnosis need to have services available for their own safety.

(1)(c)(vii) Autism spectrum disorders were added to the qualifying diagnosis for severe disabling mental illness. Many providers have given the department examples of how the debilitating effects of autism spectrum disorders on adults impact their ability to function in activities expected from adults.

(1)(d) The new (1)(d) is an amendment of the current (1)(e). The amendments reflect an alignment of the "functioning areas" to those of other states. The department added four functioning areas and increased the eligibility requirement from meeting two out of five to three out of eight functional area difficulties. The department believes that (1)(d), as proposed, will provide a more objective evaluation of the difficulties an affected person may have in functioning in daily life.

37.88.101

(1) The proposed amendment corrects an error in the identification of the appropriate rule.

(2) The added statement, "without prior authorization" clarifies that only 24 therapy sessions will be reimbursed per state fiscal year unless prior authorization is

obtained. The date of 2015 was added to the Standard Current Procedure Terminology and the "4th edition (CPT4)" was deleted. The outdated 90804, 90806, 90846, and 90847 codes were deleted and replaced with 2013 CPT codes, which are 90832, 90833, 90936, 90837, 90838, 90846, and 90847.

(3)(a) The invalid DSM IV codes were deleted and replaced with "bipolar spectrum or depressive disorder" and a clarifying "or."

(3)(b) The invalid DSM IV codes were deleted.

(7) The date for Clinical Management Guidelines was updated to 2015. The method for obtaining the guidelines was updated with current information.

37.89.103

(4) The incorrect citation to ARM 37.86.3501 was corrected.

(16) The incorrect citation to ARM 37.86.3501 was corrected.

(18) Coding references were updated. The DSM Fifth Edition has the ICD-10-CM codes that are valid effective October 1, 2015. The department no longer furnishes coding reference documents. Persons needing to use these coding references must obtain a copy elsewhere.

37.89.114

(4) The street address for the Addictive and Mental Disorders Division is no longer valid and is being deleted.

37.89.509

(8) The street address for the Addictive and Mental Disorders Division is no longer valid and is being deleted.

FISCAL IMPACT

The department believes there is some risk that the ICD-10-CM and new diagnoses could increase the number of individuals determined to have a severe disabling mental illness and increase the expenditures. It is unknown if providers will adjust diagnosis coding and claims submission that could result in a fiscal impact. At this time the fiscal impact is not expected to be substantial.

5. The department intends to apply these rule amendments retroactively to October 1, 2015. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 22, 2015.

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

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

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed amendments presented in this notice implement federal law and otherwise reflect no substantive changes and thus are exempt from the performance-based measures requirement of 53-6-196, MCA.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

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 through XVIII and the) PROPOSED ADOPTION AND
amendment of ARM 37.106.1901,) AMENDMENT
37.106.1902, and 37.106.1906)
pertaining to adding a forensic mental)
health facility endorsement to a)
licensed mental health center)

TO: All Concerned Persons

1. On October 14, 2015, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and 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 the Department of Public Health and Human Services no later than 5:00 p.m. on October 7, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PURPOSE (1) These rules establish minimum standards for a licensed mental health center to operate a secured forensic mental health facility (FMHF) for adults who are committed for custody, care, treatment, or evaluation pursuant to Title 46, chapter 14, MCA, or who are inmates of a correctional facility receiving treatment in a separate mental health setting.

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

NEW RULE II APPLICATION OF RULES (1) In addition to the requirements established in this subchapter, a licensed mental health center operating a forensic mental health facility (FMHF) must have an FMHF program endorsement issued by the department. To receive an FMHF program endorsement, the licensed mental health center must establish, to the department's satisfaction, that it meets the requirements stated in these rules.

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

NEW RULE III SCOPE (1) A forensic mental health facility (FMHF) of a licensed mental health center provides twenty-four hour, seven days a week, secured nonhospital-based forensic mental health services for adults who are:

- (a) committed to a mental health facility for evaluation of fitness to proceed pursuant to 46-14-202(2), MCA;
- (b) committed to the custody of the director of the department to be placed for treatment to gain fitness to proceed pursuant to 46-14-221, MCA;
- (c) committed to the custody of the director of the department to be placed for custody, care, and treatment under 46-14-301, MCA;
- (d) admitted to an FMHF under a court order for a mental evaluation to be included in a pre-sentence investigation under 46-14-311, MCA;
- (e) sentenced to be committed to the custody of the director of the department to be placed for custody, care, and treatment under 46-14-312, MCA;
- (f) in the custody of the Department of Corrections and transferred to an FMHF under 53-21-130, MCA, or accepted for voluntary admission following such a transfer under 53-21-111, MCA; or
- (g) committed to the Montana State Hospital under 53-21-127, MCA, while serving a sentence at a correctional facility.

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

NEW RULE IV APPLICATION OF OTHER RULES (1) In addition to the requirements established in this subchapter, each licensed mental health center operating a forensic mental health facility (FMHF) must comply with all the requirements established in ARM Title 37, chapter 106, subchapter 3, with the exception of ARM 37.106.302 and 37.106.316.

(2) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter will apply to an FMHF.

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

NEW RULE V DEFINITIONS (1) "Adult" means an individual 18 years of age and older.

(2) "Emergency situation" has the meaning given to it by 53-21-102, MCA.

(3) "Forensic mental health services" means mental health services for persons referred for care, custody, treatment, or evaluation by or through the criminal justice system.

(4) "Immediate emergency" means a situation involving a client that jeopardizes the immediate physical safety of a client, a staff member, or others.

(5) "Involuntary medication" means medication administered to a client when one or more of the following circumstances are present:

- (a) administration of medication is against the specific wish of a client, made evident by verbal or nonverbal behavior reasonably interpreted as an objection;
 - (b) a client who does not have a legally appointed guardian lacks capacity to give informed consent; or
 - (c) a client's legally appointed guardian cannot or will not give consent.
- (6) "Licensed health care practitioner" means a licensed physician, physician assistant, or advanced practice registered nurse who is practicing within the scope of the license issued by the Department of Labor and Industry under Title 37 of the MCA.
- (7) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the Department of Labor and Industry under Title 37 of the MCA.
- (8) "Medication administration" means an act in which a prescribed drug or biological is given to a client by an individual who is authorized under state laws and regulations governing such acts.
- (9) "Restraint" means:
- (a) any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client to move his or her arms, legs, body, or head freely;
 - (b) a drug or medication when it is used to restrict the patient's behavior or freedom of movement and is not a standard treatment or dosage for the patient's condition;
 - (c) restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a client for the purpose of conducting routine physical examinations or tests, or to protect the client from falling out of bed, or to permit the client to participate in activities without the risk of physical harm (this does not include a physical escort); or
 - (d) restraint does not include medications administered during an immediate emergency which are individually prescribed to assist a client to regain control of the client's dangerous behavior.
- (10) "Sally port" means a secure entry way that consists of a series of doors or gates.
- (11) "Seclusion" means the involuntary confinement of a client alone in a room or area from which the client is physically prevented from leaving. Confining clients to his or her bedrooms during medication administration, shift changes, or facility emergencies does not constitute seclusion for the purposes of this rule.

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

NEW RULE VI CONSTRUCTION REQUIREMENTS (1) Prior to construction or operation of a forensic mental health facility (FMHF), floor plans for the FMHF must be submitted to the department for review, comment, and approval. The department must also inspect and approve any new construction or any addition or alteration to an FMHF prior to occupancy.

(2) Prior to occupancy of an FMHF, or any addition or alteration to an FMHF, the FMHF must undergo an onsite inspection and receive the approval of the department's License Bureau, Construction Consultant.

(3) Any building used as an FMHF must be classified at a minimum as International Conference of Building Officials (ICBO) Construction type I-FR, or greater.

(4) All areas of an FMHF must be protected by automatic fire suppression. In unsupervised client areas, sprinkler heads must be recessed or of a design to restrict client access. An FMHF must provide the following:

(a) an operable UL listed fire alarm system with automatic response notification on alarm; and

(b) supervised smoke detectors throughout the facility reporting to the fire alarm system.

(5) An FMHF must meet the water supply system requirements of ARM 37.111.115.

(6) An FMHF must meet the sewage system requirements of ARM 37.111.116.

(7) An FMHF must have a double fence installed around any client accessible area.

(8) Each fence must be a minimum of 12 feet high, and

(a) have unclimbable security mesh fabric installed on the top five feet;

(b) have concertina wire installed on the top; and

(c) be buried 18 inches below grade.

(9) There must be a minimum 12 feet between the two fences that is free of all above ground obstructions.

(10) An FMHF must have an outside assembly area of refuge for facility evacuation during an emergency. The area must be:

(a) fenced and secured and large enough to safely hold all clients and staff; and

(b) far enough from the building to be considered a safe public way.

AUTH: 50-5-103, MCA

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

NEW RULE VII SECURED UNITS (1) A forensic mental health facility (FMHF) must have one or more separate secured unit(s) within the facility for housing clients that includes bedrooms and common space.

(2) A secured unit must be staffed at all times clients are present in the unit.

(3) A secured unit must have a staff station to include the following:

(a) provisions for charting;

(b) provisions for hand washing;

(c) provisions for secured medication storage and preparation; and

(d) telephone access.

(4) A secured unit must have access to a nourishment station or to a kitchen that must include the following:

(a) a work counter;

(b) a refrigerator;

- (c) storage cabinets;
- (d) a sink;
- (e) space for trays and dishes used for nonscheduled meal service;
- (f) hand washing facilities immediately accessible to clients and staff; and
- (g) ice for client consumption provided by icemaker-dispenser units or periodically made available during the day.

(5) A common space within each secured unit must be provided at a ratio of 35 square feet per client.

(6) The corridors of a secured unit must have general illumination with provisions for reducing light levels at night.

(7) No more than one client must reside in a bedroom.

(8) Client bedrooms must be at a minimum of 70 square feet and must include the following:

- (a) a bed with a waterproof mattress;
- (b) a small wardrobe, dresser, shelves, or bed compartment for storage of clients' personal items;
- (c) general lighting and night lighting, control for night lighting may be located outside the room at the room entrance;
- (d) electrical outlets that are tamper-resistant and GFI-protected, outlets may be controlled from outside of the room;
- (e) a window with a minimum of 248 square inches of glazing which must be designed to limit the opportunity for clients to inflict serious harm as a result of breaking the window and using pieces to inflict harm on themselves or others.

Windows:

- (i) must be of tempered glass or laminated safety glass to resist impact loads; and
- (ii) if operable, must have security locks.

(9) Sinks and toilets may be provided in client rooms. The fixtures may be controlled from outside of the room.

(10) An FMHF must not use automatic door closures unless required. If required, such closures must be mounted on the public side of the door within view of a staff work station or under video surveillance.

(11) An FMHF must use doors that:

- (a) have door hinges designed to minimize points for hanging (i.e., cut hinge type); and
- (b) have tamper-resistant fasteners.

(12) An FMHF must provide:

- (a) at least one toilet for every eight clients;
- (b) at least one bathing unit for every twelve clients, a shower or tub is not required if the FMHF utilizes a central bathing unit for all clients; and
- (c) doors to toilet rooms or bathing units that swing out or slide into the wall and which must be capable of being unlocked from the outside.

(13) Toilet rooms and bathing units may be under key control by staff.

(14) An FMHF must not use towel bars, clothing rods, hooks, or lever handles.

AUTH: 50-5-103, MCA

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

NEW RULE VIII COMMON USE AREAS (1) A forensic mental health facility (FMHF) must have an area for social activities at a minimum of 25 square feet per client.

(2) An FMHF must have a quiet area for clients to utilize according to facility policy.

(3) An FMHF must have a dining space at a minimum of 35 square feet per client. The dining space may be located off a secured unit in a central area.

(4) An FMHF must have a minimum of two classrooms with work tables or desks for client use.

(5) If an FMHF has a vocational training area, it must be equipped with appropriate tools and code-compliant equipment for client use.

(6) An FMHF must have a gymnasium and a separate client exercise room which includes appropriate exercise equipment in sufficient quantity for client use.

(7) An FMHF must have a secured outside recreational exercise area with both an enclosed individual client area and a large fenced group area.

(8) An FMHF must have examination or treatment rooms for private consultation. These rooms must have at a minimum the following:

(a) 100 square foot floor area;

(b) a hand-washing station;

(c) storage facilities; and

(d) a desk, counter, or shelf space for writing or electronic documentation.

AUTH: 50-5-103, MCA

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

NEW RULE IX OBSERVATION AND SECLUSION ROOM(S) (1) A forensic mental health facility must designate specific room(s) designed for observation, seclusion, and restraint purposes.

(2) The location of these rooms must facilitate staff observation and monitoring of clients in these areas.

(3) The room must be equipped with video and audio monitoring equipment.

(4) The room must have a minimum of 60 square feet and a ceiling height of nine feet. Ceilings in seclusion rooms must be monolithic.

(5) Rooms used for observation, seclusion, and restraint must be designed to prevent injury to clients. All finishes, light fixtures, vents and diffusers, and sprinklers must be tamper resistant. These rooms must not have: electrical outlets, medical gas outlets or similar devices; sharp corners, edges, or protrusions. The wall must be free of objects or accessories of any kind. Doors must swing out or be a slide in pocket door and have hardware on the exterior side only. The door must be a minimum width of 44 inches and include an impact resistant view panel for discreet staff observation of the client. The use of impact resistant one-way observation windows is permitted.

AUTH: 50-5-103, MCA

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

NEW RULE X WRITTEN POLICIES AND PROCEDURES (1) As required in ARM 37.106.1908, a forensic mental health facility (FMHF) must maintain a policy and procedure manual. The policy and procedure manual must be reviewed and updated as necessary, but at a minimum annually.

(2) In addition to the other requirements of ARM 37.106.1908, the manual must include policies and procedures for:

- (a) security;
- (b) involuntary administration of medication;
- (c) client discharge and transfer procedure;
- (d) client rights and grievances;
- (e) client admission criteria;
- (f) restraint and seclusion;
- (g) establishing fiscal policies governing the management of organizational and individual funds;
- (h) establishing and maintaining staffing requirements;
- (i) informing clients of policies pertaining to the FMHF;
- (j) food services; and
- (k) the detection, reporting, and investigation of abuse and neglect.

(3) The policy and procedure manual must include a current organizational chart delineating the current lines of authority, responsibility, and accountability for the administration and provision of all FMHF client treatment programs and services.

AUTH: 50-5-103, MCA

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

NEW RULE XI SECURITY (1) A forensic mental health facility (FMHF) must develop security policies and procedures. At a minimum the policies and procedures must address the following:

- (a) securing the facility;
- (b) summoning outside assistance in the event of an emergency;
- (c) addressing relevant types of natural or client-caused emergency situations; and
- (d) contraband searches.

(2) An FMHF must have security vestibules or secured car ports or Sally Ports at all facility entrances.

(3) An FMHF security system must be capable of containing clients within secured units when necessary according to FMHF policy.

(4) An FMHF security system must be designed to prevent contraband smuggling and must include provisions for monitoring and controlling visitor access and egress.

(5) All openings into and out of and within the FMHF, e.g., windows, doors, and gates, must be equipped with manual, electric, or magnetic locks.

(6) An FMHF must provide visual control, i.e., electronic surveillance, of all FMHF corridors, dining areas, classrooms, and social areas.

(7) Except for use in seclusion or observation rooms, electronic surveillance is not permitted in client bedrooms, bathing units, or toilets.

(8) Electronic surveillance of a secured unit does not substitute for direct supervision where required by facility policy.

(9) Special design considerations for injury or suicide prevention must be given to all facility details, finishes, and equipment.

(10) An FMHF must provide an enclosed secured car port for the receiving, discharge, transfer, or the transportation of clients. The car port must be separated using Underwriters Laboratory or Factory Mutual rated construction providing a minimum of two-hour fire resistance.

(11) Staff may confine clients to their rooms for all scheduled medication passes, for all staff shift changes, and during any facility emergency. Shift changes will last no longer than 30 minutes, and must be limited to no more than three changes in a 24-hour period.

AUTH: 50-5-103, MCA

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

NEW RULE XII INVOLUNTARY MEDICATION ADMINISTRATION (1) A forensic mental health facility (FMHF) must develop and implement a policy for involuntary medication administration that includes:

(a) procedures for use in an immediate emergency or an emergency situation to ensure the physical safety of the client, a staff member, or others;

(b) an administrative review process for use when involuntary medication is clinically indicated for a client who is gravely disabled or poses a likelihood of serious harm to themselves, others, or property as a result of a mental disease or disorder. The process must include:

(i) a formal review within five working days of beginning the involuntary administration of medication, by a medication review committee which includes the medical director of the FMHF, the designee, or both and at least one qualified psychiatrist who is not employed at the FMHF. No committee member may be directly involved in the client's care;

(ii) an opportunity for the client to appear before the panel in person and with a representative of the client's choice, and to provide testimony and evidence;

(iii) written advance notice of the review and the right to participate which must be given to the client, guardian, and Mental Disabilities Board of Visitors;

(iv) an opportunity for review of the decision of the panel by the director of the licensed mental health center;

(v) review by the committee at 14 and 90 days after the initial authorization of involuntary administration of medication.

(c) procedures for seeking and implementing a court order authorizing involuntary administration of medication for clients who are placed at the FMHF under 46-14-221, MCA, and for whom the sole purpose of involuntary medication is to gain fitness to proceed.

(2) Attempts must be made to administer medications with the full consent of the client receiving those medications. Such attempts must be documented.

(3) Involuntary medications must be discontinued when no longer necessary as determined by a licensed health care practitioner.

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

NEW RULE XIII RESTRAINT AND SECLUSION (1) A forensic mental health facility (FMHF) must be capable of providing restraint or seclusion and must ensure that such restraint or seclusion is performed in compliance with 53-21-146, MCA.

(2) The use of medication solely for restraint is prohibited.

(3) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the client, staff, or others from harm.

(4) The type and technique of restraint or seclusion must be the least restrictive intervention that will be effective to protect the client, staff, or others from harm.

(5) The use of restraint or seclusion must be implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by facility policy.

(6) Orders for the use of restraint or seclusion must never be written as a standing order or on an as-needed basis (PRN).

(7) A licensed health care practitioner must authorize use of the restraint or seclusion within one hour of initiating the restraint or seclusion. Before a licensed health care practitioner may authorize restraint or seclusion, the licensed health care practitioner must see the client face-to-face within one hour of the initiation of restraint or seclusion to evaluate:

(a) the client's immediate situation;

(b) the client's reaction to the intervention;

(c) the client's medical and behavioral condition; and

(d) the need to continue or terminate the restraint or seclusion.

(8) Each original order and renewal order authorizing the use of restraint or seclusion is limited to eight hours, up to a total of 24 hours. After 24 hours and before writing a new order, a licensed health care practitioner must see and assess the client.

(9) Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.

(10) A licensed health care professional must monitor the condition of the client who is restrained or secluded at an interval determined by facility policy.

(11) Each incident of restraint or seclusion must be documented in the client's medical record and must include:

(a) each order and renewal order;

(b) the one-hour face-to-face medical and behavioral evaluation;

(c) a description of the client's behavior and the intervention used;

(d) start and end times of the restraint or seclusion and the names of staff implementing interventions;

(e) alternatives or other less restrictive interventions attempted, as applicable;

(f) the client's condition or symptom(s) that warranted the use of restraint or seclusion;

(g) the client's response to the intervention(s) used, including the rationale for continued use of the intervention; and

(h) monitoring of the client in restraint or seclusion as required by facility policy.

(12) Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a client in restraint or seclusion. The training must include:

(a) techniques to identify staff and client behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion;

(b) the use of nonphysical interventions skills;

(c) choosing the least restrictive interventions based on an individual assessment of the client's medical or behavioral status or condition;

(d) the safe application and use of all types of restraint or seclusion used in the facility, including training in how to recognize and respond to signs of physical and psychological distress; and

(e) clinical identification of specific behavioral changes that indicate restraint or seclusion is no longer necessary.

(13) Staff must receive training prior to performing any actions specified in this rule and annually thereafter.

(14) An FMHF must document in the staff personnel records that training and demonstration of competency was successfully completed.

AUTH: 50-5-103, MCA

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

NEW RULE XIV STAFFING REQUIREMENTS (1) Employees of a forensic mental health facility (FMHF) must be 18 years of age and possess a high school diploma or general equivalency diploma (GED) at a minimum.

(2) Employees must receive orientation and training in areas relevant to the employee's duties and responsibilities including:

(a) an overview of the FMHF policy and procedure manual in areas relevant to the employee job responsibilities;

(b) a review of the employee job description;

(c) services provided by the facility;

(d) rights of persons served; and

(e) safety and emergency response procedures.

(3) All direct-care staff must receive full orientation before providing direct client care or treatment. In addition to meeting these requirements, direct-care staff must be trained to perform the services established in each client's treatment plan.

(4) Direct-care staff must have knowledge of each client's needs and any events about which the employee should notify the administrator or the administrator's designated representative.

(5) An FMHF must have a sufficient number of qualified staff on duty 24 hours a day to meet the scheduled and unscheduled needs of each client, to respond in emergency situations, and to provide all related services including:

(a) maintenance of order, safety, and cleanliness;

- (b) assistance with medication regimens;
 - (c) preparation and service of meals;
 - (d) housekeeping services and assistance with laundry; and
 - (e) assurance that each client receives the supervision and care required by the treatment plan.
- (6) Site-based supervisors must be on-duty 24 hours a day, seven days per week.
- (7) An FMHF must be staffed by a registered nurse (RN) 24 hours a day, seven days per week. The RN may also serve as a supervisor.
- (8) An FMHF must provide access to ancillary services such as laboratory or radiological services directly or by contracting with a facility licensed to provide such services.
- (9) An FMHF must have a sufficient number of qualified licensed mental health professionals on staff to meet the needs of the clients as outlined in facility policies and the clients' individualized treatment plans.
- (10) An individual on each work shift must have keys to all relevant client care areas and access to all items needed to provide appropriate client treatment and care.
- (11) An FMHF must provide ongoing staff training a minimum of 20 hours annually.

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

NEW RULE XV CLIENT ADMISSION (1) A forensic mental health facility (FMHF) must develop and implement a written policy regarding admission into the facility for the persons identified in [New Rule III]. The policy must include a screening process to identify and exclude from admission persons who need a hospital level of care.

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

NEW RULE XVI CLIENT DISCHARGE AND TRANSFER (1) A forensic mental health facility (FMHF) must develop and implement a discharge and transfer policy for discharging a client from the FMHF to another facility.

(2) The policy must include procedures for secure transportation of clients.

(3) The facility must ensure coordinated transfers with other licensed health care facilities or correctional facilities.

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

NEW RULE XVII CLIENT RIGHTS AND GRIEVANCES (1) Clients admitted to a forensic mental health facility (FMHF) must be afforded all of the rights provided for persons admitted to a mental health facility in Title 53, chapter 21, part 1, MCA.

(2) A copy of these rights must be posted in each secure unit of the facility.

- (3) These rights must also be explained at the time of admission to the client in terms that the client can understand.
- (4) An FMHF must develop a written client grievance policy to include:
 - (a) procedures for the submission of client's written or verbal grievance to the FMHF;
 - (b) time frames in which the FMHF must review a grievance and reach a decision;
 - (c) a process for providing the client with written notice of the decision that contains:
 - (i) the name of the facility contact person;
 - (ii) the steps taken on behalf of the client to investigate the grievance;
 - (iii) the results of the grievance process; and
 - (iv) the date of completion.

AUTH: 50-5-103, MCA

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

NEW RULE XVIII FOOD SERVICE (1) A forensic mental facility (FMHF) must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving, handling food, and dish washing procedures that are sufficient to prevent food spoilage and the transmission of infectious disease. These standards must include the following:

- (a) a requirement that food must be obtained from sources that comply with all laws relating to food and food labeling;
 - (b) a prohibition of the use of home-canned foods;
 - (c) a requirement that food subject to spoilage is removed from its original container and kept sealed, labeled, and dated.
- (2) Foods must be served in amounts and with enough variety to meet the nutritional needs of each client. An FMHF must provide therapeutic diets when prescribed by the client's practitioner. At least three meals must be offered daily and at regular times, with not more than a 12-hour span between an evening meal and breakfast unless a nutritious snack is available in the evening, then up to 16 hours may lapse between a substantial evening meal and breakfast.
- (3) Records of menus as served must be filed on the premises for three months after the date of service.
- (4) An FMHF must have an approved dietary manual for reference when preparing meals for clients requiring therapeutic or special diets. Dietitian consultation must be provided as necessary and documented for clients requiring therapeutic or special diets.
- (5) Potentially hazardous food, such as meat and milk products, must be stored at 41° F or below. Hot food must be kept at 140° F or above during preparation and serving.
- (6) Freezers must be kept at a temperature of 0° F or below and refrigerators must be kept at a temperature of 41° F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to ensure proper temperature. Temperatures must be monitored and recorded at least once a month and records must be maintained at the facility for one year.

(7) Employees must maintain a high degree of personal cleanliness and must conform to good hygienic practice and food handling requirements when working in food service.

(8) Food service employees must not work in the FMHF food service area while infected with a communicable disease that can be transmitted by foods.

AUTH: 50-5-103, MCA

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

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

37.106.1901 MENTAL HEALTH CENTER: APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapters 3, 4, ~~6, 10, 11, 14, 15, 22 and 23~~ conflict with the terms of this subchapter, the terms of this subchapter will apply to licensed mental health centers.

AUTH: 50-5-103, MCA

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

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (8) remain the same.

(9) "Department" means the Department of Public Health and Human Services.

(10) "Forensic mental health facility" (FMHF) means 24-hour, seven days a week, secured nonhospital-based forensic psychiatric treatment for adults who are committed by a court of competent jurisdiction for the purpose of psychiatric treatment or evaluation.

(9) through (14) remain the same, but are renumbered (11) through (16).

~~(15)~~ (17) "Licensed health care professional" means a licensed physician, physician assistant, ~~certified, or~~ advanced practice registered nurse, ~~or registered nurse~~ who is authorized to prescribe medication practicing within the scope of the license issued by the Department of Labor and Industry.

(16) through (30) remain the same, but are renumbered (18) through (32).

AUTH: 50-5-103, MCA

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

37.106.1906 MENTAL HEALTH CENTER: SERVICES AND LICENSURE

(1) through (3) remain the same.

(4) A licensed mental health center, with the appropriate license endorsement, may provide one or more of the following services:

(a) through (g) remain the same.

(h) an outpatient crisis response facility; ~~or~~

(i) a comprehensive school and community treatment program; or

(j) a forensic mental health facility.

(5) through (8) remain the same.

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

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes to adopt New Rules I through XVIII establishing new minimum standards for the endorsement of a forensic mental health facility within a licensed mental health center. As part of the establishment of the new standards, the department proposes to amend ARM 37.106.1901, 37.106.1902, and 37.106.1906 in order to add definitions and implement the new rules for a forensic mental health center endorsement.

Currently the department provides forensic mental health services on the forensic unit, referred to as D Wing, at the Montana State Hospital (MSH). D Wing is a part of MSH and it is licensed by the department as a psychiatric hospital. MSH is also a licensed mental health center.

The MSH D Wing houses residents who are:

- (a) committed to a mental health facility for evaluation of fitness to proceed pursuant to 46-14-202(2), MCA;
- (b) committed to the custody of the director of the department to be placed for treatment to gain fitness to proceed pursuant to 46-14-221, MCA;
- (c) committed to the custody of the director of the department to be placed for custody, care, and treatment pursuant to 46-14-301, MCA;
- (d) admitted to an FMHF pursuant to a court order for a mental evaluation to be included in a pre-sentence investigation pursuant to 46-14-311, MCA;
- (e) sentenced to be committed to the custody of the director of the department to be placed for custody, care, and treatment pursuant to 46-14-312, MCA;
- (f) in the custody of the Department of Corrections and transferred to an FMHF pursuant to 53-21-130, MCA, or accepted for voluntary admission following such a transfer pursuant to 53-21-111, MCA; or
- (g) committed to the Montana State Hospital pursuant to 53-21-127, MCA, while serving a sentence at a correctional facility.

MSH does not have the option to refuse to admit persons committed to the department for forensic mental health services through the criminal justice system.

The D Wing is exceeding its licensed capacity. Although staffing on D Wing is adjusted to maintain appropriate resident-to-patient ratios, the crowded conditions foster disruptive client behaviors. Safety of D Wing staff and clients is an ongoing concern for MSH. D Wing cannot offer single-occupancy bedrooms. D Wing does not have an area with the highest level of security, it does not separate men from women, and it does not separate types of forensic residents, such as, for example, separating people who are waiting for fitness-to-proceed evaluation from people committed to the facility because they have been found guilty of a crime, but have also been found mentally ill. In addition, D Wing maintains a waiting list for defendants who have been ordered to the department to receive a fitness-to-proceed evaluation, resulting in lengthy wait times in jail at city or county expense and disgruntled judges, county attorneys, defense attorneys, and defendants. There is no community setting in which to place D Wing residents.

For some time, the department has sought to remedy the D Wing overcrowding through the legislative process. This effort has been unsuccessful. The need to expand the facilities available for forensic mental health services is great and growing. Therefore, the department has created a new endorsement under which a licensed mental health center can provide forensic mental health services to persons who do not need to be in a psychiatric hospital, but need to be in a secured setting. The requirements for the endorsement are intended to create a forensic mental health facility that will improve the current situation in D Wing and will address the facility issues with D Wing in terms of security, separation of residents, etc. The MSH D Wing will continue to house forensic residents.

New Rules I through XVIII

The department is proposing to adopt the following new rules in order to authorize the forensic mental health facility endorsement:

New Rule I - Purpose

New Rule II - Application of Rules

New Rule III - Scope

New Rule IV - Application of Other Rules

New Rule V - Definitions

New Rule VI - Construction Requirements

New Rule VII - Secured Units

New Rule VIII - Common Use Area

New Rule IX - Observation and Seclusion Rooms

New Rule X - Written Policies and Procedures

New Rule XI - Security

New Rule XII - Involuntary Medication Administration

New Rule XIII - Restraint and Seclusion

New Rule XIV - Staffing Requirements

New Rule XV - Client Admission

New Rule XVI - Client Discharge and Transfer

New Rule XVII - Client Rights and Grievances

New Rule XVIII - Food Service

ARM 37.106.1901

The department is proposing to remove the subchapters that do not apply to mental health centers.

ARM 37.106.1902

The department proposes to add two definitions to this rule, one defining our agency and the other adding the new definition for a "forensic mental health facility."

The department proposes to revise the definition of "licensed health care provider" to be consistent with language in statute.

The department proposes to remove the term "seclusion" from the definition section for all mental health centers and place in the definition section for "forensic mental health facility." Seclusion is not permitted for all mental health center programs and will only be permitted in a "forensic mental health facility."

ARM 37.106.1906

The department is proposing to add the new term "forensic mental health facility" to the list of services that a mental health center may provide with the appropriate license endorsement.

Fiscal Impact

Programs affected include the Quality Assurance Division and the Addictive and Mental Disorders Division which are 100% general funded. There is no mandate

that any mental health center provider must implement or provide these services as part of their mental health center licensure; therefore, the FMHF rule has minimal fiscal impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 22, 2015.

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

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

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 38.5.1902 pertaining to) PROPOSED AMENDMENT
Cogeneration and Small Power)
Production)

TO: All Concerned Persons

1. On November 3, 2015, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Service Regulation 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 Public Service Regulation no later than 5:00 p.m. on October 27, 2015, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail asolem@mt.gov.

3. The commission proposes to amend the rule in one of three ways. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

Version A

38.5.1902 GENERAL PROVISIONS (1) through (4) remain the same.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. ~~A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 through 38.5.2012. Between competitive solicitations, purchases, and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be accomplished in accordance with negotiation of a short-term written contract.~~ The utility shall recompute the short-term and long-term standard tariffed avoided cost rates following submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written

~~contract.~~ Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility 3 MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

- (a) the nature of the purchases and sales;
 - (b) the applicable rate schedule or negotiated rates for the purchases and sales;
 - (c) the amount and manner of payment of interconnection costs;
 - (d) the means for measurement of the energy or capacity purchased or sold by the utility;
 - (e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;
 - (f) any installation and performance incentives to be provided by the utility to the qualifying facility;
 - (g) the services to be provided or discontinued by either party during system emergencies;
 - (h) the term of the contract;
 - (i) applicable operating safety and reliability standards with which the qualifying facility must comply;
 - (j) appropriate insurance indemnity and liability provisions.
- (6) and (7) remain the same.

AUTH: 69-3-103, 69-3-604, MCA
IMP: 69-3-102, 69-3-602, 69-3-603, MCA

REASON: Pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), the commission must require utilities to purchase electricity from qualifying facilities. 69-3-603, MCA. Last year, the Federal Energy Regulatory Commission issued a Notice of Intent Not to Act and Declaratory Order in which it found ARM 38.5.1902(5) "inconsistent with PURPA . . . to the extent that it offers the competitive solicitation process as the only means" for large QFs to obtain long-term avoided cost rates. Hydrodynamics, Inc., 146 F.E.R.C. 61,193 (Mar. 20, 2014). On August 17, 2015, Greycliff Wind Prime, LLC filed a Petition to Amend or Repeal ARM 38.5.1902(5) in Docket D2015.8.63. Version A strikes the competitive solicitation requirement from the rule.

Version B

38.5.1902 GENERAL PROVISIONS (1) through (4) remain the same.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a ~~written~~ negotiated contract between the parties or in accordance with the applicable standard tariff provisions as approved by the commission. ~~A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 through 38.5.2012. Between~~

~~competitive solicitations, purchases, and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be accomplished in accordance with negotiation of a short-term written contract.~~ The utility shall recompute the short-term and long-term ~~standard tariffed avoided costs rates~~ following submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229. ~~If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract.~~ Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility 3 MW or less may be accomplished according to standard tariffed rates as approved by the commission. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility larger than 3 MW may be accomplished at a rate which is a negotiated term of the contract between the utility and the qualifying facility. The contract shall specify:

- (a) the nature of the purchases and sales;
 - (b) the applicable rate schedule or negotiated rates for the purchases and sales;
 - (c) the amount and manner of payment of interconnection costs;
 - (d) the means for measurement of the energy or capacity purchased or sold by the utility;
 - (e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;
 - (f) any installation and performance incentives to be provided by the utility to the qualifying facility;
 - (g) the services to be provided or discontinued by either party during system emergencies;
 - (h) the term of the contract;
 - (i) applicable operating safety and reliability standards with which the qualifying facility must comply;
 - (j) appropriate insurance indemnity and liability provisions.
- (6) and (7) remain the same.

AUTH: 69-3-103, 69-3-604, MCA

IMP: 69-3-102, 69-3-602, 69-3-603, MCA

REASON: Pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), the commission must require utilities to purchase electricity from qualifying facilities. 69-3-603, MCA. Last year, the Federal Energy Regulatory Commission issued a Notice of Intent Not to Act and Declaratory Order in which it found ARM 38.5.1902(5) "inconsistent with PURPA . . . to the extent that it offers the competitive solicitation process as the only means" for large QFs to obtain long-term avoided cost rates. Hydrodynamics, Inc., 146 F.E.R.C. 61,193 (Mar. 20, 2014). On August 17, 2015, Greycliff Wind Prime, LLC filed a Petition to Amend or Repeal ARM 38.5.1902(5) in Docket D2015.8.63. Version B strikes the competitive solicitation requirement from the rule and clarifies the obligation to negotiate and to calculate avoided costs. See e.g. ARM 38.5.1903(2).

Version C

38.5.1902 GENERAL PROVISIONS (1) through (4) remain the same.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be ~~contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 through 38.5.2012. Between competitive solicitations, purchases, and sales of energy and capacity between a utility and a qualifying facility greater than 3 MW in size shall be accomplished in accordance with negotiation of a short-term written contract~~ accomplished by negotiation between the utility and the qualifying facility. The utility and the qualifying facility shall negotiate in good faith, and if no agreement can be reached through negotiations, either the utility or the qualifying facility may file a petition with the commission pursuant to 69-3-603, MCA, to resolve the dispute. A failure to negotiate in good faith, on the part of either party, may result in summary ruling against the party who failed to negotiate in good faith. The utility shall recompute the short-term and long-term standard tariffed avoided cost rates following submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229. ~~If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract.~~ Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility 3 MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

- (a) the nature of the purchases and sales;
 - (b) the applicable rate schedule or negotiated rates for the purchases and sales;
 - (c) the amount and manner of payment of interconnection costs;
 - (d) the means for measurement of the energy or capacity purchased or sold by the utility;
 - (e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;
 - (f) any installation and performance incentives to be provided by the utility to the qualifying facility;
 - (g) the services to be provided or discontinued by either party during system emergencies;
 - (h) the term of the contract;
 - (i) applicable operating safety and reliability standards with which the qualifying facility must comply;
 - (j) appropriate insurance indemnity and liability provisions.
- (6) and (7) remain the same.

AUTH: 69-3-103, 69-3-604, MCA
IMP: 69-3-102, 69-3-602, 69-3-603, MCA

REASON: Pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), the commission must require utilities to purchase electricity from qualifying facilities. 69-3-603, MCA. Last year, the Federal Energy Regulatory Commission issued a Notice of Intent Not to Act and Declaratory Order in which it found ARM 38.5.1902(5) "inconsistent with PURPA . . . to the extent that it offers the competitive solicitation process as the only means" for large QFs to obtain long-term avoided cost rates. Hydrodynamics, Inc., 146 F.E.R.C. 61,193 (Mar. 20, 2014). On August 17, 2015, Greycliff Wind Prime, LLC filed a Petition to Amend or Repeal ARM 38.5.1902(5) in Docket D2015.8.63. Version C strikes the competitive solicitation requirement from the rule, clarifies the obligation to negotiate, and establishes a summary ruling process.

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: Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov, and must be received no later than 5:00 p.m., November 6, 2015.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

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

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

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

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.18.124, 42.18.128,	)	PROPOSED AMENDMENT
42.18.206, 42.18.207, 42.18.208, and	)	AND REPEAL
repeal of ARM 42.18.132 pertaining)	
to property valuation periods and)	
property appraiser certification)	
requirements)	

TO: All Concerned Persons

1. On October 15, 2015, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 5, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA, for the taxable years from:

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

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

(c) ~~For the taxable years from~~ January 1, 2015, through December 31, ~~2020~~ 2016, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.

(d) January 1, 2017, through December 31, 2018, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2016.

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

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

REASON: The department proposes amending ARM 42.18.124 to revise the year in (1)(c) to properly implement Senate Bill 157, L. 2015, which changed the reappraisal cycle from six years to two years beginning in 2015.

The department also proposes adding new (1)(d) in preparation for the two-year cycle that will begin in 2017, and eliminating excess words in the rule by restructuring the outline format.

The department further proposes striking unnecessary words from the rule title.

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

(1) "Ancillary" means buildings of secondary importance in comparison to the primary residence including, but not limited to, garage and storage sheds.

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

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

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

REASON: The department proposes amending ARM 42.18.128 to provide a definition for the term "ancillary" as used in this subchapter, to make it clear what the department means when using this term.

42.18.206 RESIDENTIAL PROPERTY APPRAISER
CERTIFICATION REQUIREMENTS (1) and (2) remain the same.

(3) Upon ~~commencement~~ of beginning employment with the department as a residential appraiser, the employee shall undertake a one-year period of on-the-job residential appraisal work during which time the employee will begin the process of meeting the requirements set forth in (1) and (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic ~~six-month~~ probation period set forth in department policy 3.1.4.

The ~~commencement~~ beginning of the one-year experience requirement will coincide with the employee's notification of being assessed residential appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily at any time during the one-year period may result in immediate termination of employment. The department may choose to demote the employee to a property valuation specialist position, if the position is available and the individual is qualified to perform in that position.

(4) remains the same.

(5) The department may waive or decrease the length of on-the-job training required in (3) if the supervising manager determines that the incumbent has satisfactorily met the requirement in less than one year.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASON: The department proposes amending ARM 42.18.206 to update the wording in (3) for better clarity and to add new (5), which will allow a supervisor to waive or reduce the one-year on-the-job training requirement for an incumbent that brings sufficient on-the-job experience with them from a prior position. The addition of this new section will streamline the process for appropriately experienced employees working through the certification process.

The department further proposes revising the rule title to better match the rule content.

42.18.207 AGRICULTURAL PROPERTY APPRAISER
CERTIFICATION REQUIREMENTS (1) and (2) remain the same.

(3) Upon ~~commencement~~ of beginning employment with the department as an agricultural appraiser, the employee shall undertake a one-year period of on-the-job agricultural appraiser work during which time the employee will begin the process of meeting the requirements set forth in (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic ~~six-month~~ probation period set forth in department policy 3.1.4.

The ~~commencement~~ beginning of the one-year experience requirement will coincide with the employee's notification of being assigned ALCA responsibilities. All work will be supervised by the department. Failure to perform the classification/appraisal work satisfactorily at any time during the one-year period may result in immediate termination. The department may choose to demote the employee to a residential appraisal position, if the position is available and the individual is certified to perform in that position.

(4) remains the same.

(5) The department may waive or decrease the length of on-the-job training required in (3) if the supervising manager determines that the incumbent has satisfactorily met the requirement in less than one year.

AUTH: 15-1-201, MCA
IMP: 15-7-107, 15-7-111, MCA

REASON: The department proposes amending ARM 42.18.207 to update the wording in (3) for better clarity and to add new (5), which will allow a supervisor to waive or reduce the one-year on-the-job training requirement for an incumbent that brings sufficient on-the-job experience with them from a prior position. The addition of this new section will streamline the process for appropriately experienced employees working through the certification process.

The department further proposes revising the rule title to better match the rule content.

42.18.208 COMMERCIAL PROPERTY APPRAISER
CERTIFICATION REQUIREMENTS (1) and (2) remain the same.

(3) Upon ~~commencement~~ of beginning employment with the department as a commercial appraiser, the employee shall undertake a one-year period of on-the-job commercial appraisal work during which time the employee will begin the process of meeting the requirements set forth in (2). For employees new to state government,

this one-year period will run concurrently with and in addition to the automatic ~~six-month~~ probation period set forth in department policy 3.1.4.

The ~~commencement~~ beginning of the one-year experience requirement will coincide with the employee's notification of being assigned commercial appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily shall result in immediate termination or demotion to a residential appraisal position or residential/agricultural appraisal position, if such a position is available and the individual is certified to perform the duties necessary for that position.

(4) remains the same.

(5) The department may waive or decrease the length of on-the-job training required in (3) if the supervising manager determines that the incumbent has satisfactorily met the requirement in less than one year.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASON: The department proposes amending ARM 42.18.208 to update the wording in (3) for better clarity and to add new (5), which will allow a supervisor to waive or reduce the one-year on-the-job training requirement for an incumbent that brings sufficient on-the-job experience with them from a prior position. The addition of this new section will streamline the process for appropriately experienced employees working through the certification process.

The department further proposes revising the rule title to better match the rule content.

4. The department proposes to repeal the following rule:

42.18.132 ADDITIONAL RULES TO SUPPLEMENT REAPPRAISAL PLAN

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

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

REASON: The department proposes repealing ARM 42.18.132 because the rule became outdated as of January 2015 and no longer applies.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 28, 2015.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons

who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 157, L. 2015, Senator Bruce Tutvedt, was contacted by regular mail on July 6, 2015, and subsequently notified on August 31, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available upon request from the person in 5.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.19.401, 42.19.402,	)	PROPOSED AMENDMENT AND
42.19.405, 42.19.501, 42.19.502,	)	REPEAL
42.19.503, 42.19.506, and repeal of)	
ARM 42.19.406 pertaining to property)	
tax assistance programs)	

TO: All Concerned Persons

1. On October 15, 2015, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 5, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (PTAP) (1) The property owner of record or the property owner's agent must make ~~annual~~ application to the local department office, ~~in order to receive the PTAP benefit provided for in 15-6-134~~ 15-6-302, MCA.

(2) The benefit is administered through a reduction in taxable value ~~reduced property tax rate~~ that applies to the first ~~\$100,000~~ \$200,000 or less of the ~~taxable market appraised value of the applicant's residential real property~~ any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of one or more qualified applicants. The 7-month occupancy requirement does not apply to an otherwise qualified applicant who lives in a nursing home or long-term care facility. The property must be owned by the applicant, or be under contract for deed, and be used as the applicant's primary residence.

(3) ~~For purposes of this benefit, the appurtenant land not exceeding 5 acres shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the~~

primary residence is located, unless the primary residence is a mobile home or manufactured home that is assessed separately from the land. In which case, the benefit will apply to the land upon which the primary residence is located only if the land and the mobile home are owned by the applicant.

~~(4) An application must be filed, on or before April 15 of the year for which the benefit is sought, on a form available from the local department office. Applications postmarked after April 15 will be considered for the following tax year.~~

~~(5) The department may waive the April 15 deadline if the applicant:~~

~~(a) participated in the program in the prior year;~~

~~(b) was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness, and can demonstrate:~~

~~(i) one or more of the impediments, while not necessarily continuous, existed at sufficient levels between January 1 and April 15 of the tax year in which the applicant is applying, that prevented timely filing of the application; or~~

~~(ii) confusion caused by the infirmity may have prevented timely filing of the application.~~

~~(6) The department may waive the April 15 deadline on a case-by-case basis, if the applicant:~~

~~(a) qualified for the program in the prior year; and~~

~~(b) submits a written statement, plus any documents explaining any circumstances not identified in (5) that prevented timely filing of the application.~~

~~(7) The department may waive the April 15 deadline on a case-by-case basis if the applicant:~~

~~(a) did not previously participate in the PTAP;~~

~~(b) meets the requirements of (5) or (6); and~~

~~(c) provides a completed application that is submitted or postmarked no later than July 1 of the year for which benefit is sought.~~

~~(8) Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.~~

~~(9) The applicant is required to list total household income from all sources, excluding losses, depletion, and depreciation. Total household income includes the income that is attributable to all owner occupants who occupied the property as their primary residence 7 months of the preceding calendar year.~~

~~(10) Total household income includes, but is not limited to:~~

~~(a) wages, salaries, and tips;~~

~~(b) taxable interest;~~

~~(c) ordinary and qualified dividends;~~

~~(d) alimony received;~~

~~(e) capital gains;~~

~~(f) other gains;~~

~~(g) taxable refunds, credits, or offsets of state and local income taxes;~~

~~(h) business and/or farm income excluding losses, depreciation, and depletion;~~

~~(i) taxable amounts of IRA distributions, pensions, and annuities;~~

~~(j) rent, royalty, partnership, S corporation, and trust income before subtracting losses, depletion, or depreciation;~~

- ~~(k) unemployment compensation;~~
- ~~(l) taxable amounts of social security benefits; and~~
- ~~(m) other income reported or reportable on the tax return or returns required by Title 15, chapter 30 or 31 of the Montana Code Annotated.~~
- ~~(11) The department requires specific documentation if the applicant:~~
 - ~~(a) files an income tax return, a copy of the Montana state income tax return must be attached to the application;~~
 - ~~(b) qualifies for an extension of time to file their income tax return, the applicant must indicate this on the application and, no later than October 25, provide a copy of their completed income tax return for the tax year immediately preceding the year of the application; or~~
 - ~~(c) is not required to file an income tax return, they must complete the appropriate portion of the application and submit documentation, that identifies the reported income, as defined in (9). Examples of acceptable documentation include, but are not limited to:~~
 - ~~(i) social security statements;~~
 - ~~(ii) pension statements; or~~
 - ~~(iii) bank statements.~~
- ~~(12) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding 7 days to the date on the determination letter. An applicant aggrieved by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section.~~
- ~~(13) The PTAP benefit is not available when a qualified applicant purchases a dwelling after the application deadline for the tax year in which the application is submitted. In this situation, the department will consider the application for the following year.~~
- ~~(14) The PTAP benefit is not available when a qualified applicant sells the dwelling. The tax benefit does not transfer to the new owner and the new owner is responsible for the proration of the taxes from the date of sale.~~
- (3) A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence:
 - (a) must be the only residence for which the taxpayer claims property tax assistance; and
 - (b) may include more than one Montana dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and in another dwelling for less than 7 months of the same tax year, and the total between the two dwellings is at least 7 months of that year. In addressing such situations:
 - (i) the department will apply the full year benefit to the primary residence that the qualified applicant owns and occupies when their property taxes are billed; and
 - (ii) when such property transfers the department will notify the seller that they must provide their new property information to the department before the department will transfer the benefit to the applicant's new home.
- (4) An applicant may demonstrate the 7-month occupancy requirement in (3) with such indicators including, but not limited to:
 - (a) the mailing address for receipt of bills and correspondence;

(b) the address on file with the applicant's employer as the place of residence; and

(c) the mailing address listed on the applicant's federal and state tax returns, driver's license, car registration, hunting and fishing licenses, or voter registration.

(5) A temporary stay in a nursing home or similar facility will not change an applicant's primary residence for the purposes of the PTAP.

(6) The PTAP benefit does not transfer to the new owner of the dwelling.

(7) A property owner of record or the property owner's agent must file an application that is postmarked by April 15 of the year for which the assistance is first claimed. Applications received after that date will be processed and entered into the department's income and eligibility verification process for the following year.

(8) The department may accept applications through regular or electronic mail, in person, or by telephone. If by telephone, the employee shall verify that the applicant has affirmed their eligibility and affirmed that the dwelling is their primary residence by signing the form on the applicant's behalf and initialing the signature.

(9) Applicants and participants in the PTAP as it existed on December 31, 2014, shall be entered into the department's annual verification process and will not be required to submit a new application. An applicant is not required to reapply once the department has entered their application into its verification process except as provided in (3).

(10) In reappraisal years, the April 15 application deadline is waived if a first-time applicant forwards an application to the department within 30 days after the date on the classification and appraisal notice.

(11) In non-reappraisal years, the April 15 application deadline is waived if a first-time applicant forwards an application to the department postmarked before July 1.

(12) The department may waive the April 15 application deadline at any time the department's local office or the Office of Taxpayer Assistance consults with local aging services or disability offices and confirms a hardship case exists. The department must document its finding.

(13) The department shall coordinate with the Social Security Administration and the Veterans Affairs Administration in developing its process for verifying the income and eligibility of applicants and participants.

(14) Each year the department will:

(a) verify the qualifying income and eligibility of PTAP applicants and participants;

(b) grant or deny the applicant's benefit;

(c) advise applicants and participants of the department's determination in writing; and

(d) advise taxpayers of their right to appeal the department's determination to the State Tax Appeal Board within 30 days of receiving a determination letter.

(15) The information PTAP applicants provide the department is subject to the false swearing penalties established in 45-7-202, MCA. The department:

(a) may investigate the information provided in an application and an applicant's continued eligibility;

(b) may request an applicant to verify the occupancy of their primary residence; and

(c) will review, on a case-by-case basis, any applicant or participant for whom its verification process finds no source of income and record its findings for future use.

(16) The department may address unusual circumstances of ownership and income that arise in administering this program such as:

(a) confusion when a spouse dies and the other spouse is not yet on the property's deed; or

(b) one-time increases in income used for funeral or medical expenses.

AUTH: 15-1-201, 15-6-302, MCA

IMP: ~~15-6-134~~ 15-6-301, 15-6-302, 15-6-305, MCA

REASON: The department proposes amending ARM 42.19.401 due to the passage of Senate Bill 157, L. 2015, which struck the subsections authorizing the Property Tax Assistance Program in 15-6-134, MCA, and created a separate section for the program within 15-6-305, MCA.

The new section in statute changes the program's benefit from the first \$100,000 or less of taxable market value to \$200,000 in appraisal value. It replaces the system of annual applications with a process to annually verify the income and eligibility of applicants and ongoing participants. Applicants now need to submit an application only once. The statute simplifies management of the program by using the concepts of residential real property instead of enumerating its components and by requiring the qualified property to be the taxpayer's primary residence.

The department proposes striking outdated language, adding new language, and restructuring any remaining language to align the rule content with the intent of the new law. The proposed rule amendment also incorporates language in new (4) to provide applicants with indicators to help demonstrate that they meet the 7-month occupancy requirement to qualify for assistance.

The department also proposes updating the implementing statutes for the rule based on the changes in law. Section 15-6-134, MCA, is proposed to be stricken because it no longer applies to PTAP and 15-6-301 and 15-6-305, MCA, are proposed to be added as the new implementing statutes that delineate the program. The department further proposes adding 15-6-302, MCA, as additional rulemaking authority for the administration of property tax assistance programs.

42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM (1) ~~Section 15-6-134, MCA, provides Sections 15-6-301 and 15-6-305, MCA, provide~~ property tax relief to low income homeowners. ~~The section requires Sections 15-6-301 and 15-6-305, MCA, also require~~ the department to annually adjust the income schedules used to determine the eligibility and the amount of relief to account for the effects of inflation.

(2) The calculation of the inflation adjustment shall be made on a yearly basis as follows:

(a) ~~Section 15-6-134, MCA, specifies Sections 15-6-301 and 15-6-305, MCA, specify~~ that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the Survey of Current Business by the Bureau of Economic Analysis of the U.S. Department of Commerce, is to be used in the calculation of the

inflation factor.

(b) The formula for the calculation of the inflation factor is as follows:

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t_0}}$$

where:

IF_t equals the inflation factor for property tax year t,

$PCE_{(t-1)}$ is the implicit price deflator for personal consumption expenditures for the second quarter April of the year prior to the tax year in question,

PCE_{t_0} is the implicit price deflator for personal consumption expenditures for the second quarter of 1995 April 2015.

(c) The inflation factor, calculated per the previous section, is used to annually adjust the base year income schedules for the effects of inflation.

Each income figure in the base year ~~table~~ income schedule is multiplied by the inflation factor calculated for the tax year in question in order to update the ~~table~~ schedule. The product is then rounded to the nearest whole dollar amount.

The base year income schedule is below.

----- Base Year Income Schedules Schedule -----

		Percentage Multiplier
Single Person	Married Couple	
\$0 - \$6,000	\$0 - \$8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

<u>Single Person</u>	<u>Head of Household or Married Couple</u>	<u>Percentage Multiplier</u>
<u>\$0 - \$8,413</u>	<u>\$0 - \$11,217</u>	<u>20%</u>
<u>\$8,414 - \$12,900</u>	<u>\$11,218 - \$19,630</u>	<u>50%</u>
<u>\$12,901 - \$21,032</u>	<u>\$19,631 - \$28,043</u>	<u>70%</u>

AUTH: 15-1-201, MCA

IMP: ~~15-6-134, 15-6-191, 15-6-301, 15-6-305, MCA~~

REASON: The department proposes amending ARM 42.19.402 due to the

passage of Senate Bill 157, L. 2015, which updated the income schedule for the Property Tax Assistance Program to reflect 2015 values and reset the personal consumption expenditures inflation factor to April 2015.

The department further proposes updating the implementing statutes for the rule to match the changes in law. Section 15-6-134, MCA, is proposed to be stricken because it no longer applies to the rule and 15-6-301 and 15-6-305, MCA, are proposed to be added as the new statutes that delineate the program.

42.19.405 DEFINITIONS The following definitions apply to rules found in this chapter.

~~(1) "Ancillary" means buildings of secondary importance in comparison to the primary residence, including but not limited to garages and storage sheds.~~

~~(2) "Entity" means a corporation, fiduciary, or pass-through entity, as defined in 15-30-2101, MCA, and an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person.~~

~~(3) "Dwelling" means the following, depending upon the type of tax assistance program. For the purpose of:~~

~~(a) a property tax assistance program (PTAP) application, it means any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outbuildings and appurtenances belonging to the applicant, and as much surrounding land, not exceeding 5 acres, as is reasonably necessary for use of such a dwelling. Qualifying land is limited to the legally described parcel upon which the qualified residence is located; or~~

~~(b) an extended property tax assistance program (EPTAP) application, it means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home, and as much surrounding land, not exceeding 1 acre, as is reasonably necessary for use of such a dwelling. Qualifying land is limited to the legally described parcel upon which the qualified residence is located.~~

~~(4) "Household" is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.~~

~~(5) "Income" applies to the property tax exemption for qualified disabled veterans and means:~~

~~(a) the applicant's income, if the applicant files their federal tax return as single or head of household;~~

~~(b) the applicant's and spouse's income, if they file their federal tax return as married; or~~

~~(c) the applicant's income, if the applicant does not file a federal tax return; the applicant must report their income based upon what their filing status would be if they were required to file a federal tax return.~~

~~(6) "Primary residence" means the following, depending upon the type of tax assistance program. For the purpose of:~~

~~(a) the PTAP it means a residential dwelling that was owned and occupied for more than 7 months of the preceding calendar year;~~

~~(b) the EPTAP it means a Montana residential dwelling actually occupied by itself or in combination with another residential dwelling in Montana for at least 7~~

months a year; or

~~(c) the property tax exemption for qualified disabled veterans, it means a residential dwelling that is occupied by the disabled veteran or their surviving spouse at the time the application is filed.~~

~~(7) "Total household income" means the following, depending upon the type of tax assistance program. For the purpose of:~~

~~(a) the PTAP, it means the income as reported on the Montana tax return or returns for the year in which the assistance is being claimed excluding losses, depletion, and depreciation and before any federal or state adjustments to income; or~~

~~(b) the EPTAP, it means the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. Income also includes the income of any natural person or entity that is a trustee of or controls 25 percent or more of the applicant entity. For single-family rental dwellings, total household income does not include the income of the tenant.~~

~~(1) "Head of household" means a taxpayer who meets the head of household standard for federal income tax purposes.~~

~~(2) "Percentage reduction" means the amount by which the property tax rate is reduced based on the income schedule found in:~~

~~(a) ARM 42.19.402 for the property tax assistance program (PTAP); or~~

~~(b) ARM 42.19.503 for the Montana disabled veteran (MDV) property tax assistance program.~~

~~(3) "Qualifying income" means the federal adjusted gross income of an applicant and an applicant's spouse, excluding capital and income losses as they appear on their Montana income tax return for the prior tax year.~~

~~(4) "Residential real property" means the land and improvements of a taxpayer's primary residence.~~

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-134, ~~15-6-193~~ 15-6-301, 15-6-305, 15-6-311, 15-30-2101, MCA

REASON: The department proposes amending ARM 42.19.405 due to the passage of Senate Bill (SB) 157, L. 2015, which altered the property tax assistance and disabled veteran programs.

The department proposes striking the definitions for terms no longer used in the rules in this chapter due to the changes in statute.

The department further proposes defining terms being added into the rules in this chapter due to the changes in statute that are critical in implementing and understanding the property tax assistance and disabled veteran programs as they were altered by SB 157, L. 2015.

The department proposes striking 15-6-193, MCA, as an implementing statute from the rule because it was eliminated with the passage of SB 157.

The department proposes adding 15-6-301, 15-6-305, and 15-6-311, MCA, as

new implementing statutes because they delineate the property tax assistance programs and adding 15-6-302, MCA, as additional rulemaking authority providing for the department's administration of these programs.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS (1) The property owner of record or the property owner's agent must make ~~annual~~ application to the local department office, ~~in order to obtain a property tax exemption under the Montana Disabled Veteran (MDV) program for property tax assistance.~~

(2) The exemption applies to any residential improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land, ~~not to exceed 5 acres, the residential real property of a qualified veteran or qualified veteran's surviving spouse that is owned or under contract for deed and occupied by a~~ used by a veteran or a qualified veteran's surviving spouse as a primary residence ~~as provided for in 15-6-211 15-6-301 and 15-6-311, MCA.~~

(3) ~~For purposes of this exemption, the land beneath and immediately adjacent to the residence shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the qualified residence is located, unless the primary residence is a mobile home or manufactured home that is assessed separately from the land. In which case, the benefit will apply to the land upon which the primary residence is located, only if the land and the mobile home are owned by the applicant.~~

(4) ~~An application must be filed, on or before April 15 of the year for which the exemption is sought, on a form available from the local department office. Applications postmarked after April 15 will be considered for the following tax year.~~

(5) ~~The department may waive the April 15 deadline if the applicant:~~

(a) ~~participated in the program in the prior year;~~

(b) ~~was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness, and can demonstrate:~~

(i) ~~one or more of the impediments, while not necessarily continuous, existed at sufficient levels between January 1 and April 15, of the tax year in which the applicant is applying, that prevented timely filing of the application; or~~

(ii) ~~confusion caused by the infirmity may have prevented timely filing of the application.~~

(6) ~~The department may waive the April 15 deadline, on a case-by-case basis, if the applicant:~~

(a) ~~qualified for the program in the prior year;~~

(b) ~~meets the income requirements in the current year; and~~

(c) ~~submits a written statement, plus any document explaining any circumstances not identified in (5) that prevented timely filing of the application.~~

(7) ~~The department may waive the April 15 deadline if the applicant:~~

(a) ~~did not previously receive the exemption;~~

(b) ~~meets the requirements of (5) or (6); and~~

(c) ~~provides a completed application that is submitted or postmarked no later than July 1 of the year for which the exemption is sought.~~

(8) ~~The department may accept and process the applications and proof of~~

income if submitted or postmarked no later than July 1 of the year for which the benefit is sought.

~~(9) Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.~~

~~(10) The following documents must accompany the application:~~

~~(a) a letter from the Veterans' Administration that verifies the applicant is currently rated 100 percent disabled or is paid at the 100 percent disabled rate. If the disability is permanent, the letter need be submitted only once;~~

~~(b) copies of the applicant's completed federal income tax return for the preceding calendar year, including all schedules;~~

~~(c) if the applicant qualifies for an extension of time to file the applicant's federal income tax return, the applicant must, no later than October 25, provide a copy of their completed income tax return for the tax year immediately preceding the year of the application; and~~

~~(d) if the applicant is not required to file an income tax return, the applicant must provide documentation that identifies the applicant's income. Examples of acceptable documentation include, but are not limited to:~~

~~(i) social security statements;~~

~~(ii) pension statements; or~~

~~(iii) bank statements.~~

~~(11) The department shall disapprove an application if it contains false information or in circumstances where the taxpayer:~~

~~(a) is required to file an income tax return for the year in which the applicant seeks the exemption and does not provide a copy of the return;~~

~~(b) is not required to file an income tax return for the year in which the applicant seeks the exemption and does not provide the documentation required in (10); or~~

~~(c) does not sign the application.~~

~~(12) A taxpayer who provides false information on an application may be charged with fraudulent misrepresentation under 45-6-317, MCA.~~

~~(13) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding 7 days to the date on the determination letter. An applicant aggrieved by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section.~~

~~(14) Tax exemptions for qualified veterans or their surviving spouses may not be prorated, except as provided for in (c):~~

~~(a) If a qualified veteran or their surviving spouse purchases a home and applies for the exemption by the deadline, they would receive the exemption for the full year.~~

~~(b) If a qualified veteran or their surviving spouse purchases a home after the application deadline, they would not receive the exemption for that year.~~

~~(c) If a qualified veteran or their surviving spouse has the exemption on a home and sells it, the taxes are prorated and assessed to the new owner for the remainder of the year based on 15-16-203, MCA.~~

(3) A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence:

(a) must be the only residence for which the taxpayer claims property tax assistance; and

(b) may include more than one Montana dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and in another dwelling for less than 7 months of the same tax year, and the total between the two dwellings is at least 7 months of that year. In addressing such situations:

(i) the department will apply the full year benefit to the primary residence that the qualified applicant owns and occupies when their property taxes are billed; and

(ii) when such property transfers the department will notify the seller that they must provide their new property information to the department before the department will transfer the benefit to the applicant's new home.

(4) An applicant may demonstrate the 7-month occupancy requirement in (3) with such indicators including but not limited to:

(a) the mailing address for receipt of bills and correspondence;

(b) the address on file with the applicant's employer as the place of residence; and

(c) the mailing address listed on the applicant's federal and state tax returns, driver's license, car registration, hunting and fishing licenses, or voter registration.

(5) A temporary stay in a nursing home or similar facility will not change an applicant's primary residence for the purposes of the MDV.

(6) The MDV benefit does not transfer to the new owner of the dwelling.

(7) A property owner of record or the property owner's agent must file an application that is postmarked by April 15 of the year for which the assistance is first claimed. Applications received after that date will be processed and entered into the department's income and eligibility verification process for the following year.

(8) The department may accept applications through regular or electronic mail, in person, or by telephone. If by telephone, the employee shall verify that the applicant has affirmed their eligibility and affirmed that the dwelling is their primary residence by signing the form on the applicant's behalf and initialing the signature.

(9) Applicants and participants in the MDV as it existed on December 31, 2014, shall be entered into the department's annual verification process and will not be required to submit a new application. A veteran is not required to reapply once the department has entered their application into its verification process except as provided in (3).

(10) In reappraisal years, the April 15 application deadline is waived if a first-time applicant forwards an application to the department within 30 days after the date on the classification and appraisal notice.

(11) In non-reappraisal years, the April 15 deadline is waived if a first-time applicant forwards an application to the department postmarked before July 1.

(12) The department may waive the April 15 deadline at any time in which the department's local office or the Office of Taxpayer Assistance consults with local aging services, disability, or veterans affairs offices and confirms a hardship case exists. The department must document its finding.

(13) The department shall coordinate with the Social Security Administration

and the Veterans Affairs Administration in developing its process for verifying the income and eligibility of applicants and participants.

(14) Each year the department will:

(a) verify the qualifying income and eligibility of MDV applicants and participants;

(b) grant or deny the applicant's benefit;

(c) advise applicants and participants of the department's determination in writing; and

(d) advise taxpayers of their right to appeal the department's determination to the State Tax Appeal Board within 30 days of receiving a determination letter.

(15) The information MDV applicants provide the department is subject to the false swearing penalties established in 45-7-202, MCA. The department:

(a) may investigate the information provided in an application and an applicant's continued eligibility; and

(b) may request an applicant to verify the occupancy of their primary residence.

(16) The department may address unusual circumstances of ownership and income that arise in administering this program such as:

(a) confusion when a spouse dies and the other spouse is not yet on the property's deed; or

(b) one-time increases in income used for funeral or medical expenses.

AUTH: 15-1-201, 15-6-302, MCA

IMP: ~~15-6-211~~ 15-6-301, 15-6-311, MCA

REASON: The department proposes amending ARM 42.19.501 due to the passage of Senate Bill (SB) 157, L. 2015, which struck the subsections authorizing the Montana Disabled Veteran (MDV) program for property tax assistance and created a new separate section for the program in 15-6-311, MCA.

The new section in statute replaces the system of annual applications with a process for the department to annually verify the income and eligibility of qualified veterans and veterans' surviving spouses. Applicants now need to submit an application only once. The statute also simplifies management of the program by using the concept of residential real property instead of enumerating its components and requiring the qualified property to be the taxpayer's primary residence.

The department proposes striking outdated language, adding new language, and restructuring any remaining language to align the rule content with the intent of the new law. The proposed rule amendment also incorporates language in new (4) to provide applicants with indicators to help demonstrate that they meet the 7-month occupancy requirement to qualify for assistance.

The department also proposes updating the implementing statutes for the rule based on the changes in law. Section 15-6-211, MCA, is proposed to be stricken because it was repealed with the enactment of SB 157. Section 15-6-311, MCA, is proposed to be added as the new implementing statute that delineates the program.

The department further proposes adding 15-6-302, MCA, as additional rulemaking authority providing for the department's administration of the property tax assistance programs.

42.19.502 EXEMPTIONS INVOLVING AN OWNERSHIP TEST (1) through (3)(a) remain the same.

(b) To receive an exemption under the Soldiers and Sailors Relief Act, the military person must be a nonresident and provide the ~~county assessor~~ department with proof that they have orders assigning them to duty in Montana.

(c) and (4) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-201, 15-6-203, 15-6-209, 15-24-1208, MCA

REASON: The department proposes amending ARM 42.19.502 to remove outdated language. The term "county appraisal" is proposed to be stricken and replaced with a reference to the local Department of Revenue staff.

42.19.503 INFLATION ADJUSTMENT FOR QUALIFIED DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM (1) ~~Section 15-6-211, MCA, provides Sections 15-6-301 and 15-6-311, MCA, provide~~ a property tax exemption or partial exemption to qualified disabled veterans. ~~Section 15-6-211, MCA, also requires Sections 15-6-301 and 15-6-311, MCA, also require~~ the department to annually adjust the income schedules used to determine the eligibility and the amount of exemption to account for the effects of inflation.

(2) The calculation of the inflation adjustment shall be made on a yearly basis as follows:

(a) ~~Section 15-6-211, MCA, specifies Sections 15-6-301 and 15-6-311, MCA, specify~~ that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the Survey of Current Business by the Bureau of Economic Analysis of the U.S. Department of Commerce, is to be used in the calculation of the inflation factor.

(b) The formula for the calculation of the inflation factor is as follows:

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t_0}}$$

where:

IF_t equals the inflation factor for property tax year t;

$PCE_{(t-1)}$ is the implicit price deflator for personal consumption expenditures for the second quarter April of the year prior to the tax year in question;

PCE_{t_0} is the implicit price deflator for personal consumption expenditures for the second quarter of 2002 April 2015.

(c) The inflation factor, calculated per (2)(b), is used to annually adjust the base-year income schedules for the effects of inflation.

Each income figure in the base-year ~~table~~ income schedule is multiplied by the inflation factor calculated for the tax year in question in order to update the ~~table~~ schedule. The product is then rounded to the nearest whole dollar amount.

The base-year income schedule follows:

----- Base Year Income ~~Schedules~~ Schedule -----

<u>Single Person</u>	<u>Married Couple</u>	<u>Surviving Spouse</u>	<u>Percentage Multiplier</u>
\$ 0 - 30,000	\$ 0 - 36,000	\$ 0 - 25,000	0%
30,001 - 33,000	36,001 - 39,000	25,001 - 28,000	20%
33,001 - 36,000	39,001 - 42,000	28,001 - 31,000	30%
36,001 - 39,000	42,001 - 45,000	31,001 - 34,000	50%

<u>Single Person</u>	<u>Head of Household or Married Couple</u>	<u>Surviving Spouse</u>	<u>Percentage Multiplier</u>
<u>\$0 - \$37,404</u>	<u>\$0 - \$44,885</u>	<u>\$0 - \$31,170</u>	<u>0%</u>
<u>\$37,405 - \$41,145</u>	<u>\$44,886 - \$48,626</u>	<u>\$31,171 - \$34,911</u>	<u>20%</u>
<u>\$41,146 - \$44,885</u>	<u>\$48,627 - \$52,366</u>	<u>\$34,912 - \$38,651</u>	<u>30%</u>
<u>\$44,886 - \$48,626</u>	<u>\$52,367 - \$56,107</u>	<u>\$38,652 - \$42,392</u>	<u>50%</u>

AUTH: 15-1-201, MCA

IMP: ~~15-6-211~~ 15-6-301, 15-6-311, MCA

REASON: The department proposes amending ARM 42.19.503 due to the passage of Senate Bill (SB) 157, L. 2015, which updated the income schedule for Montana disabled veterans and their surviving spouses to reflect 2015 values and to reset the personal consumption expenditures inflation factor to April 2015.

The department further proposes updating the implementing statutes for the rule to match the changes in law. Section 15-6-211, MCA, is proposed to be stricken because it was repealed with the enactment of SB 157, and 15-6-301 and 15-6-311, MCA, are proposed to be added as the new statutes that delineate the program.

42.19.506 EXEMPTIONS INVOLVING A USE TEST (1) For property tax exemptions which require a use test, the following criteria apply:

(a) and (b) remain the same.

(c) examples of supporting documentation include, but are not limited to:

(i) through (viii) remain the same.

(ix) physical inspections of the property by the ~~county appraisal~~ local

Department of Revenue staff; and

(d) and (2) remain the same.

(3) An example of the application of the use test in (1) is when 25 percent of a building was used for educational purposes in ~~1992~~ the current year and the remainder of the building was used for commercial purposes. The applicant ~~applies for an exemption on January 1, 1993~~ owns the property on January 1 and applies for an exemption on March 1 of the current year. For ~~1993~~ the current year and until the use changes, the property receives a 25 percent exemption for the land and the building.

(4) and (5) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-201, 15-6-203, 15-6-209, 15-24-1208, MCA

REASON: The department proposes amending ARM 42.19.506 to remove outdated language. The term "county appraisal" is proposed to be stricken and replaced with a reference to the local Department of Revenue staff.

The department also proposes updating the example in (3) to replace the references to specific years with the more generic term "current year" instead. The department further proposes restructuring one of the sentences in the example for better clarity.

4. The department proposes to repeal the following rule:

42.19.406 EXTENDED PROPERTY TAX ASSISTANCE PROGRAM (EPTAP)

AUTH: 15-1-201, MCA

IMP: 15-6-193, MCA

REASON: The department proposes repealing ARM 42.19.406 due to the passage of Senate Bill 157, L. 2015, which eliminated the Extended Property Tax Assistance Program and renders the rule unnecessary.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 28, 2015.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5

above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 157, L. 2015, Senator Bruce Tutvedt, was contacted by regular mail on July 6, 2015, and subsequently notified on August 31, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 14, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.5.131 pertaining to rules) PROPOSED AMENDMENT
governing the registration of)
business/mark names)

TO: All Concerned Persons

1. On October 15, 2015, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on October 1, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.5.131 DISTINGUISHABLE ON/IN THE RECORD(S) (1) The Secretary of State's role with regard to the registration of business/mark names is ministerial. If a business/mark name is distinguishable from another business/mark name, the Secretary of State is required to file it.

~~(1)~~(2) Pursuant to Title 30, chapter 13, MCA, and Title 35, chapters 1, 2, ~~4~~, 7, 8, ~~and 10, 12, and 18~~, MCA, "distinguish," "distinguishable," "distinguishable on the record," and "distinguishable in the records" means that a registered business/mark name must be sufficiently distinctive from another registered business/mark name so that it does not cause confusion in an absolute or linguistic sense.

(3) The following items make a registered business/mark name distinguishable from another registered business/mark name:

~~(2)~~ (a) Business names that contain key words that are different and do not copy a business/mark name already on record, are "distinguishable." A "key word" means any word other than articles, prepositions, conjunctions, or business name identifiers as defined in 30-13-201, MCA. For example, "Bill's Carpentry" is distinguishable from "Bill's Builders."

(b) key words are the same, but are in a different order. For example: "Yellowstone Hotel" is distinguishable from "Hotel Yellowstone."

(c) the use of geographic designations. For example: "Helena Auto Painting" is distinguishable from "Boulder Auto Painting."

(d) phonetic similarities. For example: "Maid in Montana" is distinguishable from "Made in Montana."

(e) abbreviations. For example: "Montana Ave Salon" is distinguishable from "Montana Avenue Salon."

(f) different spellings of proper names. For example: "Jayne's Boutique" is distinguishable from "Jane's Boutique."

(g) unique or improper spelling. For example: "Black Cat Designs" is distinguishable from "Black Kat Designs."

~~(3) Geographic and numeric designations, phonetic similarities, and abbreviations of words (other than business identifiers) will make business names "distinguishable." For example, "Two for One Diner's Club" is distinguishable from "241 Diner's Club."~~

(4) The following conditions will not make a registered business/mark name distinguishable from another registered business/mark name:

~~(a) the use of punctuation marks or special characters,~~ for For example: "R/D Construction" and "R D Construction" are not distinguishable;

(b) the use of special characters. Special characters are non-alphabetical and non-numeric characters such as @, #, \$, %, &, *, and + that can represent a word. For example: 25 % Better, Inc. and 25 Percent Better, Inc. are not distinguishable.

~~(b)(c) the use of articles "a," "an," or "the,"~~ for For example: "The Painted Pony" and "Painted Pony" are not distinguishable;

~~(c)(d) the use of business name identifiers or their abbreviations,~~ for For example: "ABC Inc.," "ABC Co.," and "ABC Corp." are not distinguishable;

~~(d)(e) the substitution of an arabic or roman numeral for a word, spelled-out number.~~ for For example: "2 3 Kings," "III Kings," and "Two Three Kings," are not distinguishable;

~~(e)(f) the substitution of a lower case letter for a capital letter,~~ for For example: "d" and "D" are not distinguishable;

~~(f) the use of plurals, possessives, or tense, for example: plurals--"Fine Line Inc." and "Fine Lines Inc." are not distinguishable; possessives--"Employee Services" and "Employees' Services" are not distinguishable; and tense--"Swim Inc.," "Swimming Inc.," "Swims Inc.," and "Swam Inc." are not distinguishable; and~~

(g) the use of internet domain suffixes, for For example: ".com," ".org," ".gov," and ".net" are not distinguishable.

(h) contractions. For example: "Do Not Stop, Inc." is not distinguishable from "Don't Stop, Inc."

(i) variations in word endings. For example: "Betsy's Cleaners" is not distinguishable from "Betsy's Cleaning" and "ABC Transport, Inc." is not distinguishable from "ABC Transportation, Co."

(j) adding the letter "s" to make a word, including an alphabetism, plural or possessive. For example: "Jay's Market" and "Jays Market" and "RM's Co." and "RMS Co." are not distinguishable.

(k) different spacing. For example: "Cross Roads Ranch" and "Crossroads Ranch" are not distinguishable.

(5) The Secretary of State reserves the right to not register business names that are vulgar or grossly offensive.

AUTH: Ch. 166, Sec. 1, L. 2015, 35-1-1307, 35-1-1315, 35-2-1107, MCA
IMP: 30-13-202, 30-13-310, 35-1-308, 35-1-310, 35-1-311, 35-1-1031, 35-2-305, 35-2-307, 35-2-826, 35-4-206, 35-7-106, 35-7-112, 35-8-103, 35-8-108, 35-10-703, 35-12-505, 35-12-1304, 35-18-201, MCA

REASON: These amendments are reasonably necessary to update and clarify the rules governing business/mark name registration requirements and restrictions. In addition, Senate Bill 41, as passed by the 2015 Montana Legislature, granted rulemaking authority for assumed business names and trademarks and clarified that professional corporate names and limited liability partnership names must be distinguishable on the record from any other business name. The authority and implementation statutes have been reviewed and updated to reflect these legislative changes.

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 Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 23, 2015.

5. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply. The bill sponsor was contacted by letter on August 19, 2015.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of September, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.14.301, 44.14.302, and) PROPOSED AMENDMENT
44.14.304 through 44.14.311)
pertaining to fees charged by the)
Records and Information)
Management Division)

TO: All Concerned Persons

1. On October 15, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on October 1, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.14.301 FEES FOR 16MM MICROFILM SERVICES (1) The following fees will be charged for 16mm microfilm images:

(a) MRD-2 8 1/2" x 11" and legal (manual)	\$.165
(b) <u>(a) B & H Auto Exposure</u>	<u>\$.103</u>
(c) 8" x 11" or 8" x 14" paperwork (rotary)	.079
(d) 8" x 11" or 8" x 14" computer printout (rotary)	.079
(e) extreme size and weight variance (rotary)	.079
(f) cards - fixed weight and color (rotary)	.015
(g) cards - mixed weight and color (rotary)	.026
<u>(b) Microfilm Services – Image to Film – AR</u>	<u>.06</u>

AUTH: ~~2-6-103~~ 2-15-405, MCA
IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.302 FEES FOR 35MM MICROFILM SERVICES (1) The following fees will be charged for 35mm microfilm images:

(a) 16" x 20" bound books	\$.2855
(b) 24" x 34" newspapers	.27160

(c) 24" x 34" bound newspapers	27160
(d) (a) <u>48" x 48" MRG</u> blueprints/maps	<u>\$ 1.09</u>
(b) <u>MRD - all sizes</u>	<u>.35</u>

AUTH: ~~2-6-103~~ 2-15-405, MCA
 IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.304 FEES FOR FILM PROCESSING (1) The following fees will be charged for film processing:

(a) 16mm, each 100 foot roll	\$ 7.70 <u>8.50</u>
(b) 16mm, each 215 foot roll	14.66 <u>17.00</u>
(c) 35mm, each 100 foot roll	8.16 <u>8.90</u>

AUTH: 2-15-405, MCA
 IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.305 FEES FOR FILM INSPECTING (1) The following fees will be charged for film inspection:

(a) each 100 foot roll inspection	\$ 10.64 <u>11.00</u>
(b) each 215 foot roll inspection	21.29 <u>22.00</u>
(c) each film splice	0.795 <u>0.80</u>

AUTH: 2-15-405, MCA
 IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.306 FEES FOR FILM DUPLICATION (1) The following fees will be charged for film duplicating:

(a) 16mm, each 100 foot roll	\$ 11.76 <u>12.25</u>
(b) 16mm, each 215 foot roll	13.03 <u>15.00</u>
(c) 35mm, each 100 foot roll	11.80
(d) (c) 105mm, each microfiche or jacket	0.386 <u>0.43</u>
(e) (d) each reader/printer copy	0.50 <u>0.75</u>
(f) (e) 16mm, 100 foot roll (silver)	21.84 <u>23.00</u>
(g) (f) 35mm, 100 foot roll (silver)	25.66 <u>29.00</u>

AUTH: 2-15-405, MCA
 IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.307 FEES FOR JACKET LOADING/TITLING (1) The following fees will be charged for jacket loading and titling:

(a) 16mm, each 5 channel jacket	\$ 0.879 <u>0.88</u>
(b) agency's own jacket (each)	0.2887
(c) (b) 35mm, 1 and 2 channel jacket (each)	0.879 <u>0.90</u>
(d) loading 16mm aperture card (each)	0.8590
(e) (c) jacket title (each)	0.7980 <u>0.90</u>
(f) jacket updating (per hour)	24.00

AUTH: 2-15-405, MCA
IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.308 MISCELLANEOUS FEES (1) The following miscellaneous fees will be charged:

(a) indexing and document preparation (per hour)	\$ 24.00 <u>25.00</u>
(b) and (c) remain the same.	
(d) camera rental (per day)	95.00
<u>(d) vendor shredding (recall)</u>	<u>As billed by the vendor</u>

AUTH: ~~2-6-103~~, 2-15-405, MCA
IMP: ~~2-6-110~~, 2-6-211, MCA

44.14.309 MISCELLANEOUS SUPPLIES (1) The following fees will be charged for Fees for the following filming supplies based on actual cost by supplier and postage/freight will be as charged by the supplying vendor:

(a) each NMI reader bulb	\$ 11.85
(b) (a) 16mm, each 100 foot roll film	7.10
(c) (b) 35mm, each 100 foot roll film	15.00
(d) each box of splicing tape	17.50
(e) jackets (1 box 16mm/1000)	74.91
(f) (c) fiche envelopes (1 box/1000)	37.50
<u>(g) (d) postage/freight (cost based on actual fee)</u>	<u>Actual</u>

AUTH: 2-15-405, MCA
IMP: ~~2-6-110~~, 2-6-203, 2-6-211, MCA

44.14.310 FEES FOR RECORDS CENTER SERVICES (1) The following fees shall be charged for services provided for records housed in the state records center:

(a) storage per square foot, per month	\$0.2565
(b) storage per cubic foot, per	0.31 <u>\$ 0.33</u>
(c) (b) retrieval/re-file, each	1.00 <u>1.20</u>
(d) (c) emergency retrieval, each	13.36 <u>25.00</u>
(e) through (h) remain the same, but are renumbered (d) through (g).	
(h) permanent withdrawal (remove or dispose)	25.00 per hour
(i) database set-up	25.00 per hour
(j) unsuccessful search	1.20
(k) data research	25.00 per hour

AUTH: ~~2-6-103~~, 2-15-405, MCA
IMP: ~~2-6-201~~, ~~2-6-202~~, ~~2-6-203~~, ~~2-6-206~~, 2-6-211, MCA

44.14.311 FEES FOR RECORDS CENTER BOXES (1) The following fees shall be charged for each storage box based upon the supplier costs:

(a) standard size A 15" x 12" x 10"	\$ <u>1.47</u> <u>2.47</u>
(b) standard size B 15" x 12" x 4 1/2"	<u>1.47</u>

~~(c) drawing and map storage boxes size 24" x 12" x 10" 3.22~~

AUTH: ~~2-6-201~~ 2-15-405, MCA

IMP: ~~2-6-202, 2-6-203, 2-6-206, 2-6-211~~, MCA

REASON: These amendments are reasonably necessary to adjust the fees associated with the materials purchased and labor provided by the Records and Information Management Division so that the fees are commensurate with the overall costs of the office and reasonably reflect the prevailing rates charged in the public and private sectors for similar services. The authority and implementation statutes were reviewed and updated.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., October 23, 2015.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

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

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

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

9. The cumulative amount for all persons of the proposed fee changes is approximately \$50,000 annually based on FY 2015 charges for Records and Information Management Division services and supplies. The number of persons affected is approximately 70 state and local government agencies that purchase

supplies or perform services with the Records and Information Management Division.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of September, 2015.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.59.1738 pertaining to renewal fees for)
mortgage brokers, lenders, servicers,)
and originators)

TO: All Concerned Persons

1. On July 30, 2015, the Department of Administration published MAR Notice No. 2-59-528 pertaining to the proposed amendment of the above-stated rule at page 959 of the 2015 Montana Administrative Register, Issue Number 14.

2. No comments were received.

3. The department has amended ARM 2.59.1738 exactly as proposed.

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

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

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.5.308 and 4.5.313 pertaining)
to the noxious weed seed free forage)
fees)

TO: All Concerned Persons

1. On June 25, 2015, the Department of Agriculture published MAR Notice No. 4-14-227 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 784 of the 2015 Montana Administrative Register, Issue Number 12.

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

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

COMMENT #1: A grower who plans to ship in bulk noxious weed seed free forage out of state had questions about the new fee and the exact amount he would pay and whether in the future it might have a negative impact on his business.

RESPONSE #1: The field and facility inspection fees are not changed by this rule. The new marker fee for certifying bulk products only is \$0.20/50 pounds or \$8.00/ton. The decision to certify and sell these products as certified is at the discretion of the seller.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.10.209 and 6.10.210)
pertaining to Offerings)

TO: All Concerned Persons

1. On July 30, 2015, the Commissioner of Securities and Insurance, Montana State Auditor, published MAR Notice No. 6-218 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 962 of the 2015 Montana Administrative Register, Issue Number 14.

2. On August 20, 2015, a public hearing was held on the proposed amendment of the above-stated rules. No comments were received by the August 28, 2015, deadline.

3. The department has amended ARM 6.10.209 and 6.10.210 exactly as proposed.

/s/ Lynne Egan
Lynne Egan
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to actions that qualify as categorical exclusions under the Montana Environmental Policy Act) NOTICE OF ADOPTION
)
)
)
)

TO: All Concerned Persons

1. On July 30, 2015, the Department of Commerce published MAR Notice No. 8-2-135 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 966 of the 2015 Montana Administrative Register, Issue Number 14.

2. The department has adopted New Rule I (8.2.328), but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (8.2.328) ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION (1) and (2) remain as proposed.

(3) Actions described in (2) may not be processed as categorical exclusions if:

(a) they involve a substantial public controversy over the project's potential effect on the quality of the human environment;

(b) through (4) remain as proposed.

AUTH: 2-3-103, 2-4-201, MCA

IMP: 2-3-104, 75-1-201, MCA

3. On August 24, 2015, a public hearing was held on the proposed adoption of the above-stated rule. Comments were received until the September 1, 2015 deadline.

4. The department has thoroughly considered the comments and testimony received. One commenter provided comments in regard to these rules, raising two issues.

COMMENT NO. 1: The "public controversy" language in (3)(a) of the proposed new rule is not found within MEPA or any Montana Administrative Rules. This standard will require any project of any sort that has public opposition to conduct an EA or an EIS, which will delay projects and increase costs for applicants.

RESPONSE NO. 1: The MEPA Model Rules define a categorical exclusion as "a type of action which does not individually, collectively, or cumulatively require an EA or EIS, as determined by rulemaking or programmatic review adopted by the agency, unless extraordinary circumstances, as defined by rulemaking or

programmatic review, occur." Section (3) of the proposed rule sets forth those extraordinary circumstances under which a categorical exclusion would not be the appropriate level of environmental review in considering applications for grants or loans from the department. By contrast, under the National Environmental Policy Act, the existence of a public controversy is one factor that federal agencies are to consider in determining the significance of an impact on the environment resulting from the proposed project. The "extraordinary circumstances" adopted by the Montana Department of Environmental Quality (ARM 17.40.318(2)(f)), the Montana Department of Fish, Wildlife, and Parks (ARM 12.2.454(2)(e)), and the Montana Department of Transportation (ARM 18.2.261(5)(e)) all contain public controversy language similar to that of proposed (3)(a). However, the department has modified the final rule to provide that public controversy alone must be substantial in order to justify the preparation of an EA or EIS. In the absence of the categorical exclusions proposed by the department, most applications for grants and loans from the department must already prepare an EA or EIS; under the new rule, some of these applicants may be able to use a categorical exclusion, thereby avoiding potential delays and costs associated with a higher level of environmental review.

COMMENT NO. 2: The use of the terms "footprint" and "no increase in the population served by the facility" in (2)(e) of the proposed rule "tightens" the exemption set forth in (2)(d), leaving minor infrastructure upgrade projects subject to more intensive MEPA analysis and forcing the preparation of an EA, at a minimum, for even minor upgrades within an existing right-of-way.

RESPONSE NO. 2: Each one of the six types of actions set forth in (2) of the new rule are separate and independent grounds for meeting the criteria for use of a categorical exclusion. Thus, the additional limitations contained in the categorical exclusion set forth in (2)(e) do not apply to the types of actions that would qualify as a categorical exclusion under (2)(d).

As set forth in Response No. 1, categorical exclusions are necessarily limited to those actions which do not individually, collectively, or cumulatively require an EA or EIS. Projects that involve infrastructure upgrades or replacement of entire facilities, as the commenter notes, are likely to or are intended to serve a larger population than served by the current facility. Such projects typically involve the potential to individually, collectively, or cumulatively have a significant impact on the human environment, and therefore require an EA or EIS under MEPA. In some cases, however, such projects will take place entirely within the footprint of the existing facility, and involve no upsizing or increase in service capacity. It is these limited types of projects in this category that the new exclusion is designed to address. Under existing department rules, an application for a grant or loan to finance such a project must always prepare an EA or EIS; under the new rule, these applicants will be able to use the new categorical exclusion, thereby avoiding potential delays and costs associated with a higher level of environmental review.

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

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

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.94.3816 pertaining to the)
administration of the 2017 Biennium)
Treasure State Endowment Program)
– Emergency Grants)

TO: All Concerned Persons

1. On July 30, 2015, the Department of Commerce published MAR Notice No. 8-94-134 pertaining to the proposed amendment of the above-stated rule at page 969 of the 2015 Montana Administrative Register, Issue Number 14.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

/s/ DOUGLAS MITCHELL
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.99.806 pertaining to the)
administration of the Business)
Workforce Training Grant)

TO: All Concerned Persons

1. On July 30, 2015, the Department of Commerce published MAR Notice No. 8-99-136 pertaining to the proposed amendment of the above-stated rule at page 971 of the 2015 Montana Administrative Register, Issue Number 14.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to the apprentice)
hunter certificate)

TO: All Concerned Persons

1. On June 25, 2015, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-444 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 791 of the 2015 Montana Administrative Register, Issue Number 12.

2. The commission has adopted NEW RULE I (ARM 12.3.187) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 12.3.187) APPRENTICE HUNTER CERTIFICATE

(1) through (2)(b) remain as proposed.

(3) Apprentice hunters 15 years of age or younger are allowed to hunt during any specified statewide youth season as provided in the regulations.

AUTH: 87-2-810, MCA

IMP: 87-2-810, MCA

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

Comment 1: Multiple comments supported the rule language as proposed.

Response 1: The commission appreciates your participation in this rule making process.

Comment 2: Two comments stated background checks should be required for all mentors because hunter education instructors are required to pass a background check.

Response 2: Hunter education instructors are volunteers in an official department capacity and background checks are complete pursuant to department policy. Mentors are not department volunteers and are required to be family members or designated as a mentor by a parent or guardian. It is the parent or guardian who is responsible for determining who is an appropriate mentor.

Comment 3: Several comments stated the mentor should not be allowed to carry a firearm with an apprentice hunting.

Response 3: The legislature considered restricting the mentor from hunting when accompanying an apprentice and those proposed amendments to the bill failed. Due to this, the commission believes the restriction is outside the scope of its rulemaking authority.

Comment 4: Several comments stated that mentors should be required to complete a hunter education course or a mentor certification course.

Response 4: Montana statute, 87-2-105, MCA, states hunter education is not required for any person born before January 1, 1985. Further education or certification requirements are outside the scope of the commission's rulemaking authority. It is the responsibility of the parent or guardian to ensure that the apprentice is accompanied by an appropriate mentor.

Comment 5: Eight comments stated sight and sound needed to be specifically defined as a measured distance.

Response 5: Defining sight and sound with specific distances would be difficult to determine, manage, and enforce.

Comment 6: One comment stated a mentor should be able to have more than one apprentice. For example, a father with two children should be able to mentor both children.

Response 6: The commission limited mentors to accompany only one apprentice at a time. A mentor may have more than one apprentice in the field but only one can be hunting.

Comment 7: Three comments stated a mentor should not be able to become a mentor if they have a fish and game violation.

Response 7: The law requires the mentor to have a current hunting license which eliminates anyone who has lost their hunting privileges due to a fish and game violation. Any further restriction is outside the scope of this rulemaking process.

Comment 8: The Department of Fish, Wildlife and Parks (department) received several questions regarding apprentice hunter eligibility to hunt during statewide youth hunts. The department recommended language clarifying that age-specific apprentice hunters were eligible to hunt during statewide youth hunts.

Response 8: The commission adopted the rule with additional language providing clarification.

/s/ Aimee Fausser
Aimee Fausser
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chairman, Fish and Wildlife Commission

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW	)	CORRECTED NOTICE OF
RULE I requests for information, the	)	AMENDMENT
amendment of ARM 24.11.101,)	
24.11.317, 24.11.511, and 24.11.534,)	
and the repeal of ARM 24.11.901,)	
24.11.902, 24.11.903, 24.11.904,)	
24.11.907, 24.11.908, 24.11.909, and)	
24.11.2231 regarding unemployment)	
insurance)	

TO: All Concerned Persons

1. On April 16, 2015, the Department of Labor and Industry (department) published MAR Notice No. 24-11-304 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 357 of the 2015 Montana Administrative Register, Issue Number 7. On May 14, 2015, the department published an amended notice of public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 510 of the 2015 Montana Administrative Register, Issue Number 9.

2. On July 16, 2015, the department published a Notice of Adoption, Amendment, and Repeal of the above-stated rules at page 932 of the 2015 Montana Administrative Register, Issue Number 13. In that notice, the department stated that no public comments had been received.

3. The department has determined that one comment, regarding ARM 24.11.317, was timely submitted and received, but was inadvertently overlooked following the close of the comment period. The department has now thoroughly considered the comment that was received. A summary of the comment received and the department's response is as follows:

Comment 1: A third party administrator for various employers in Montana expressed concern that, due to recent changes in the USPS processes, employers may not receive timely notice of a rescheduled hearing. The commenter suggested that subsection (5) of the rule be amended to allow shorter notice only upon the agreement of the parties or a waiver of the notice period.

Response 1: The department recognizes that it must provide reasonable notice to the parties of the time and place of a prehearing conference and of the hearing as a matter of due process. Balancing the need for timely decisions on unemployment insurance benefits with providing adequate notice of a hearing, the department concludes that after the initial 10 days' written notice of a matter has been given to the parties, the department may reasonably provide shorter notice of a rescheduled hearing. As an example, a party might, at the last minute, show good cause for a

continuance. In that situation, the department would reschedule the hearing and provide notification to the parties via telephone, fax, or e-mail of the new (rescheduled) date and time for the unemployment insurance hearing. In order to address the concerns raised by the commenter, the department will amend ARM 24.11.317(5) as shown in paragraph 4, below.

4. The department has amended ARM 24.11.317 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.11.317 NOTICE OF HEARINGS (1) through (4) remain as adopted.

(5) The advance notice requirements in (2) and (3) do not apply to rescheduled hearings or rescheduled prehearing conferences, if the parties have been given reasonable notification of the new date and time.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-1109, 39-51-2407, MCA

/s/ MARK CADWALLADER

Mark Cadwallader
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 14, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.174.503 administration of) REPEAL
vaccines, 24.174.1412 additions,)
deletions, and rescheduling of)
dangerous drugs, and the repeal of)
ARM 24.174.1420 through)
24.174.1424 related to scheduling of)
dangerous drugs)

TO: All Concerned Persons

1. On May 14, 2015, the Board of Pharmacy (board) published MAR Notice No. 24-174-66 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 524 of the 2015 Montana Administrative Register, Issue No. 9.

2. On June 23, 2015, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the June 30, 2015, deadline.

3. The board has amended ARM 24.174.503 and 24.174.1412 exactly as proposed.

4. The board has repealed ARM 24.174.1420 through 24.174.1424 exactly as proposed.

BOARD OF PHARMACY
STARLA BLANK, RPh
PRESIDENT

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

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

Certified to the Secretary of State September 14, 2015

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 37.8.107, 37.8.108, 37.8.126,)
37.8.311, 37.8.801, and 37.8.802,)
pertaining to the update of vital)
records to reflect current practices)

TO: All Concerned Persons

1. On July 16, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-714 pertaining to the proposed amendment of the above-stated rules at page 891 of the 2015 Montana Administrative Register, Issue Number 13.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

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 37.114.701, 37.114.702,)
37.114.703, 37.114.704, 37.114.705,)
37.114.708, pertaining to)
implementation of HB 158 (2015))
regarding the modernization of)
immunization laws related to school)

TO: All Concerned Persons

1. On July 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-716 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 999 of the 2015 Montana Administrative Register, Issue Number 14.

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

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

COMMENT #1: A commenter supported the overall effort to require varicella vaccination for students attending Montana schools. However, the commenter did suggest that the department use a tiered approach of using two age cohorts to implement the rule for the first few years to lessen some of the burden to school secretaries and school nurses in the larger communities.

RESPONSE #1: Using a tiered approach for the implementation of the new requirement for varicella vaccination may lessen the burden on schools; however, the department believes that the intent of the law change was to ensure that all students were protected against varicella disease in the school setting. By vaccinating only two age cohorts, vaccination levels to meet herd immunity would not be achieved for several years and would put students who cannot be vaccinated at risk for disease.

4. These rule amendments are effective October 1, 2015.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

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

In the matter of the adoption of New Rules I through XI and the amendment of ARM 37.110.238 pertaining to the production and sale of cottage food products) NOTICE OF ADOPTION AND AMENDMENT)))))

TO: All Concerned Persons

1. On July 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-717 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1008 of the 2015 Montana Administrative Register, Issue Number 14. On August 27, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-717 pertaining to the public hearing on the amended notice of proposed adoption and amendment of the above-stated rules at page 1241 of the 2015 Montana Administrative Register, Issue Number 16.

2. The department has adopted New Rule I (37.110.501), II (37.110.502), IV (37.110.504), V (37.110.506), VI (37.110.507), VII (37.110.508), X (37.110.513), and XI (37.110.514) as proposed.

3. The department has amended ARM 37.110.238 as proposed.

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

NEW RULE III (37.110.503) APPROVED COTTAGE FOOD PRODUCTS

(1) Only those products approved by the department and listed in the registration may be produced by a cottage food operation. A cottage food operation is allowed to produce the following food items as long as they are a non-potentially hazardous food:

(a) ~~baked good~~ products that ~~are~~ may be cooked in an oven including:

(i) through (b)(v) remain as proposed.

(c) repackaged, commercially dried fruit or vegetables from an approved source as described in [New Rule VIII(2)], ~~except that cottage food operators may not dry or package fresh fruits or vegetables~~ or fresh fruits that;

(i) have a natural pH below 4.6, specifically: apples, apricots, grapefruit, lemons, limes, mangos, nectarines, oranges, peaches, plums, pomegranates, tangerines, blackberries, blueberries, cherries, cranberries, currants, gooseberries, grapes, raspberries, strawberries, and huckleberries; and

(ii) are dried by cottage food operators with the following methods:

(A) during the fruit drying process the fruit must reach 160^o Fahrenheit within an hour of processing the fruit;

(B) the fruit must then maintain 140^o Fahrenheit for the remainder of the drying process;

(C) dried fruit may not be packaged using any method of reduced oxygen packaging, including vacuum packaging.

(d) through (2) remain as proposed.

(3) Other products may be approved on a case-by-case basis by the department in consultation with the local health ~~department~~ authority of the county in which the cottage food operator is registered.

AUTH: 50-50-102, 50-50-103, MCA

IMP: 50-50-102, 50-50-116, 50-50-117, MCA

NEW RULE VIII (37.110.510) MANUFACTURE OF COTTAGE FOOD PRODUCTS (1) remains as proposed.

(2) Food must be obtained from approved sources, including:

(a) and (b) remain as proposed.

(c) In many cases local farm products are considered approved sources; consult with your local health authority to make determinations on a case-by-case basis.

(3) through (8) remain as proposed.

(9) Food must only contact surfaces of equipment and utensils that are cleaned and sanitized as specified:

(a) and (b) remain as proposed.

(c) To the extent practicable, cottage food manufacturers should either dip utensils, dishes, and equipment in a 100 ppm chlorine bleach solution (or other approved sanitizer) and allow to air dry, or use the sanitizing cycle of a dishwasher.

(10) Toxic chemicals such as ~~soap and~~ household cleaners, concentrated bleach, and pesticides must be stored in a way that will not contaminate food, food-preparation areas, and food-contact surfaces.

AUTH: 50-50-103, MCA

IMP: 50-50-103, 50-50-116, MCA

NEW RULE IX (37.110.511) REGISTRATION REQUIREMENTS

(1) through (5) remain as proposed.

(6) At the time of registration, the registrant must demonstrate that the water for the cottage food operation is either:

(a) and (b) remain as proposed.

(c) Water sampling may also be required by the state or local health authority when cottage food is suspected of being associated with an illness or outbreak.

(7) A registration fee of \$40.00 must be paid to the county in which the cottage food operation is registered. Once registered a cottage food operator may sell their registered products anywhere in the state of Montana. The cottage food operation must register again with the local ~~regulatory~~ health authority and pay the registration fee if it wishes to change the location of its cottage food operation or

produce new products. Recipe changes to an existing approved product that necessitate redetermination as to whether that product constitutes a non-potentially hazardous food or contains a major allergen are new products for the purposes of this rule. While not exhaustive, the following are examples of when a new fee must be paid:

(a) when a cottage food operator moves to a new house;

(b) when a cottage food operator changes a recipe in a way that may make the recipe potentially hazardous or adds an allergen, such as switching from a traditional frosting to one that contains cream cheese or adding walnuts to chocolate chip cookies; and

(c) when a cottage food operator wishes to make a completely new product, such as dried fruit when they had previously registered chocolate chip cookies.

(8) remains as proposed.

AUTH: 50-50-103, MCA

IMP: 50-50-103, 50-50-116, 50-50-117, MCA

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

COMMENT #1: Two commenters requested that cottage food operators be allowed to dry their own fruit.

RESPONSE #1: The department agrees with the comment. The adopted rule has been revised to reflect this change providing that the fruit being dried has a natural pH below 4.6, specific drying methods are followed, and no reduced oxygen packaging is used.

COMMENT #2: Two commenters appreciated the department's use of language that allows products not listed in the rule to be reviewed on a case-by-case basis.

RESPONSE #2: The department agrees.

COMMENT #3: Two commenters liked the use of an example label and requested that more examples like this one be used throughout the rules.

RESPONSE #3: The department agrees and will try to use examples such as this whenever possible.

COMMENT #4: Two commenters requested that the language regarding an approved source be clarified to specify that local farm products may be used in the production of cottage food.

RESPONSE #4: The department agrees. The adopted rule has been revised to reflect this change.

COMMENT #5: Two commenters requested that the language regarding when water sampling must occur be clarified.

RESPONSE #5: The department agrees. The adopted rule has been revised to reflect this change.

COMMENT #6: Two commenters requested that examples be added to New Rule IX to clarify when a new registration fee must be paid.

RESPONSE #6: The department agrees. The adopted rule has been revised to reflect this change.

COMMENT #7: One commenter requested the rule be changed to explicitly state that once registered an operator may sell their registered products anywhere in Montana.

RESPONSE #7: The department agrees. The adopted rule has been revised to reflect this change.

COMMENT #8: One commenter requested the term "Domestic Residence Kitchen" be defined, and suggested the following definition: "Domestic Residence Kitchen" means the area of the domestic residence stated in law, designed and intended for use by a resident or residents for personal food preparation, or the processing, storage, or packaging of cottage food products. The domestic residence kitchen must only use food equipment designed for residential use, and must not use commercial types of food equipment typically used in larger retail or wholesale food establishments.

RESPONSE #8: The department disagrees. The statute is clear that cottage food operators must operate within their domestic residence. The distinction between commercial grade and residential grade equipment is not clear and review criteria for this distinction would be difficult, if not impossible, to enforce.

COMMENT #9: One commenter asked if advertisements for cottage food products are allowed under the cottage food rule.

RESPONSE #9: This comment does not necessitate any changes. The rules do not prevent advertising in local papers or on social media. All cottage food sales, however, are required to be direct (in-person) sales.

COMMENT #10: One commenter does not think that the line between cottage food operators and licensed wholesalers is clear, and requested that the rule make the distinction between cottage food operators and licensed wholesalers.

RESPONSE #10: The department disagrees. The statutory requirements limiting cottage food operators to direct sales make it clear that they are not wholesalers of food.

COMMENT #11: One commenter requested that all cottage food operators undergo regular inspections and be rated based on health and safety parameters related to their operation.

RESPONSE #11: The department disagrees. The statute clearly states when an inspection will be conducted. This cannot be changed in rule.

COMMENT #12: One commenter requested that the rule be consistent in its references to the entity with whom the cottage food operator registers and recommends using the term "local health authority" throughout.

RESPONSE #12: The department agrees. The adopted rule has been revised to reflect this change.

COMMENT #13: One commenter requested that the term "application for review" be changed to "registration for review" to clarify the rule.

RESPONSE #13: The department agrees. The adopted rule has been revised to reflect this change.

COMMENT #14: One commenter requested that the fees be structured in a tiered manner based on the number of recipes that are to be reviewed.

RESPONSE #14: The department disagrees. The proposed fee reflects the intent of both HB-478 and HB-630 (2013). During the development of these bills fees of between thirty and fifty dollars were discussed. Forty dollars was chosen as it is the average of the two.

COMMENT #15: One commenter requested that preparation methods and recipes not be required for submittal.

RESPONSE #15: The department disagrees. In order to protect public health the department must review preparation methods and recipes. As stated in the proposed rule, the ingredient list will be made public as is required by federal and state labeling laws while the preparation methods and recipes will be confidential.

COMMENT #16: One commenter requested that animal treats be included in the cottage food rule.

RESPONSE #16: The department disagrees. Licensing of pet and animal feed production is regulated through the Department of Livestock.

COMMENT #17: One commenter requested that diaper-age children be explicitly prohibited from the production and packaging area in a cottage food production area.

RESPONSE #17: The department disagrees. New rule sections specifically pertaining to cleaning food contact surfaces and personal cleanliness already cover contamination that may occur from the presence of diaper-age children.

COMMENT #18: One commenter requested that information regarding the sanitization of dishware be added, and suggested the following language: "Dishes, utensils and equipment can be sanitized in using the sanitizing cycle of a dishwasher OR by dipping them in 100 ppm chlorine bleach solution (or other approved sanitizer) and allowed to air dry."

RESPONSE #18: The department does not believe that sanitization should be required in all operations. However, to the extent practicable, a sanitizing dip and air drying or a sanitizing dishwasher should be used. The adopted rule has been changed to reflect this guidance.

COMMENT #19: One commenter requested that the term "household cleaners" be used instead of "soap," and that the term "pesticides" be added to the examples of toxic chemicals in New Rule VIII Manufacture of Cottage Food Products (10).

RESPONSE #19: The department agrees, and the adopted rule reflects the changes.

6. These rule amendments are effective September 25, 2015.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 14, 2015.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.87.102, 37.87.901,	)	REPEAL
37.87.903, 37.87.1303, 37.87.1313;)	
and the repeal of ARM 37.87.723)	
pertaining to the revision of)	
authorization requirements for)	
Medicaid Mental Health Services for)	
Youth)	

TO: All Concerned Persons

1. On July 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-719 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1023 of the 2015 Montana Administrative Register, Issue Number 14. On August 27, 2015, the Department of Public Health and Human Services published the amended MAR Notice No. 37-719 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1243 of the 2015 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 37.87.102, 37.87.901, 37.87.903, 37.87.1303, 37.87.1313, and repealed 37.87.723 as proposed.

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

The department received comments to the rule that requested changes be made to the Manual. No changes were made to the rules themselves. However, since the manual is incorporated by reference and hence part of the administrative rule, the department has noted the changes below in the responses and has placed the amendments to the Manual on the department's web site. You may obtain a copy of the amended manual at: <http://dphhs.mt.gov/dsd/CMB/Manuals.aspx>.

COMMENT #1: Comments were received expressing concern regarding the addition of the service requirement that Outpatient Therapy provided to youth under the age of 8 must include education and support for the family on how to respond to the needs of the youth, manage their own emotional state, and build secure attachment. The commenters noted that in the statement of reasonable necessity the requirement is for youth under the age of eight while this is not reflected in the service requirement section. The commenters believe it is not the department's position to dictate what a therapist provides during family sessions.

RESPONSE #1: Upon consideration of the comments received the department agrees that the requirement is not appropriate for all youth and is removing from the amended rule the service requirement to include "education and support for the family on how to respond to the needs of the youth, manage their own emotional state, and build secure attachment."

COMMENT #2: Comments were received expressing concern over the addition of the language pertaining to the use of the family therapy codes when a parent is part of the treatment of the youth and additionally questioning how much time the parent would have to spend in a session for the session to be billed as a family session. A few of the commenters would like more information pertaining to the "provider practices and utilization review" that is stated in the proposed rule. One commenter would also like to know if family sessions count towards the 24 sessions a youth is entitled to receive without a serious emotional disturbance (SED) diagnosis. Another commenter stated that if the amended language arises out of issues with billing practices then the department should deal with those through audits and retro reviews.

RESPONSE #2: The proposed language regarding the billing of family therapy codes has been in the Youth General Medicaid Manual. It was requested that it be added to the Children's Mental Health Bureau Medicaid Services Provider Manual (Manual) as it pertains to youth. Consequently, the proposed amendment language does not represent a change to current billing requirements. It serves as a clarification for providers based upon an identified need by the Surveillance and Utilization Review (SURS) program. However, the department agrees with the comment suggesting that implementation be through audit. The department has removed the proposed language from the Manual. SURS will communicate this requirement in a separate venue.

COMMENT #3: Comments were received opposing the proposed change to the functional impairment criteria in the Manual for the following reasons: 1) the department should have made such a profound change in collaboration with providers and stakeholders; 2) the proposed changes will result in a negative impact to SED youth and their families; 3) it appears that specific psychiatric symptoms are tied to statements asserting functional impairment and are poorly organized; using psychiatric symptoms to justify a finding of functional impairment results in circular reasoning; 4) the proposed language will serve to exclude more children from the SED label and does not provide clarity; 5) that while the department states that the functional impairment may be reflected in both internalizing and externalizing behaviors, the impairments listed are heavily weighted toward extreme externalizing; and 6) the five categories are inappropriate to children under 6 and that adding "developmental appropriate" does not make them developmentally appropriate.

RESPONSE #3: The department appreciates this feedback and has removed this proposed amendment from this rule change. The department will seek to collaborate with providers and stakeholders prior to proposing to amend this section in the future.

COMMENT #4: One commenter stated that the definitions proposed for CANS seem more like rationale than definitions.

RESPONSE #4: The department agrees with the comment and has amended the proposed definitions for CANS to provide clarity.

COMMENT #5: One commenter stated that the overview section is lacking any other motivation other than federal government requirements, for example the mission of the bureau.

RESPONSE #5: The department removed the overview section of the manual and replaced it with a simple purpose statement.

COMMENT #6: One commenter stated they would like examples of services that are not in the array of the Children's Mental Health Bureau's (CMHB) services that may be considered duplicative for the purpose of coordination of services.

RESPONSE #6: The department cannot provide an all-inclusive list of examples of services that may be considered duplicative. Youth in the CMHB program often receive services through other funding sources. The intent of this section is to inform providers of CMHB services that the coordination of services does not apply only to CMHB services for the purpose of coordination and preventing duplicative services.

COMMENT #7: One commenter recommended that the Notes/Exceptions listed for Targeted Case Management (TCM) under the Acute Hospital category also be noted under the TCM category.

RESPONSE #7: The department appreciates the comment and has added the Notes/Exceptions to the TCM category.

COMMENT #8: Regarding discharge from services, one commenter stated that they would like for the table of discharge requirements to be left in the Manual and to additionally have the addition of the requirements in specific categories of services.

RESPONSE #8: The department appreciates the comment and has maintained the table of discharge requirements and also is listing the requirements in the service specific areas.

COMMENT #9: One commenter stated that they are confused by the rationale of including "Asperger's Disorder" and "Other Pervasive Developmental Disorders" when these categories are now under the DSM-5 rubric of Autism Spectrum Disorder. The commenter believes that for practical purposes most providers will use the DSM-5 equivalent. The commenter would like to know what clarity is achieved by providing an encompassing diagnostic label followed by two labels that represent variations subsumed by the encompassing label.

RESPONSE #9: The department reviewed the list of Serious Emotional Disturbance (SED) diagnosis and agrees with the comment. The department has removed Asperger's Disorder, F84.5 and Other Pervasive Developmental Disorders, F84.8 from the list as they are under the rubric of Autism Spectrum Disorder in the DSM-5.

COMMENT #10: One commenter stated that they believe that targeted case management should be allowed concurrent with in-state Psychiatric Residential Treatment Facilities (PRTF) as well as out-of-state PRTFs.

RESPONSE #10: This comment is outside of the scope of this rulemaking.

COMMENT #11: One commenter stated that Chapter 5 of the Manual references Title 37, chapter 5 of the Administrative Rules of Montana (ARM) stating that complete information pertaining to the appeals process may be obtained there. The commenter would like to know why the Manual would provide information that is not complete if the complete appeals process is located in ARM.

RESPONSE #11: The department agrees with this comment and has removed the chapter regarding appeals. The department has maintained the reference to ARM Title 37, chapter 5. Additionally, the department removed the definition of authorized representative as that pertained to the appeals section in the Manual and is also defined in ARM.

COMMENT #12: One commenter stated that it appears that the Reconsideration Review process only applies to PRTF services and would like clarification on the appeals process for TGHs.

RESPONSE #12: The commenter is correct; the Reconsideration Review process section of the Manual is applicable only to PRTF services. Based upon Comment #11, the department will refer all inquiries regarding appeals to ARM Title 37, chapter 5.

COMMENT #13: One commenter asked for clarity in the Home Support Service (HSS) section of the Manual (c)(iii) pertaining to the required documents for crisis intervention under the continued stay criteria.

RESPONSE #13: The department reviewed the section and agrees with the comment. The department has removed the language from the crisis documentation in (c)(iii) of the HSS section of the Manual.

COMMENT #14: One comment was an objection to the proposed requirement for the addition of the detailed documentation of crisis intervention proposed for the admission criteria for HSS. The comment noted that the information may not be available if the youth has not been in services with the provider. The commenter recommended the following language for (2)(c)(iv) of the admission criteria instead: "Documentation that the youth has required crisis intervention more than once in the

past 45 days. Documentation must include the date, location, and nature of the crisis situation."

RESPONSE #14: The department appreciates the comment and has changed the language to reflect the commenter's recommendation.

COMMENT #15: One commenter stated that they disagree with proposed (4) under the medical necessity criteria for TCM because TCM is already well defined in rule and this is unnecessary.

RESPONSE #15: It was not the intent of the department to constrict the meaning of TCM but to make clear that TCM is not to be used in lieu of services that other systems are responsible to provide. The department has changed the proposed language to state, "TCM cannot be used for activities that are the responsibility of other systems."

COMMENT #16: One commenter requested the prior authorization (PA) time frame for therapeutic group home stays remains at 120 days and not be extended to 180 days.

RESPONSE #16: The department has considered the options for the time frame of the initial stay for TGHs. Taking into consideration the average length of stays of youth in TGHs reported by providers and stakeholders as well as the staffing constraints in which the department must operate to complete the PAs, the department chose 180 days. It is at the provider's discretion to discharge a youth prior to the 180 days initial stay time frame if the youth no longer meets the medical necessity criteria for TGH level of care. Additionally, the language in the Manual provides for the option of the department to issue the PA for TGH initial stays for "up to 180 days." This allows the flexibility for the department to authorize fewer days in the event that 180 days is not believed to be medically necessary without it being considered a partial denial.

COMMENT #17: One commenter requested specific time frames for turnaround of a request for a PA or continued stay.

RESPONSE #17: The department agrees with the comment and has changed the Manual to reflect clear, consistent, and reasonable turnaround time frames for both the PA and the continued stay requests.

COMMENT #18: One commenter requested that the department clarify if the assessment for SED must occur annually.

RESPONSE #18: The SED assessment must occur annually. The department has clarified this in the Manual.

COMMENT #19: One commenter requested a place where the status of PA requests and continued stay requests can be checked rather than waiting for the letter from the department.

RESPONSE #19: The department is currently working with the department's Information Technology division to determine what options are available to offering provider access to this information electronically. At this time, the department cannot provide an estimate as to a timeframe for this to come to fruition. The current process provides a fax to the requestor within two business days of the determination by the clinical staff. Additionally, the requestor may contact the CMHB at any time to check on the status.

COMMENT #20: One commenter noted on page 51 of the Manual, the reference for the allowance of targeted case management for youth in an out of state PRTF has been removed from ARM 37.87.1223 and is proposed in New Rule I of MAR Notice No. 37-715.

RESPONSE #20: The department appreciates the comment and has corrected this reference to reflect the New Rule I as proposed in MAR Notice No. 37-715.

COMMENT #21: One commenter requested the department consider adding emergency admission criteria for youth with the Child and Family Services Division (CFSD) for occasions when there is an immediate need for such youth to enter a TGH.

RESPONSE #21: The department has considered this request and has changed the Manual to provide for up to 72 hours of TGH reimbursement, not dependent on youth meeting the medical necessity criteria for youth who require emergency admission to a TGH. This emergency admission window will be available to all youth in emergency or crisis situations not just those in CFSD custody.

COMMENT #22: One commenter would like an appeals process for partial certification for PAs and for continued stay. The commenter stated that as it currently stands a provider is required to submit a new authorization request 5 to 10 days prior to the discharge date of the youth and this does not leave enough time to facilitate discharge planning for the youth. Additionally, these time frames do not allow for the current appeals process to take place prior to the discharge date of the youth. The commenter would like a clear appeals process to include a peer-to-peer and a doctor-to-doctor review.

RESPONSE #22: The department's appeal process is located in ARM Title 37, chapter 5. While the department does agree with the commenter that having the option of a peer-to-peer and a doctor-to-doctor review would be ideal, the 2013 legislature removed the funding for the contract that afforded the department the ability to provide that option.

COMMENT #23: One commenter asked if the prior authorization form/information provided for therapeutic group home stays meets the requirements for the clinical assessment or does a provider need to have both documents in the file of the youth?

RESPONSE #23: The department requires both a prior authorization form and a clinical assessment and the file for the youth must contain both documents. The Manual has been changed to reflect this requirement.

COMMENT #24: One commenter stated it would be helpful to have a reference to the CANS section of the Manual in the "service requirements" section for the services which do require CANS.

RESPONSE #24: The department has added the CANS requirements to the service requirements for the specific areas in the Manual.

COMMENT #25: A few commenters would like clarification regarding the time frames associated with prior authorizations and continued stays.

RESPONSE #25: The department will review the time frames for the utilization review process of TGHs and HSS and provide clarification for prior authorizations and continued stays.

COMMENT #26: One commenter remarked that ARM 37.87.303 referenced in the Service Requirements section for CSCT has been repealed.

RESPONSE #26: The department appreciates the comment and has corrected the ARM reference in the CSCT section.

COMMENT #27: One commenter asked for clarification regarding the certificate of need section for Acute Inpatient. 42 CFR 456.60 states that a physician must certify the need for the service; the Manual specifies that a mid-level may certify need.

RESPONSE #27: The department appreciates the comment and has changed the Manual to reflect that a physician must certify the need for hospital services.

COMMENT #28: One commenter stated that they are concerned about the impact of the PA requirement for TGH restricting the use of beds for short term crisis placements.

RESPONSE #28: The department has changed the language to include a 72-hour payment authorization request for emergency/crisis situations. If the youth continues to need TGH care beyond the 72-hour authorization, the youth would need to continue to meet the medical necessity criteria and the provider will need to obtain a PA.

COMMENT#29: One commenter noted the time frame on the form for discharge notification is different from that in the proposed Manual and recommends they be consistent.

RESPONSE #29: The department thanks the commenter for this suggestion. The Manual becomes effective October 1, 2015, at which time the forms available online will all have been updated to reflect any changes that affect the forms.

COMMENT #30: One commenter stated that the PA requirements for Therapeutic Home Visits (THV) may be problematic if something happens while the youth is on the visit that would require an extension of time.

RESPONSE #30: The department recognizes that circumstances may arise that prevent a youth from returning from a THV in the allotted amount of time. As such the department did allow for a provider to submit a request for the PA in those circumstances no later than one business day, as opposed to five business days, prior to the end of the current visit.

4. These rule amendments and repeal are effective October 1, 2015.

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

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

Certified to the Secretary of State September 14, 2015

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.5.3403 pertaining to operator)
service provider allowable rates)

TO: All Concerned Persons

1. On August 13, 2015, the Department of Public Service Regulation published MAR Notice No. 38-5-231 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1134 of the 2015 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State September 14, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.2.511 Review of Centrally)
Assessed Property Appraisals, to)
remove an outdated reference to a)
form number)

TO: All Concerned Persons

1. On August 13, 2015, the Department of Revenue published MAR Notice No. 42-2-932 pertaining to the proposed amendment of the above-stated rule at page 1136 of the 2015 Montana Administrative Register, Issue Number 15.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 14, 2015.

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- 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, 2015. This table includes those rules adopted during the period July 1, 2015, through September 30, 2015, 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, 2015, this table, and the table of contents of this issue of the Register.

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 2015 Montana Administrative Register.

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 - 44.5.122 and other rule - Fees Charged by the Secretary of State, p. 1038, 1364
 - 44.6.110 and other rules - Secretary of State's Electronic Filing System - Filing of a Title 71 Lien - Requirements for Filing UCC Amendments With the Business Services Division, p. 743
 - 44.14.202 Retention of Local Government Electronic Long-Term Records, p. 920, 1288
 - 44.15.101 and other rules - Notaries Public, p. 1358
- (Commissioner of Political Practices)
- 44.10.101 and other rules - Campaign Finance Reporting, Disclosure, and Practices, p. 1138

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in August 2015 appear. Vacancies scheduled to appear from October 1, 2015 through December 31, 2015, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 2015.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Directors of State Compensation Insurance Fund (Commissioner of Insurance Fund)			
Ms. Janice VanRiper Helena	Governor	Best	8/7/2015 5/1/2019
Qualifications (if required): Policy Holder			
Board of Plumbers (Labor and Industry)			
Mr. Steve Carey Frenchtown	Governor	reappointed	8/7/2015 5/1/2019
Qualifications (if required): Journeyman Plumber			
Mr. Denver Fraser Clancy	Governor	reappointed	8/7/2015 5/1/2019
Qualifications (if required): Representative of the Department of Environmental Quality			
Ms. Debi Friede Havre	Governor	reappointed	8/7/2015 5/1/2019
Qualifications (if required): Representative of the public			
Mr. Steven R. Henry Billings	Governor	Lindeen	8/21/2015 7/1/2017
Qualifications (if required): Representative of public who is not engaged in business of installing or selling plumbing			
Mr. Scott Lemert Livingston	Governor	reappointed	8/7/2015 5/1/2019
Qualifications (if required): Master Plumber			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Research and Commercialization Technology (Commerce)			
Mr. David William Opitz Missoula	Governor	Davison	8/21/2015 7/1/2017
Qualifications (if required): Public Member			
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)			
Ms. Tina Marie Berg Lewistown	Governor	Harris	8/7/2015 12/31/2017
Qualifications (if required): Policy Holder			
Governor's Commission on Community Service (Governor)			
Major Lori Chamberlain Fort Harrison	Governor	reappointed	8/7/2015 7/1/2018
Qualifications (if required): State agency representative			
Mr. Doug Mitchell Helena	Governor	reappointed	8/7/2015 7/1/2016
Qualifications (if required): State agency representative			
Ms. Karin Olsen Helena	Governor	reappointed	8/7/2015 7/1/2018
Qualifications (if required): Designee of the State Superintendent of Public Instruction			
Ms. Chantel Schieffer Bozeman	Governor	reappointed	8/7/2015 7/1/2018
Qualifications (if required): Representative of a community-based organization			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Mental Disabilities Board of Visitors (Governor)			
Mr. James Henry Hajny Livingston	Governor	Angel	8/21/2015 6/30/2017
Qualifications (if required): consumer or family member of a consumer of mental health services			
Ms. Miriam Hertz Seeley Lake	Governor	reappointed	8/21/2015 6/30/2017
Qualifications (if required): consumer or family member of a consumer with developmental disabilities			
Ms. Tracy Perez Ronan	Governor	reappointed	8/21/2015 6/30/2017
Qualifications (if required): professional person in the field of mental health treatment			
Mental Health Ombudsman (Governor)			
Mr. Dennis Nyland Helena	Governor	reappointed	8/2/2015 8/1/2019
Qualifications (if required): Mental Health Ombudsman			
Montana Historical Society Board of Trustees (Education)			
Mr. Charles Sackett Johnson Helena	Governor	Murry	8/7/2015 7/1/2020
Qualifications (if required): Public Representative			
Mr. Jude Sheppard Chinook	Governor	reappointed	8/7/2015 7/1/2020
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Information Security Advisory Council (Administration)			
Mr. Ron Baldwin Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): State Chief Information Officer			
Ms. Erika Billiet Kalispell	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): Local Governments			
Rep. Mark W. Blasdel Somers	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): State Legislature			
Mr. Joe Chapman Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): State Government Agency			
Mr. Bryan Costigan Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): Montana Analysis and Technical Information Center Representative			
Mr. John Daugherty Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): State Government Agency			
Ms. Sherri Davidoff Missoula	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): General Public			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Information Security Advisory Council (Administration) cont.			
Mr. Stuart Fuller Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	State Government Agency		
Mr. Kreh Germaine Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	State Government Agency		
Mr. Jim Gietzen Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	State Government Agency		
Mr. Adrian Irish Missoula	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	University Representative		
Ms. Margaret Kauska Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	State Government Agency		
Rep. Kelly McCarthy Billings	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	State Legislature		
Ms. Lynne Pizzini Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required):	State Government Agency		

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Information Security Advisory Council (Administration) cont.			
Major General Matthew T. Quinn Helena	Administration	not listed	8/7/2015 6/30/2017
Qualifications (if required): State Homeland Security Advisor			
Montana State Workforce Innovation Board (Labor and Industry)			
Mr. Rich Aarstad Helena	Governor	not listed	8/21/2015 7/1/2017
Qualifications (if required): Workforce Representative			
Mr. Dean Bentley Butte	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Ms. Casey Blumenthal Helena	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Governor Steve Bullock Helena	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Governor or Designee			
Ms. Tina Bundtrock Great Falls	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Workforce Innovation Board (Labor and Industry) cont.			
Mr. Clayton Christian Missoula	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Commissioner of Higher Education or designee			
Mr. Dave Crum Great Falls	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Ms. Anna Doran Helena	Governor	not listed	8/21/2015 7/1/2017
Qualifications (if required): Business Representative			
Mr. Alan Ekblad Great Falls	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Workforce Representative			
Mr. Paul Gatzemeier Billings	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Mr. Larry Hall Ronan	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Mr. Kirk Hammerquist Kalispell	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Workforce Innovation Board (Labor and Industry) cont.			
Mr. Jasyn Harrington Helena	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Community Organization Representative			
Ms. Jacquie Helt Missoula	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Workforce Representative			
Mr. Bill Hunt, Jr. Shelby	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Mr. Niles Hushka Bozeman	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Superintendent Denise Juneau Helena	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): State Superintendent of Public Instruction or designee			
Mr. Fred Kellogg Polson	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Ms. Billie Lee Ronan	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Workforce Innovation Board (Labor and Industry) cont.			
Mr. Miles McCarvel Missoula	Governor	not listed	8/21/2015 7/1/2017
Qualifications (if required): Workforce Representative			
Mr. Michael J. McGinley Dillon	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Local Government elected official			
Mr. John McKee Butte	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Mr. Robert W. Minto, Jr. Missoula	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Director Richard Opper Helena	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Director of the Department of Public Health and Human Services or designee			
Mr. Jay Reardon Helena	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Workforce Representative			
Ms. Loren Rose Seeley Lake	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Workforce Innovation Board (Labor and Industry) cont.			
Ms. Arlene Templer Pablo	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Tribal Government Representative			
Mr. Scott Trent Missoula	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Business Representative			
Ms. Jane Weber Great Falls	Governor	not listed	8/7/2015 7/1/2017
Qualifications (if required): Local government elected official			
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Tim McDermott Bozeman	Governor	reappointed	8/7/2015 7/1/2018
Qualifications (if required): member of the general public			
Mr. John "Chuck" Thompson Missoula	Governor	Morris	8/7/2015 7/1/2018
Qualifications (if required): representative of service station dealers			
State Rehabilitation Council (Public Health and Human Services)			
Ms. Amy Capolupo Missoula	Governor	reappointed	8/7/2015 10/1/2017
Qualifications (if required): Advocacy Community			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Rehabilitation Council (Public Health and Human Services) cont.			
Ms. Tiffany Costa Billings Qualifications (if required): Advocacy Community	Governor	McElravy	8/7/2015 10/1/2017
Ms. Coreen Louise Faulkner Missoula Qualifications (if required): Advocacy Community	Governor	Johnson	8/7/2015 10/1/2017
Ms. Annaliese Gibbs Billings Qualifications (if required): Vocational Rehabilitation Community	Governor	reappointed	8/7/2015 10/1/2017
Mr. Rick Heitz Kalispell Qualifications (if required): Advocacy Community	Governor	reappointed	8/7/2015 10/1/2017
Mr. Jim Marks Helena Qualifications (if required): Vocational Rehabilitation Community	Governor	reappointed	8/7/2015 10/1/2017
Ms. Donna Marie Robnett Frenchtown Qualifications (if required): Advocacy Community	Governor	Hollimon	8/7/2015 10/1/2017
Mr. John Senn Billings Qualifications (if required): Advocacy Community	Governor	reappointed	8/7/2015 10/1/2017

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2015

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Rehabilitation Council (Public Health and Human Services) cont.			
Ms. Sharyl Wells Browning	Governor	Albert	8/7/2015 10/1/2017
Qualifications (if required): Section 121 Representative			
Mr. Michael Woods Billings	Governor	reappointed	8/7/2015 10/1/2017
Qualifications (if required): Advocacy Community			
Task Force on State Public Defender Operations (Legislative Services Division)			
Mr. Mike Eakin Billings	Governor	not listed	8/7/2015 12/31/2016
Qualifications (if required): Attorney experienced in the federal Indian Child Welfare Act			
Mr. Jason Trinity Holden Great Falls	Governor	not listed	8/7/2015 12/31/2016
Qualifications (if required): Attorney with experience in the criminal defense of misdemeanor and felony offenses			
Ms. Wendy Holton Helena	Governor	not listed	8/7/2015 12/31/2016
Qualifications (if required): Group Facilitator			
Ms. Juli Pierce Billings	Governor	not listed	8/7/2015 12/31/2016
Qualifications (if required): Attorney with experience in the prosecution of misdemeanor and felony offenses			

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Athletic Trainers (Labor and Industry)		
Mr. Brian Coble, Helena Qualifications (if required): athletic trainer (post-secondary school)	Governor	10/1/2015
Mr. Christopher Heard, Butte Qualifications (if required): athletic trainer (health care facility)	Governor	10/1/2015
Dr. Derrick Johnson, Butte Qualifications (if required): physician	Governor	10/1/2015
Dr. John David Michelotti, Helena Qualifications (if required): Physician	Governor	10/1/2015
Board of Barbers and Cosmetologists (Labor and Industry)		
Ms. Corie Mora, Great Falls Qualifications (if required): manicurist	Governor	10/1/2015
Ms. Sara Dobbins, Helena Qualifications (if required): public representative	Governor	10/1/2015
Ms. Jennifer Gross, Billings Qualifications (if required): Public Representative	Governor	10/1/2015
Ms. Abigail Coburn, Missoula Qualifications (if required): Public Representative	Governor	10/1/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Sanna Beerman, Black Eagle Qualifications (if required): occupational therapist</p>	Governor	12/31/2015
<p>Board of Outfitters (Labor and Industry) Mr. Robin Cunningham, Gallatin Gateway Qualifications (if required): fishing outfitter</p>	Governor	10/1/2015
<p>Mr. Shawn McNeely, Bozeman Qualifications (if required): fishing and hunting outfitter</p>	Governor	10/1/2015
<p>Governor's Healthier Montana Task Force (Public Health and Human Services) Ms. Peggy Kopp, Sidney Qualifications (if required): Hospital Representative</p>	Governor	10/25/2015
<p>Mr. Todd Harwell, Helena Qualifications (if required): Department of Public Health and Human Services Representative</p>	Governor	10/25/2015
<p>Dr. Caitlin Hall, Crow Agency Qualifications (if required): Tribal Health Programs</p>	Governor	10/25/2015
<p>Dr. Roman Hendrickson, Sheridan Qualifications (if required): Healthcare Providers</p>	Governor	10/25/2015
<p>Mr. Clay Vincent, Bozeman Qualifications (if required): Public Health Agency</p>	Governor	10/25/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Preservation Review Board (Historical Society) Ms. Miki Wilde, East Helena Qualifications (if required): public representative	Governor	10/1/2015
Mr. Timothy Urbaniak, Billings Qualifications (if required): public representative	Governor	10/1/2015
Ms. Debra Hronek, Red Lodge Qualifications (if required): public representative	Governor	10/1/2015
Historical Records Advisory Council (Board of Education) Ms. Ellen Crain, Butte Qualifications (if required): Public Representative	Governor	10/10/2015
Ms. Anne L. Foster, Huntley Qualifications (if required): Public Representative	Governor	10/10/2015
Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	10/10/2015
Mr. Jon Ille, Hardin Qualifications (if required): Public Representative	Governor	10/10/2015
Mr. Samuel Meister, Missoula Qualifications (if required): Public Representative	Governor	10/10/2015
Ms. Heather Hultman, Bozeman Qualifications (if required): Public Representative	Governor	10/10/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Records Advisory Council (Board of Education), cont.		
Ms. Kristi Dawn Scott, Great Falls Qualifications (if required): Public Representative	Governor	10/10/2015
Local Government Advisory Council (Revenue)		
Commissioner Carol Brooker, Plains Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Carole Lankford, Pablo Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Mr. Doug Kaercher, Havre Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Mr. Jerry Jimison, Glendive Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Kim Buchanan, Bozeman Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Mr. Greg Chilcott, Hamilton Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Paulette DeHart, Helena Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Donnie McVee, Laurel Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Local Government Advisory Council (Revenue) cont.		
Ms. Betty Romo, Wolf Point Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Ms. Christina Volek, Billings Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Mr. Jason Wiener, Missoula Qualifications (if required): Governance, taxation, finance & budgetary issue expertise for Local Govt, Schools or Tribe	Director	12/31/2015
Montana Alfalfa Seed Committee (Agriculture)		
Mr. Tim Wetstein, Joliet Qualifications (if required): alfalfa seed grower	Governor	12/31/2015
Mr. Dallas Steiger, Hysham Qualifications (if required): alfalfa seed grower	Governor	12/21/2015
Private Land Public Wildlife Advisory Council (Fish, Wildlife and Parks)		
Mr. Chris King, Winnett Qualifications (if required): Landowner	Governor	10/10/2015
Mr. Pat Gunderson, Glasgow Qualifications (if required): BLM Representative Ex-officio Member	Governor	10/10/2015
State Emergency Response Commission (Military Affairs)		
Mr. Bruce M. Coccoli, Helena Qualifications (if required): representative of the National Guard	Governor	10/1/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Mr. Bruce Suenram, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	10/1/2015
Mr. William T. Rhoads, Butte Qualifications (if required): representative of a utility company	Governor	10/1/2015
Mr. David Mason, Helena Qualifications (if required): representative of the fire services training school	Governor	10/1/2015
Mr. Royce Shipley, Great Falls Qualifications (if required): representative of the U.S. Air Force	Governor	10/1/2015
Mr. Thomas Kuntz, Red Lodge Qualifications (if required): representative of a fire service association	Governor	10/1/2015
Mr. Michael J. McGinley, Dillon Qualifications (if required): representative of the association of counties	Governor	10/1/2015
Commissioner Ed Tinsley, Fort Harrison Qualifications (if required): representative of the Disaster and Emergency Services	Governor	10/1/2015
Mr. Mike Vogel, Bozeman Qualifications (if required): representative of the university system	Governor	10/1/2015
Mr. Joe Marcotte, Billings Qualifications (if required): representative of Montana hospitals	Governor	10/1/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Mr. Jim DeTienne, Helena Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS	Governor	10/1/2015
Ms. Sheena Wilson, Helena Qualifications (if required): representative of the governor's office	Governor	10/1/2015
Mr. Jordan Love, Great Falls Qualifications (if required): Representative of the Department of Public Health and Human Services	Governor	10/1/2015
Ms. Cheryl Richman, Helena Qualifications (if required): representative of the Department of Transportation	Governor	10/1/2015
Mr. Ron Jendro, Helena Qualifications (if required): representative of the Department of Fish, Wildlife and Parks	Governor	10/1/2015
Mr. Ron Zellar, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	10/1/2015
Mr. Michael Mercer, Great Falls Qualifications (if required): representative of the National Weather Service	Governor	10/1/2015
Mr. Pete Lawrenson, Missoula Qualifications (if required): representative of a railroad company	Governor	10/1/2015
Mr. Dale Nelson, Ronan Qualifications (if required): representative of a tribal emergency response commission	Governor	10/1/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Ms. Bonnie Lovelace, Helena Qualifications (if required): representative of the Department of Environmental Quality	Governor	10/1/2015
Major Thomas Butler, Helena Qualifications (if required): representative of the Department of Justice	Governor	10/1/2015
Ms. Delila Bruno, Helena Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS	Governor	10/1/2015
Mr. Scott Sanders, Belgrade Qualifications (if required): representative of an emergency medical services association	Governor	10/1/2015
Chief John Turner, Fort Benton Qualifications (if required): representative of a law enforcement association	Governor	10/1/2015
Mr. Roger Ebner, Butte Qualifications (if required): representative of an emergency management association	Governor	10/1/2015
Ms. Judith LaPan, Sidney Qualifications (if required): representative of a public health organization	Governor	10/1/2015
Mr. Peter Ridgeway, Missoula Qualifications (if required): representative of the transportation industry	Governor	10/1/2015
Ms. Michelle Slyder, Billings Qualifications (if required): representative of the petroleum industry	Governor	10/1/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont. Mr. Andre Marcure, Missoula Qualifications (if required): representative of the insurance industry	Governor	10/1/2015
Mr. Patrick Lonergan, Bozeman Qualifications (if required): DES Association	Governor	10/1/2015
Ms. Jackie Williams, Helena Qualifications (if required): Department of Agriculture Representative	Governor	10/1/2015
Major Shawn Hardy, Fort Harrison Qualifications (if required): National Guard Representative	Governor	10/1/2015
Mr. Walt Kerttula, Helena Qualifications (if required): Department of Transportation Representative	Governor	10/1/2015
Ms. Tara Moore, Bozeman Qualifications (if required): University System Representative	Governor	10/1/2015
General Bradley A. Livingston, Fort Harrison Qualifications (if required): Disaster and Emergency Services Division Representative	Governor	10/1/2015
Mr. Anthony Bacino, Missoula Qualifications (if required): Railroad Company Representative	Governor	10/1/2015
Mr. Donald Britton, Great Falls Qualifications (if required): National Weather Service Representative	Governor	10/1/2015

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2015 THROUGH DECEMBER 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont. Ms. Nikki Johnson, Helena Qualifications (if required): Agriculture Representative	Governor	10/1/2015
LTC Michael Moreni, Fort Harrison Qualifications (if required): Representative of the National Guard	Governor	10/1/2015
Statewide Independent Living Council (Public Health and Human Services) Ms. Astghik Iknatian, Billings Qualifications (if required): DPHHS Representative and ex-officio member	Governor	12/1/2015
Ms. Monique Casbeer, Missoula Qualifications (if required): Person with Disability not employed by a State Agency or Independent Living Center	Governor	12/1/2015
Mr. Robert Idol, Whitefish Qualifications (if required): Person with Disability not employed by a State Agency or Independent Living Center	Governor	12/1/2015
Statewide Interoperability Governing Board (Governor) Mr. Tim Fox, Helena Qualifications (if required): Attorney General or Designee	Governor	10/1/2015
Mr. Geoff Feiss, Helena Qualifications (if required): Representative of the Montana Telecommunications Industry	Governor	10/1/2015
Mr. Tim Burton, Helena Qualifications (if required): Governor's Office Representative	Governor	10/1/2015

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Interoperability Governing Board (Governor) cont.		
Mr. Kevin Myhre, Lewistown Qualifications (if required): Representative of Montana League of Cities and Towns	Governor	10/1/2015
Ms. Bonnie Lorang, Helena Qualifications (if required): Representative of the Montana Telecommunications Industry	Governor	10/1/2015
Sheriff Leo C. Dutton, Helena Qualifications (if required): Representative of the Montana Sheriffs and Peace Officers Association	Governor	10/1/2015
Mr. Mike Doto, no city listed Qualifications (if required): Representative of the Montana State Volunteer Firefighters Association	Governor	10/1/2015
Director Jason Smith, Helena Qualifications (if required): Director of Indian Affairs	Governor	10/1/2015
Director Mike Tooley, Helena Qualifications (if required): Transportation Director	Governor	10/1/2015
Mr. Patrick Lonergan, Bozeman Qualifications (if required): Montana Fire Chiefs Association	Governor	10/1/2015
Mr. Ron Baldwin, Helena Qualifications (if required): Chief Information Officer or Designee	Governor	10/1/2015
Commissioner Joe Briggs, Great Falls Qualifications (if required): Representative of the Montana Association of Counties	Governor	10/1/2015

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Interoperability Governing Board (Governor) cont. Ms. Jayne Rogers, Great Falls Qualifications (if required): Representative of the Montana EMS Association	Governor	10/1/2015
Colonel Jeff Fisher, Fort Harrison Qualifications (if required): Department of Military Affairs Representative	Governor	10/1/2015
Chief Roger Nasset, Kalispell Qualifications (if required): Representative of Montana Association of Chiefs of Police	Governor	10/1/2015
Mr. Kevin Box, Whitehall Qualifications (if required): Representative of the Montana Emergency Medical Services Association	Governor	10/1/2015
Mr. Curt Stinson, Helena Qualifications (if required): Representative of Montana Association of Chiefs of Police	Governor	10/1/2015
Trauma Care Committee (Public Health and Human Services) Mr. Tim Sinton, Choteau Qualifications (if required): representative of the Central Region Trauma Advisory Council	Governor	11/2/2015
Dr. Dennis Maier, Billings Qualifications (if required): representative of the Montana Committee on Trauma/ACS	Governor	11/2/2015
Ms. Elaine Schuchard, Glasgow Qualifications (if required): representative of the Emergency Nurses Association	Governor	11/2/2015
Ms. Kristen Lowery, Deer Lodge Qualifications (if required): representative of the Montana Trauma Coordinators	Governor	11/2/2015

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services) cont. Ms. Leah Emerson, Ronan Qualifications (if required): representative of the Western Region Trauma Advisory Council	Governor	11/2/2015
Mr. Sam Miller, Bozeman Qualifications (if required): representative of the Eastern Region Trauma Advisory Council	Governor	11/2/2015
Mr. Don Whalen, Missoula Qualifications (if required): representative of private ambulances	Governor	11/2/2015
Ms. Becky Arbuckle, no city listed Qualifications (if required): representative of the Montana Emergency Medical Services Association	Governor	11/2/2015
Dr. Sidney Williamson, Bozeman Qualifications (if required): representative of the American College of Emergency Physicians	Governor	11/2/2015
Ms. Roberta Shupe, Harlem Qualifications (if required): representative of the Indian Health Service	Governor	11/2/2015
Ms. Joy Fortin, Kalispell Qualifications (if required): representative of the Montana Trauma Coordinators	Governor	11/2/2015
Water and Waste Water Operators' Advisory Council (Environmental Quality) Mr. Roger Skogen, Valier Qualifications (if required): wastewater plant operator	Governor	10/16/2015